

Appendix D
Western's Proposed Transmission Owner Tariff

**WESTERN AREA POWER ADMINISTRATION
TRANSMISSION OWNER TARIFF**

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1. **Preamble.** The United State of America, acting by and through the Department of Energy, Western Area Power Administration (Western) hereby sets forth in this Transmission Owner Tariff the Transmission Revenue Requirement (TRR) for its Entitlements related to the Path 15 Upgrade Project high voltage transmission facilities placed under the CAISO's Operational Control, and certain terms and conditions relating to the operation, expansion of and interconnection with the Path 15 Upgrade Project high voltage transmission facilities placed under the CAISO's Operational Control for which Western holds Entitlements.
2. **Effective Date.** This TO Tariff is effective on the date on which Western becomes a Participating TO and shall continue to be effective so long as Western is a party to the TCA.
3. **Definitions.** Certain capitalized terms used in this TO Tariff that are set out immediately below shall have the meanings set out immediately below. Capitalized terms used in this tariff and not defined below shall have the meanings set out in the CAISO Tariff as it may be amended from time to time.
 - 3.1 **California Independent System Operator ("CAISO").** The California Independent System Operator, a state chartered, nonprofit corporation that controls the transmission facilities of Participating TOs and dispatches certain generating units and loads.
 - 3.2 **Market Participant.** An entity, including a Scheduling Coordinator, who participates in the energy market through the buying, selling, transmission, or distribution of energy or ancillary services into, out of, or through the CAISO controlled grid.
 - 3.3 **Participating TO.** A party to the TCA whose application under Section 2.2 of the TCA has been accepted and who has placed its transmission assets and/or Entitlements under the CAISO's Operational Control in accordance with the TCA. A Participating TO may be an Original Participating TO or a New Participating TO. For purposes of this TO Tariff, the Participating TO is Western.
 - 3.4 **Path 15 Upgrade Project ("Project").** The transmission system enhancements constructed to upgrade Path 15, which consist of a 500 kV transmission line between the Los Banos Substation and the Gates Substation on the PG&E system, modifications at both such substations, and including 230 kV and 115 kV reinforcements and reconfigurations.
 - 3.5 **Regulatory Authority.** In the case of Western, Western is its own regulatory authority.

- 3.6 Transmission Control Agreement (“TCA”).** The Transmission Control Agreement entered into between the CAISO and the Participating TOs within California.
- 3.7 Transmission Revenue Balancing Account Adjustment (“TRBAA”).** A mechanism established by the Participating TO which will ensure that all Transmission Revenue Credits and other credits specified in Sections 6 and 8 of Appendix F, Schedule 3 of the CAISO Tariff, flow through to CAISO Tariff and TO Tariff transmission customers.
- 3.8 Transmission Revenue Credit.** The net of the revenues received by the Participating TO from the CAISO for Wheeling service, Usage Charges (excluding any Usage Charges received by the Participating TO as an FTR Holder) and from the sale of an FTR
- 3.9 Transmission Revenue Requirement (“TRR”).** The TRR is the total annual authorized revenue requirements associated with transmission facilities and Entitlements turned over to the Operational Control of the CAISO by the Participating TO. The costs of any transmission facility turned over to the Operational Control of the CAISO shall be fully included in the Participating TO’s TRR. The TRR includes the costs of transmission facilities and Entitlements and deducts Transmission Revenue Credits and credits for Standby Transmission Revenue and the transmission revenue expected to be actually received by the Participating TO for Existing Rights and Converted Rights. The TRR is shown in Appendix I.
- 3.10 Transmission System Rights (“TSR”).** A TSR is an exclusive right to use the incremental transmission capacity created by the Project; including the rights associated with Firm Transmission Rights as such term is used in the CAISO tariff.
- 3.11 Western’s General Requirements for Interconnection.** The document detailing the process and guidelines an entity should follow when attempting an interconnection with the Participating TO, dated September 20, 1999, as it may further amended.
- 3.12 Western’s Open Access Transmission Tariff.** The document detailing the process an entity should follow when requesting transmission service from the Participating TO (excluding requests for transmission on the Project), filed with FERC on December 31, 1997, in Docket No. NJ98-1-000, as it may be further amended.
- 4. Eligibility.** Transmission service over Western high voltage Project transmission facilities and Project Entitlements placed under the CAISO’s Operational Control shall be provided only to Eligible Customers as defined by the CAISO Tariff. Any dispute as to whether a customer is eligible for wholesale transmission service

shall be resolved by FERC and any dispute as to whether a Customer is eligible for service under this TO Tariff shall be resolved by the Regulatory Authority. This Tariff only provides Transmission service to Western's Project facilities and does not provide access to any other Western facilities.

