UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Corporation	**)** **)**	**Docket Nos. ER03-1222-000 and ER03-1222-001**

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTIONS TO INTERVENE, COMMENTS, AND PROTESTS

I. INTRODUCTION AND SUMMARY

On August 18, 2003, the California Independent System Operator Corporation ("ISO")[1] filed Amendment No. 57 to the ISO Tariff.[2] Amendment No. 57 is an addendum to Amendment No. 49, filed in Docket No. ER03-608-000 on March 11, 2003.[3] The purpose of Amendment No. 57 is to complete the resolution of revenue disbursement to New Participating Transmission Owners ("New Participating TOs") that do not serve End-Use Customers by specifically addressing the calculation in Appendix F, Schedule 3, Section 10 of the ISO Tariff and the corresponding fix that needed to be made in Section 6.1 of the same Schedule. The substance of Amendment No. 57 was intended to be included in the Amendment No. 49 filing, but was inadvertently omitted.

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[1] Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] On August 20, 2003, the ISO filed an errata to its Amendment No. 57 filing; this errata filing was assigned to Docket No. ER03-1222-001.

[3] Amendment No. 49 was accepted in part by the Commission and consolidated with the ongoing proceeding regarding Amendment No. 27 in ER00-2019-006. *California Independent System Operator Corp.*, 103 FERC ¶ 61, 260 (2003).

A number of entities have submitted motions to intervene in the captioned proceedings, several entities have submitted substantive comments, and two entities have submitted protests of Amendment No. 57.[4] The ISO does not oppose the interventions of entities that have sought leave to intervene in the proceeding.

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO hereby requests leave to file an answer, and files its answer, to the comments and protest submitted in this proceeding.[5]

II. ANSWER

A. Differences of Treatment Among Participating TOs

Vernon argues that all Participating TOs should be treated the same under the ISO's proposed Amendment No. 57, and that the ISO's proposal should be applied in a non-discriminatory manner to all Participating TOs. Vernon at 2. Vernon further complains that the ISO's plan of treating different Participating

[4] Motions to Intervene were filed by the California Department of Water Resources; the California Electricity Oversight Board; the California Municipal Utilities Association; the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California; the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency; the City of Vernon, California ("Vernon"); The Metropolitan Water District of Southern California; Modesto Irrigation District; Northern California Power Agency ("NCPA"); Pacific Gas and Electric Company ("PG&E"); Southern California Edison Company ("SCE"); the Transmission Agency of Northern California; Turlock Irrigation District; and Williams Power Company. PG&E and Vernon styled their pleadings as, *inter alia*, protests of Amendment No. 57.

[5] To the extent this answer is deemed an answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R § 385.213) to permit it to make this answer. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. *See, e.g.*, *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC

TOs differently would perpetuate utility specific ISO HV transmission rate treatment. *Id*.

The ISO has recognized that there are different "flavors" of Participating TOs; this is reflected in the differing treatments received by the Original Participating TOs as compared to the New Participating TOs, as well as New Participating TOs with merchant transmission. This difference is a fundamental pillar to the ISO's Access Charge methodology filed in March 2000. For entities that are differently situated, it is appropriate to apply different treatments as contemplated by Amendment No. 57.

Vernon states that the ISO's proposal is based on a misconception, and that in fact, no Participating TOs serve load – Utility Distribution Companies ("UDCs") do. The ISO does not disagree with the premise that it is the UDCs (together with Metered Subsystems and Scheduling Coordinators) that serve Load. However, the ISO Tariff provides in Appendix F, Schedule 3, Section 5 in the determination of the Access Charge that each Participating TO is required to include in its TO Tariff filed with the Commission the applicable Gross Load. Gross Load is defined as:

> **Gross Load**
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> For the purposes of calculating the transmission Access Charge, Gross Load is all Energy (adjusted for distribution losses) delivered for the supply of Loads directly connected to the transmission facilities or Distribution System of a UDC or MSS, and all Energy provided by a Scheduling Coordinator for the supply of Loads not directly connected to the transmission facilities or Distribution System of a UDC or MSS. Gross Load shall exclude Load with respect to which the Wheeling Access Charge is payable and the

¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

> portion of the Load of an individual retail customer of a UDC, MSS, or Scheduling Coordinator that is served by a Generating Unit that: (a) is located on the customer's site or provides service to the customers site through arrangements as authorized by Section 218 of the California Public Utilities Code; (b) is a qualifying small power production facility or qualifying cogeneration facility, as those terms are defined in the FERC's regulations implementing Section 201 of the Public Utility Regulatory Policies Act of 1978; and (c) secures Standby Service from a Participating TO under terms approved by a Local Regulatory Authority or FERC, as applicable, or can be curtailed concurrently with an outage of the Generating Unit serving the Load. In the case of a Local Publicly Owned Electric Utility that (a) is a Participating TO, (b) is in compliance with all metering requirements of Section 10 in the Metering Protocols of the ISO Tariff applicable to a utility that is an ISO Metered Entity, and (c) has not received a waiver of such metering requirements, Gross Load shall also exclude the portion of the Local Publicly Owned Electric Utility's Load that is served by a Generating Unit that (a) is directly connected to the Load through the Local Publicly Owned Electric Utility's Distribution System, (b) has certified and polled metering, and (c) is operated at greater than 50% capacity in the current month as measured by such a meter. Gross Load forecasts consistent with filed TRR will be provided by each Participating TO to the ISO.[6]

Consequently, it is Vernon that is confused. Each Participating TO must file the applicable Gross Load at FERC in its TO Tariff. A merchant transmission owner that does not serve Load does not have a Gross Load number. Thus its TO Tariff, filed at FERC and provided to the ISO, would have a zero value.

Vernon also argues that the HV transmission Access Charge is established based on TAC Areas, "without reference to utility specific retail loads of UDCs." Vernon at 7. Vernon fails to grasp, however, that in order to establish HVAC for each TAC Area, the ISO uses the Gross Load of each Participating TO

[6] This definition is the one provided in Amendment No. 49 (and also takes into account the ISO's compliance filing on Amendment No. 27); however, its terms are substantially similar to what was approved by the Commission prior to Amendment No. 49.

that was provided in their TO Tariff filing with the Commission. Therefore, the load served by the UDC, MSS, or Scheduling Coordinator is very much involved in calculating the High Voltage Access Charge.[7]

Vernon also contends that is unjust and unreasonable and unduly discriminatory to guarantee no-load Participating TOs full TRR recovery and not do the same for other Participating TOs; and that this would be the result of Amendment No. 57, because any shortfall in payments for no-load Participating TOs would be carried over to the following year. Vernon at 9. Vernon fails to recognize, however, that under the current Access Charge structure, existing Participating TOs are guaranteed recovery of their HVTRRs, provided the Gross Load they put in their TO Tariff is correct (*i.e*., equal to or less than their actual annual Gross Load). Moreover, there is perhaps a greater likelihood of over-recovery, since if the actual Load is greater than projected the utility will recover additional revenues. The down-side risk is also mitigated by the ability of a Participating TO to file revised Gross Load estimates at any time. Finally, Vernon could eliminate both the risk of under-recovery and the potential for over-recovery by proposing a formula rate similar to that filed by San Diego Gas & Electric in Docket No. ER03-601 that provides for true-ups. That being the case, no additional favorable treatment is being offered to no-load Participating TOs in Amendment No. 57.

Vernon argues that the Commission order in ER98-3760[8] dictates that individual Participating TOs no longer have claim to the revenues that the use of

[7] This calculation is further demonstrated in the ISO's September 17, 2003 transmission Access Charge informational filing in Docket No. ER03-1102-000.

specific facilities may generate. Consistent with this order, according to Vernon, TRR recovery should be proportional across all Participating TOs and " 'revenues to each Participating TO [should be] based on the ratio of the individual TO's [TRR] to the total TRR's [*sic*] of all Participating TO's….' "[*sic*]. Vernon at 10. Vernon's argument is based on an order relating to the Wheeling Access Charge, not the transmission Access Charge.[9] Moreover, even this irrelevant order has been overtaken by later events. The Unresolved Issues Order relates to the original Wheeling Access Charge methodology that was superseded by the existing Wheeling Access Charge methodology in January 2001 when Vernon became a Participating TO.