5. Access Charges. The applicable Access Charges are provided in the CAISO Tariff.

5.1 Transmission Revenue Requirement. As set forth in the CAISO Tariff; the Transmission Revenue Requirement for each Participating TO shall be used to develop the Access Charges set forth in the CAISO Tariff. Western's preliminary Transmission Revenue Requirement, as proposed to be filed with and approved by the FERC, is set forth in Appendix I.

5.2 Transmission Revenue Balancing Account Adjustment ("TRBAA"). The Participating TO shall maintain a Transmission Revenue Balancing Account ("TRBA") that will ensure that all Transmission Revenue Credits and the refunds, specified in Sections 6 and 8 of Appendix F, Schedule 3 of the CAISO Tariff, flow through to transmission customers. The TRBAA shall be equal to: $TRBAA = TRC_F + TRC_T + I$.

$TRC_T =$ The balance representing the prior period difference between the projected Transmission Revenue Credits and the actual credits.

$TRC_F =$ The forecast of Transmission Revenue Credits for the following calendar year.

$I =$ The interest balance for the TRBA, which shall be calculated using the interest rate pursuant to Section 35.19(a) of FERC's regulations under the Federal Power Act (18 CFR Section 35.19(a)). Interest shall be calculated based on the average TRBA principal balance each month, compounded quarterly.

The Western TRBAA, calculated in accordance with Western's regulations and procedures as recognized by the CAISO Tariff and confirmed by the FERC, is stated in Appendix I.

6. Ancillary Services-Applicability and Charges. If any Ancillary Services are required, the Participating TO will not provide such services, but the transmission customer will be required to meet any such requirement in accordance with the CAISO Tariff.

7. Billing and Payment.

7.1 [intentionally left blank]

7.2 The CAISO shall pay the Participating TO those Access Charge revenues and such other proceeds and revenues as are provided for in the CAISO Tariff for the purpose of enabling the Participating TO to recover its Transmission Revenue Requirement.

7.3 Those entities, whether End-User Customers, UDCs, MSSs, or others, who are designated by the CAISO as responsible for the payment of Western's Transmission Revenue Requirement shall pay to the CAISO all applicable charges related to Western's TSRs and Entitlements in accordance with the CAISO Tariff.

8. Obligation to Interconnect or Construct Transmission Expansions & Facility Upgrades.

8.1 **Participating TO Obligation to Interconnect.** To the extent consistent with Sections 9.2.1 and 9.3.3 of this TO Tariff, Western's General Requirements for Interconnection and the Coordinated Operating and Interconnection Agreement for the Path 15 Upgrade the Participating TO shall, at the request of a third party, interconnect its system to the generation or load of such third party, or modify an existing Interconnection.

8.1.1 **Upgrade to Transmission System.** Interconnection must be consistent with Western's General Requirements for Interconnection, Good Utility Practice, the Coordinated Operations and Interconnection Agreement for the Path 15 Upgrade and in conformance with all Applicable Reliability Criteria, all applicable statutes, and regulations. The Participating TO will not upgrade its existing or planned transmission system to accommodate the Interconnection if doing so would impair system reliability, or would otherwise impair or degrade pre-existing firm transmission service.

8.1.2 **Costs Associated with Interconnection** The cost of any Direct Assignment Facilities constructed pursuant to this section shall be paid, in advance, by the party requesting the Interconnection.

8.1.3 **Execute Interconnection Agreement.** Prior to the construction of any Interconnection facilities pursuant to this TO Tariff, the party requesting an Interconnection shall execute an appropriate Interconnection Agreement and that will include, without limitation, cost, responsibilities for engineering, equipment, and construction costs. All costs shall be paid in advance by the requesting party.

8.1.4 Coordination with ISO on Interconnection Requests. The Participating TO shall coordinate the interconnection with the ISO.