In any event, the new transmission Access Charge methodology is, in fact, consistent with the Commission's philosophy that "Once an entity joins the CA ISO, its facilities are turned over to the CA ISO for unfettered use. Thus, these entities no longer have claim to the revenues that use of these specific facilities generate."[10] The new methodology provides that if the Scheduling Point consists of Participating TOs within the same TAC Area, then revenues from the Wheeling Access Charge are distributed to each Participating TO in the TAC Area based on "the ratio of each Participating TO's High Voltage Transmission Revenue Requirement to the sum of all such Participating TO's High Voltage Transmission

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[8] *California Independent System Operator Corp.,* 101 FERC ¶ 61,219 (2002) ("Unresolved Issues Order").

[9] Indeed, the complete phrase referenced by Vernon reads: "the CA ISO's proposal to distribute *Wheeling Access revenues* to each Participating TO based on the ratio of the individual TO's Transmission Revenue Requirement (TRR) to the total TRR's of all Participating TO's is reasonable…" Unresolved Issues Order at P 82 [emphasis added].

[10] Unresolved Issues Order at P 82.

Revenue Requirement."[11] If the Scheduling Point does not have all Participating TOs in the same TAC Area, then "the revenue is first allocated between the TAC Areas based on the proportion of ownership and Entitlements of transmission capacity . . . Second, the revenues thus allocated to each TAC Area shall be disbursed among the Participating TOs in the TAC Area" as discussed above.[12]

Finally, Vernon contends that if this proposal is going to be made effective, it should only be after suspension, subject to refund, and hearing. Vernon at 2. The ISO does not object to this matter being set for hearing and subject to refund (although it does not believe such actions are necessary). The ISO does object, however, to any suspension of Amendment No. 57 pending resolution of any hearing or other proceedings. The ISO must have an effective Access Charge reimbursement policy in place, to avoid uncertainty and to allow for the proper functioning of the ISO Controlled Grid. Additionally, as filed with the Commission on August 15, 2003 in Docket No. ER03-1217-000, the ISO has already accepted a new merchant transmission owner, TransElect, and the revenue disbursement must be decided. Moreover, as stated earlier, this is an addendum to Amendment 49, which has already been consolidated with ER00-2019-006.[13] A hearing on Amendment 49 absent Amendment 57 could result in a disconnect of the conceptual revenue disbursement in Section 7 of the ISO Tariff versus the formula steps included in Appendix F, Schedule 3, Section 10. Therefore, no suspension is appropriate.

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[11] Section 7.1.4.3.1 of the ISO Tariff.

[12] Section 7.1.4.3.2 of the ISO Tariff.

B. Clarity of Tariff Language

PG&E "generally supports the CAISO's approach to allocating transmission service revenue among Participating TOs…" PG&E at 2, but requests three changes to make the ISO's proposed Tariff language more precise.

1. Tariff Section 9.4.3

PG&E argues that ISO Tariff Section 9.4.3 should not be read to provide Firm Transmission Rights ("FTRs") free of auction requirements to "no-load" Participating TOs, because these "free" FTRs are designed for New Participating TOs that serve load as a hedge against congestion. PG&E at 4. PG&E adds that "free" FTRs to no-load Participating TOs would constitute a windfall. PG&E at 5.

The ISO agrees with PG&E on this point, but does not believe the current proposed Tariff language can be read to allow "free" FTRs to no-load Participating TOs. Consistent with Tariff Section 9.4.3 (as provided in Amendment No. 49), only "a New Participating TO that has an obligation to serve Load shall receive FTRs for Inter-Zonal Interfaces . . ." In addition, under Section 3.2.7.3 (as provided in Amendment No. 49), a project sponsor either receives a guaranteed return on its TRR or FTRs, but not both. Trans-Elect already has discussed with the Commission and the ISO the requirements to file a Transmission Revenue Requirement and recover those costs through the ISO's Access Charge. As well, the Commission already has determined the rate of

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[13] *California Independent System Operator Corp.*, 103 FERC ¶ 61, 260 (2003).

return it will grant Trans-Elect for the Path 15 project in its order in Docket No. ER02-1672-000.[14]

PG&E goes on to suggest, however, that in order to achieve this goal, the "obligation to serve load" in Section 9.4.3 should be interpreted as a statutory or regulatory requirement to serve load only, and not any "mere" contractual obligations. The ISO does not agree with this interpretation.