8.2 Participating TO Obligation to Construct Transmission Expansions or Facility Upgrades. The Participating TO shall be obligated to: (1) perform System Impact or Facility Studies where the Project Sponsor or the ISO agrees to pay in advance the study cost and specifies the project objectives to be achieved, and (2) build transmission additions and facility upgrades where the Participating TO is obligated to construct or expand facilities in accordance with and subject to the limitations of Western's General Requirements for Interconnection, applicable laws and regulations, the ISO Tariff and this TO Tariff.

8.2.1 Obligation to Construct. A Participating TO shall not be obligated to construct or expand Interconnection facilities or system upgrades unless and until the conditions stated in this Tariff and Western's General Requirements for Interconnection have been satisfied.

9. Expansion Process.

9.1 Determination of Facilities. A Participating TO shall perform a Facilities Study in accordance with this Section where (1) the Participating TO determines that it may be necessary to construct or expand facilities; or (2) the ISO, a Project Sponsor, Project Proponent, or Market Participant agrees to pay in advance the costs of the Facilities Study and specifies the project objectives to be achieved in terms of increased capacity or reduced congestion.

9.1.1 Payment of Facilities Study's Cost.

9.1.1.1 Project Sponsor or Project Proponent to Pay for Facilities Study. Where the facilities to be added or upgraded have been determined to be needed in accordance with the procedures established herein, the Market Participant, Project Sponsor, Project Proponent, or the ISO requesting the study shall pay in advance the reasonable cost of the Facilities Study. When the Participating TO is the Project Sponsor in accordance with the ISO Tariff, the costs of the Facilities Study shall be recovered through its Access Charge.

9.1.1.2 Principal Beneficiaries to Pay for Facilities Study. Where the facilities to be added or upgraded have been determined to be needed and the principal beneficiaries have been identified, the Project

Sponsor and the identified principal beneficiaries shall pay in advance the reasonable cost of the Facilities Study, in such proportions as may be agreed.

9.1.2 Payment Procedure. Where a Facilities Study is being conducted pursuant to this TO Tariff, the Participating TO shall, as soon as practicable, tender to the Market Participant, Project Sponsor, Project Proponent, ISO, or identified principal beneficiaries, as the case may be, a Facilities Study Agreement that defines the scope, content, assumptions, and terms of reference for such study, the estimated time required to complete it, and such other provisions as the parties may reasonably require and pursuant to which such Market Participant, Project Sponsor, Project Proponent, the ISO, or identified principal beneficiaries agree to pay in advance the Participating TO the reasonable cost of performing the required Facilities Study. If the Market Participant, Project Sponsor, Project Proponent, the ISO, or identified principal beneficiaries, as the case may be, agree to the terms of the Facilities Study Agreement, they shall execute the Facilities Study Agreement and return it to the Participating TO within ten Business Days. If such Market Participant, Project Sponsor, Project Proponent, the ISO, or identified principal beneficiary elects not to execute a Facilities Study Agreement, the Participating TO shall have no obligation to complete a Facilities Study.

9.1.3 Facilities Study Procedures. Upon receipt of an executed Facilities Study Agreement, a copy of which has been provided to the ISO by the party requesting the Facilities Study, the Participating TO will use due diligence to complete the required Facilities Study in accordance with the terms of the Facilities Study Agreement.

9.2 Obligation to Build.

9.2.1 Due Diligence to Construct Subject to this TO Tariff, the Participating TO shall use due diligence to construct, within a reasonable time, additions or upgrades to the Project that it is obligated to construct pursuant to this TO Tariff. The Participating TO's obligation to build will be subject to: 1) its ability, after making a good faith effort, to obtain the necessary approvals and property rights under applicable federal, state, and local laws; 2) the presence of a cost recovery mechanism with cost responsibility assigned in accordance with the ISO Tariff; 3) a signed Participation Agreement; (4) payment of all costs must be advanced to the Participating TO; and (5) any necessary Congressional approval. The Participating TO will not construct or

expand its existing or planned transmission system, if doing so would violate the Coordinated Operations and Interconnection Agreement for Path 15 Upgrade or impair system reliability as determined through systems analysis based on the Applicable Reliability Criteria.

9.2.2 Delay in Construction or Expansion. If any event occurs that will materially affect the time for completion of new facilities, or the ability to complete them, the Participating TO shall promptly notify: (1) the Project Sponsor with regard to facilities determined to be needed; (2) the Parties to the Participation Agreement with regard to facilities determined to be needed pursuant to this TO Tariff where principal beneficiaries were identified; and (3) the ISO. In such circumstances, the Participating TO shall, within thirty days of notifying such Project Sponsor, Parties to the Participation Agreement, and the ISO of such delays, convene a technical meeting with such Project Sponsor, Parties to the Participation Agreement, and the ISO to discuss the circumstances which have arisen and evaluate any options available. The Participating TO also shall make available to such Project Sponsor, Parties to the Participation Agreement, and the ISO, as the case may be, studies and work papers related to the cause and extent of the delay and the Participating TO's ability to complete the new facilities, including all information that is in the possession of the Participating TO that is reasonably needed to evaluate the alternatives.

9.2.2.1 Alternatives to the Original Facility Additions. If the review process of Section 9.2.2 determines that one or more alternatives exist to the originally planned construction project, the Participating TO shall present such alternatives for consideration to the Project Sponsor, Parties to the Participation Agreement, and the ISO, as the case may be. If upon review of any alternatives, such Project Sponsor, the ISO, or Parties to the Participation Agreement wish to evaluate or to proceed with one of the alternative additions or upgrades, such Project Sponsor, the ISO, or Parties to the Participation Agreement may request that the Participating TO prepare a revised Facility Study pursuant to Sections 9.1.1, 9.1.2, and 9.1.3 of this TO Tariff.

9.2.2.2 Refund Obligation for Unfinished Facility Additions. If the Participating TO and the Project Sponsor, the ISO, or Parties to the Participation Agreement, as the case may be, mutually agree that

no other reasonable alternatives exist, the obligation to construct the requested additions or upgrades shall terminate and any deposit not yet applied toward the expended project costs shall be returned without interest. However, the Project Sponsor and any identified principal beneficiaries, as the case may be, shall be responsible for all costs prudently incurred by the Participating TO through the time the construction was suspended.

9.3 Provisions Relating To Transmission Construction On the Systems Of Other TOs.

9.3.1 Responsibility for Third Party Additions. A Participating TO shall not be responsible for making arrangements for any engineering, permitting, and construction of transmission or distribution facilities on the system(s) of any other entity or for obtaining any regulatory approval for such facilities. The Participating TO will undertake reasonable efforts through the coordinated planning process to assist in making such arrangements, including, without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

9.3.2 Coordination of Third-Party System Additions. Where transmission additions or upgrades being built pursuant to the ISO Tariff require additions or upgrades on other systems, to the extent consistent with Section 9.3.3 of this TO Tariff, the Participating TO shall coordinate construction on its own system with the construction required by others. The Participating TO, after consultation with the ISO, the Project Sponsor, and Parties to the Participation Agreement, as the case may be, may defer construction if the new transmission facilities on another system cannot be completed in a timely manner. The Participating TO shall notify such Project Sponsor, Parties to the Participation Agreement, and the ISO, in writing of the basis for any decision to defer construction and the specific problems which must be resolved before it will initiate or resume construction of the new facilities. Within forty Business Days of receiving written notification by the Participating TO of its intent to defer construction pursuant to this section, such Project Sponsor,

10. Interconnection Process.

10.1 Applications. Parties requesting Interconnections shall submit written applications to the Participating TO and shall send a copy of the

application to the ISO. The Participating TO shall time-stamp the application to establish study priority.

10.2 Completed Application. A Completed Application shall provide all of the information listed in Western's General Requirements for Interconnection and 18 CFR § 2.20, including, but not limited to, the following: (i) The identity, address, telephone number, and facsimile number of the entity requesting service; (ii) The Interconnection point(s) and the location of the transmission addition contemplated by the applicant; (iii) The resultant (or new) maximum amount of Interconnection capacity requested at each point which may experience such an increase; and the increased transmission capacity of the transmission addition requested; (iv) The proposed date for initiating an Interconnection. In addition to the information specified above, when required to properly evaluate system conditions, the Participating TO also may ask the applicant to provide the following: (v) The electrical location of the source of the power (if known) to be transmitted pursuant to the applicant's request for Interconnection. If the source of the power is not known, a system purchase will be assumed; (vi) The electrical location of the ultimate load (if known). If the location of the load is not known, a system sale will be assumed; and (vii) Such other information as the Participating TO reasonably requires to process the application. The Participating TO will treat the information in (v) and (vi) as confidential at the request of the applicant except to the extent that disclosure of this information is required by this TO Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice, or pursuant to RTG or ISO transmission information sharing agreements. Consistent with applicable law, the Participating TO shall treat this information consistent with the standards of conduct contained in Part 37 of FERC's regulations.