The ISO can envision situations in the future when entities' "mere" contractual obligations to serve Load have a real impact on decisions to turn over Operational Control of transmission to the ISO. However, this is not the case with Trans-Elect, the entity whose plan to join the ISO has, in part, precipitated the changes in the ISO Tariff proposed in Amendment No. 57. Moreover, the ISO does not want to put itself in a position of determining what is needed to meet a statutory or regulatory requirement.

Regardless of the merits of PG&E's proposal, however, Amendment No. 57 does not propose to change the text of Section 9.4.3, and PG&E's recommendation is thus beyond the scope of this docket (unless it is consolidated with Docket No. ER00-2019). PG&E is advocating this same revision in the hearing on Docket No. ER00-2019, and the matter will be fully litigated therein.

2. Definition of Transmission Revenue Credit

PG&E argues that all Congestion-related revenue must be credited by no-load Participating TOs, and notes that although changes to reflect this

[14] *Western Area Power Forum*, 99 FERC ¶ 61, 306 (2002).

concept are made in Amendment No. 57 in Section 6.1 of Schedule 3 to Appendix F, such changes also should be made to the definition of Transmission Revenue Credit in the ISO's Master definition Supplement, Appendix F to the ISO Tariff. PG&E at 6.

PG&E suggests the following changes to the definition (PG&E's changes are in bold):

> For an Original Participating TO **and a New Participating TO that has no statutory or regulatory obligation to serve Load**, the proceeds received from the ISO for Wheeling service, FTR auction revenue and Usage Charges, plus the shortfall or surplus resulting from any cost differences between Transmission Losses and Ancillary Service requirements associated with Existing Rights and the ISO's rules and protocols. For a New Participating TO, **other than one with no statutory or regulatory obligation to serve Load**, during the 10-year transition period described in Section 4 of Schedule 3 of Appendix F, the proceeds received from the ISO for Wheeling Service and Net FTR Revenue….

PG&E at 7.

As noted above, the ISO does not agree that the terms "statutory or regulatory" should be used in this definition to modify the obligation Participating TOs may have to serve load. Although PG&E seeks the insertion of this language to insure that the understanding of "obligation to serve load" is restricted to "the classic obligation to serve of a state-regulated energy utility", and excludes mere contractual obligations (PG&E at 5), the ISO disagrees with this interpretation.

Additionally, as the term "Net FTR Revenue" is included in the definition of Transmission Revenue Credit, the New Participating TO, including those that do

not serve Load, already is required to credit Congestion-related revenue.[15] Thus PG&E's change would be redundant and potentially confusing. Therefore, no change is needed to the definition.

3. Section 6.1 of Schedule 3, Appendix F

PG&E argues that Section 6.1 of Schedule 3, Appendix F should be modified to refer to a no-load Participating TO's High Voltage Transmission Revenue Requirement or "HVTRR" (rather than just the TRR), in order to ensure clarity of the provision. PG&E at 7.

The language suggested by PG&E would read:

> (b) the annual TRBA adjustment shall be…*For a Participating TO that is not a UDC, MSS or a Scheduling Coordinator serving End-Use Customers and that does not have Gross Load in its TO Tariff in accordance with Appendix F, Schedule 3, Section 9, the Participating TO shall include any over- or under-recovery of its annual* **High Voltage** *Transmission Revenue Requirement in its TRBA…*

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[15] The definition of Net FTR is as follows:

> **Net FTR Revenue**
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> The sum of: 1) the revenue received by the New Participating TO from the sale, auction, or other transfer of the FTRs provided to it pursuant to Section 9.4.3 FTR, or any substantively identical successor provision of the ISO Tariff; and 2) for each hour: a) the Usage Charge revenue received by the New Participating TO associated with its Section 9.4.3 FTRs; minus b) Usage Charges that are: i) incurred by the Scheduling Coordinator for the New Participating TO under ISO Tariff Section 7.3.1.4, ii) associated with the New Participating TO's Section 9.4.3 FTRs, and iii) incurred by the New Participating TO for its energy transactions but not incurred as a result of the use of the transmission by a third-party and minus c) the charges paid by the New Participating TO pursuant to Section 7.3.1.7, to the extent such charges are incurred by the Scheduling Coordinator of the New Participating TO on congested Inter-Zonal Interfaces that are associated with the Section 9.4.3 FTRs provided to the New Participating TO. The component of Net FTR Revenue represented by item 2) immediately above shall not be less than zero for any hour.

Thus, the New Participating TO that does not serve Load must credit in the Transmission Revenue Credit revenue from the sale, auction, or other transfer of the FTRs provided, as well as Usage charges. These are the same amounts PG&E terms "Congestion-related revenue."

Id.

PG&E again is incorrect. There is nothing in the ISO Tariff that limits a merchant transmission owner from building transmission that is below 200 kV, although this is unlikely. However, the ISO does not oppose PG&E's attempt to clarify that this section of the ISO Tariff in reference to High Voltage Transmission Facilities. In fact, the ISO would add additional language to make the point more clear. The ISO's proposed change would read:

> (b) the annual **high voltage** TRBA adjustment shall be based on the principal balance in the **high voltage** TRBA as of September 30, … *For a Participating TO that is not a UDC, MSS or a Scheduling Coordinator serving End-Use Customers and that does not have Gross Load in its TO Tariff in accordance with Appendix F, Schedule 3, Section 9, the Participating TO shall include any over- or under-recovery of its annual* **High Voltage** *Transmission Revenue Requirement in its* ***high voltage*** *TRBA*. *If the annual* ***high voltage*** *TRBA adjustment…*

The ISO believes its edit to PG&E's suggested change adds additional clarity.

C. Consolidation with ER02-2019-006

In the Amendment 57 Filing, the ISO requested that, unless the Commission accepts this amendment without suspension, it be consolidated with the on-going proceedings in Docket No. ER00-2019-006.

NCPA expresses the concern that consolidating with the TAC proceeding might further delay the hearing in ER00-2019; instead, NCPA suggests that the Amendment 57 filing be handled expeditiously. NCPA at 3. PG&E, as well,

opposes consolidation, to avoid delay or a defective record in the ER00-2019 proceeding. PG&E argues that no party would be prepared to deal with the issues raised in Amendment 57 during the imminent hearing. PG&E at 8.

NCPA's and PG&E's concerns regarding consolidation are misplaced. As noted above and in the Amendment No. 57 filing, the contents of this amendment ought to have been included in Amendment No. 49, which the Commission has already consolidated with ER00-2019-006, and does form part of the subject matter of the upcoming hearing in that docket. Amendment No. 49 included modifications to Sections 3.2.7, 7.3.1.6, 7.3.1.7, 9.4.3, and 9.5.3, the deletion of Appendix F, Schedule 3, Section 10.3 to address New Participating TOs that do not serve Load, and the deletions of beneficiaries as parties that might pay for ISO Controlled Grid High Voltage Facility upgrades and additions. The substance of the provisions regarding revenue disbursement to New Participating TOs that do not serve End-Use Customers is found in that earlier amendment; Amendment No. 57 merely corrects the disconnect that could result if the calculation is not specifically spelled out in the ISO Tariff.

Moreover, the substance and the implementation of these provisions must be determined in a consistent manner. To allow separate proceedings would present the opportunity of conflicting outcomes, leading to confusion as to how the ISO was to proceed on this significant matter. That being the case, it is appropriate to consolidate any proceeding regarding Amendment No. 57 with that ongoing in ER00-2019-006.

III. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission approve Amendment No. 57 as filed, apart from the changes discussed above.

Respectfully submitted,

/s/ Julia Moore

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CERTIFICATE OF SERVICE

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

Dated at Washington, DC, on this 23rd day of September, 2003.

/s/ Julia Moore
Julia Moore