10.3 Notice of Need for System Impact Study. After receiving a Completed Application for Interconnection, the Participating TO shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Participating TO's transmission planning reliability criteria and transmission assessment practices for completing a System Impact Study is provided in Attachment D of Western's Open Access Transmission Tariff. If the Participating TO determines that a System Impact Study is necessary to accommodate the requested Interconnection, it shall so inform the applicant (and shall send a courtesy copy to the ISO), as soon as practicable. In such cases, the Participating TO shall within twenty Business Days of receipt of a Completed Application, tender a System Impact Study Agreement that defines the scope, content, assumptions and terms of reference for such study, the estimated time required to complete it, and such other provisions as the parties may reasonably require, and pursuant to which the applicant shall agree to reimburse the Participating TO for the reasonable costs of

performing the required System Impact Study. For an Interconnection request to remain a Completed Application, the applicant shall execute the System Impact Study Agreement and return it to the Participating TO within ten Business Days. If the applicant elects not to execute a System Impact Study Agreement, its application shall be deemed withdrawn, and the applicant shall reimburse to the Participating TO and the ISO all costs reasonably incurred in processing the application

10.4 System Impact Study Cost Reimbursement and Agreement.

10.4.1 Cost Reimbursement. The System Impact Study Agreement shall clearly specify the maximum charge, based on the Participating TO's estimate of the cost and time for completion of the System Impact Study. The charge shall be paid in advance. The charge shall not exceed the reasonable cost of the study. In performing the System Impact Study, the Participating TO shall rely, to the extent reasonably practicable, on existing transmission planning studies. The applicant will not be assessed a charge for such existing studies; however, the applicant will be responsible for the reasonable charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the applicant's request.

10.4.2 Multiple Parties. If multiple parties request Interconnection at the same location, the Participating TO may conduct a single System Impact Study. The costs of that study shall be pro-rated among the parties requesting Interconnection.

10.5 System Impact Study Procedures. Upon receipt of an executed System Impact Study Agreement, the Participating TO will use due diligence to complete the required System Impact Study within a sixty day period. The System Impact Study shall identify any system constraints which cannot be reasonably accommodated through ISO Congestion Management, such that transmission expansions or upgrades would be required to provide the requested Interconnection. In the event that the Participating TO is unable to complete the required System Impact Study within such time period, it shall so notify the applicant and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the applicant and the ISO. The Participating TO will use the same due diligence in completing the System Impact Study for others as it uses when completing studies for its affiliated UDC. The Participating TO shall notify the applicant and the ISO immediately upon completion of the System Impact Study.

10.5.1 Failure to Execute an Interconnection Agreement. If the Participating TO finds that the transmission system will be adequate to accommodate all of a request for Interconnection and that no costs are likely to be incurred for new transmission additions or upgrades, the applicant must execute an Interconnection Agreement within ten Business Days of completion of the System Impact Study or the application shall be deemed terminated and withdrawn.

10.5.2 Facilities Study Procedures. If a System Impact Study indicates that additions or upgrades to the transmission system are needed to meet an applicant's request, the Participating TO shall, within fifteen Business Days of the date of the System Impact Study, tender to the applicant a Facilities Study Agreement that defines the scope, content, assumptions and terms of reference for such study, the estimated time required to complete it, and such other provisions as the parties may reasonably require, and pursuant to which the applicant agrees to pay in advance the Participating TO for performing the required Facilities Study. For a service request to remain a Completed Application, the applicant shall execute the Facilities Study Agreement and return it to the Participating TO within ten Business Days. If the applicant elects not to execute a Facilities Study Agreement, its application shall be deemed withdrawn and the applicant shall reimburse to the Participating TO all costs reasonably incurred in processing the application not covered by the System Impact Study Agreement.

10.6 Relevant Sections Apply Upon Receipt of Facilities Study Agreement. Upon receipt of an executed Facilities Study Agreement by the Participating TO, the relevant portions of Sections 9.1.3 through 9.3.3 of this TO Tariff shall apply.

10.7 Partial Interim Service. If the Participating TO determines that there will not be adequate transmission capability to satisfy the full amount of a Completed Application for an increase in the maximum rate of delivery or receipt associated with a new request for Interconnection, the Participating TO nonetheless shall be obligated to offer and provide the portion of the requested Interconnection that can be accommodated without any additions or upgrades. However, the Participating TO shall not be obligated to provide the incremental amount of requested Interconnection that requires the addition of facilities or upgrades to the transmission system until such facilities or upgrades have been placed in service.

10.8 Expedited Procedures for New Facilities. In lieu of the procedures set forth above, the applicant shall have the option to expedite the process by requesting the Participating TO to tender at one time, together with the

results of required studies, an "Expedited Service Agreement" pursuant to which the applicant would agree to pay in advance the Participating TO for all costs reasonably incurred pursuant to the terms of this TO Tariff. In order to exercise this option, the applicant shall request in writing an Expedited Service Agreement covering all of the above-specified items within twenty Business Days of receiving the results of the System Impact Study identifying needed facility additions or upgrades or costs incurred in providing the requested Interconnection. The Participating TO shall tender an Expedited Service Agreement within ten Business Days of the applicant's request. While the Participating TO agrees to provide the applicant with its best estimate of the new facility costs and other charges that may be incurred, unless otherwise agreed by the parties, such estimate shall not be binding and the applicant must agree in writing to advance funds to the Participating TO for all costs reasonably incurred pursuant to the provisions of this TO Tariff. The applicant shall execute and return such Expedited Service Agreement within ten Business Days of its receipt or the applicant's request for Interconnection will cease to be a Completed Application and will be deemed terminated and withdrawn. In that event, the applicant shall advance to the Participating TO all costs reasonably incurred in processing the application not covered by the terms of the System Impact Study Agreement.

11. Uncontrollable Forces and Indemnification.

11.1 Procedures to Follow if Uncontrollable Force Occurs. In the event of the occurrence of an Uncontrollable Force which prevents a Party from performing any of its obligations under this TO Tariff, such Party shall (i) immediately notify the other Parties in writing of the occurrence of such Uncontrollable Force, (ii) not be entitled to suspend performance in any greater scope or longer duration than is required by the Uncontrollable Force, (iii) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance hereunder, (iv) keep the other Parties apprised of such efforts on a continual basis and (v) provide written notice of the resumption of performance hereunder. Notwithstanding any of the foregoing, the settlement of any strike, lockout, or labor dispute constituting an Uncontrollable Force shall be within the sole discretion of the Party to this TO Tariff involved in such strike, lockout, or labor dispute and the requirement that a Party must use its best efforts to remedy the cause of the Uncontrollable Force and mitigate its effects and resume full performance hereunder shall not apply to strikes, lockouts, or labor disputes. No Party will be considered in default as to any obligation under this TO Tariff if prevented from fulfilling the obligation due to the occurrence of an Uncontrollable Force.

- 11.2 Indemnification.** A Market Participant shall at all times indemnify, defend, and save the Participating TO harmless from any and all damages, losses, claims, (including claims and actions relating to injury or to death of any person or damage to property), demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Participating TO's performance of its obligations under this TO Tariff on behalf of a Market Participant, except in cases of negligence or intentional wrongdoing by the Participating TO.
- 12. Regulatory Filings.** Nothing contained herein shall be construed as affecting, in any way, the right of the Participating TO to engage in a subsequent ratemaking process as it deems necessary and appropriate to recover its Transmission Revenue Requirements, or for a change in its terms and conditions, including changes in rate methodology, or for a change in designation of transmission and Entitlements to be placed under the CAISO's control, pursuant to the applicable FERC rules, regulations, policies, and governing statutes.
- 13. Miscellaneous.**
- 13.1 Notices.** Any notices, demands, or requests in accordance with this TO Tariff, unless otherwise provided in this TO Tariff, shall be in writing and shall be deemed properly served, given, or made: (i) upon delivery if delivered in person, (ii) five days after deposit in the mail if sent by first class United States mail, postage prepaid, (iii) upon receipt of confirmation by return electronic facsimile if sent by facsimile, or (iv) upon delivery if delivered by prepaid commercial courier service, in each case addressed to a Party at the address set forth in Appendix II. Any Party may at any time, by notice to the other Parties, change the designation or address of the person specified in Appendix II to receive notice on its behalf. Any notice of a routine character in connection with service under this TO Tariff shall be given in such a manner as the Parties may determine from time to time, unless otherwise provided in this TO Tariff.
- 13.2 Waiver.** Any waiver at any time by any Party of its rights with respect to any default under this TO Tariff, or with respect to any other matter arising in connection with this TO Tariff, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this TO Tariff. Any delay short of the statutory period of limitations in asserting or enforcing any right shall not constitute or be deemed a waiver.
- 13.3 Confidentiality.**
- 13.3.1 Maintaining Confidentiality if Not for Public Disclosure.** The Participating TO shall maintain the confidentiality of all of the

documents, data, and information provided to it by any other Party that such Party may designate as confidential, provided, however, that the information will not be held confidential by the receiving Party if (1) the designating Party is required to provide such information for public disclosure pursuant to this TO Tariff or applicable regulatory requirements, or (2) the information becomes available to the Public on a non-confidential basis (other than from the receiving Party).

13.3.2 Disclosure of Confidential Information. Notwithstanding anything in this Section 13.3.2 to the contrary, if any Party is required by applicable laws or regulations, or in the course of administrative or judicial proceedings, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section 13.3.2, the Party may disclose such information; provided, however, that as soon as such Party learns of the disclosure requirement and prior to making such disclosure, such Party shall notify the affected Party or Parties of the requirement and the terms thereof. The affected Party or Parties may, at their sole discretion and own costs, direct any challenge to or defense against the disclosure requirement and the disclosing Party shall cooperate with such affected Party or Parties to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The disclosing Party shall cooperate with the affected Parties to obtain proprietary or confidential treatment of confidential information by the person to whom such information is disclosed prior to any such disclosure.

13.4 Titles. The captions and headings in this TO Tariff are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the rates, terms, and conditions of this TO Tariff.

13.5 Severability. If any term, covenant, or condition of this TO Tariff or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest, by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this TO Tariff and their application shall not be affected thereby but shall remain in force and effect. The Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination, unless a court or governmental agency of competent jurisdiction holds that such provisions are not severable from all other provisions of this TO Tariff.

- 13.6 Preservation of Obligations.** Upon termination of this TO Tariff, all unsatisfied obligations of each Party shall be preserved until satisfied.
- 13.7 Governing Law.** This TO Tariff shall be interpreted, governed by, and construed under the laws of the United States, as applicable, as if executed and to be performed wholly within the State of California.
- 13.8 Appendices Incorporated.** The appendices to this TO Tariff are attached to this TO Tariff and are incorporated by reference as if fully set forth herein.
- 13.9 Consistency with CAISO Tariff.** This TO Tariff is intended to be consistent with the CAISO Tariff, and, if necessary, shall be amended to conform with any changes authorized or required in any final order in a FERC proceeding mandating such changes in the CAISO Tariff.
- 13.10 Disputes.** Except as limited by law, the CAISO ADR Procedures shall apply to all disputes between parties which arise under this TO Tariff. Without express authorization from Congress, the PTO is unable to enter into binding ADR. The CAISO ADR Procedures set forth in Section 13 of the CAISO Tariff shall not apply to disputes as to whether rates and charges set forth in this TO Tariff are just and reasonable under the Federal Power Act.

APPENDIX I

Transmission Revenue Requirement and TRBAA

The Western Base Transmission Revenue Requirement is \$0. The TRBAA is estimated to be \$0 for initial year of Project operation, calendar year 2004, as computed in accordance with CAISO Tariff. All of Western's Entitlements placed under the CAISO's Operational Control are related to High Voltage Facilities as defined by the CAISO Tariff. The TRBAA will be recalculated annually consistent with the CAISO Tariff, approved by the FERC, and provided to the CAISO. Sheet No. 11

**APPENDIX II
NOTICES**

Designated Representative:

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**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Western Area Power Administration) Docket No. EF04- -000

NOTICE OF FILING
(_____, 2004)

Take notice that on _____, 2004, Western Area Power Administration ("Western") submitted a Petition for a Declaratory Order (1) determining that Western's proffered transmission Revenue Requirement ("TRR") is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Western's becoming a Participating Transmission Owner, - **this is an open discussion item** (2) approving Western's Transmission Owner ("TO") Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Western's TRR and TO Tariff effective as of the later of January 1, 2004, or the effective date of a Transmission Control Agreement acceptable to Western.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All such motions and protests should be filed on or before _____, 2004. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at: <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Magalie R. Salas
Secretary