

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

California Independent System)
Operator Corporation) Docket No. EC01-____-000

**APPLICATION TO TRANSFER OPERATIONAL CONTROL OVER
NON-JURISDICTIONAL TRANSMISSION FACILITIES TO THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Section 203 of the Federal Power Act (“FPA”), 16 U.S.C. § 824b, and Part 33 of the regulations of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 33, the California Independent System Operator Corporation (“ISO”), submits this application seeking authorization for the transfer of Operational Control,¹ to the extent described below, from the City of Vernon, California (“Vernon”) to the ISO of Vernon’s interests in certain transmission facilities, to be effective on January 1, 2001. This transfer will enhance the ability of the ISO to operate the regional transmission system, including the interfaces between the ISO’s Control Area and other Control Areas, on an integrated basis and to provide open and non-discriminatory access to the regional grid.

¹ Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A.

I. INTRODUCTION

A. The Parties

1. Vernon

Vernon is a municipally owned electric, natural gas, and water local distribution utility located adjacent to east Los Angeles. The peak load of Vernon's customers is approximately 196 MW. Vernon's distribution system is part of the ISO's Control Area (in particular the former Control Area of the Southern California Edison Company). Vernon meets the needs of these customers in part by participating as a Scheduling Coordinator under the ISO Tariff and PX Tariff.

Vernon owns minority interests in several major transmission facilities interconnected with the ISO Controlled Grid and connecting the ISO's Control Area to other Control Areas, as described in greater detail below. The operation of those transmission facilities, and Vernon's rights to utilize a portion of their transfer capability, are also described below. In addition, Vernon has certain contractual rights to utilize the transmission facilities of current Participating Transmission Owners ("Participating TOs") whose facilities form the existing ISO Controlled Grid.

2. The ISO

The ISO was established by California electricity restructuring legislation in 1996 as a public benefit corporation, with the principal responsibility of assuming Operational Control over the transmission facilities of California electric utilities, including both investor-owned utilities and government-owned utilities.

By exercising independent control over the regional grid, the ISO assures Market Participants of open and non-discriminatory access to the transmission facilities that are critical to the operation of competitive power markets, both at wholesale and, where cognizant state and/or local authorities have authorized direct access to ultimate consumers, at retail.

On November 26, 1996, the Commission conditionally approved the joint application of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (the “initial Participating TOs”) for authorization to establish the ISO as an independent system operator meeting the requirements set forth in Order No. 888, and to transfer Operational Control over their network transmission facilities to the ISO. *Pacific Gas and Electric Co.*, 77 FERC ¶ 61,204 (1996) (“November 26 Order”). The ISO commenced operations on March 31, 1998.

From the inception of the ISO, the ISO and the Commission have recognized the benefits of expanding the ISO's integrated operation of the regional transmission grid to include the transmission facilities and Entitlements of all transmission-owning utilities, including those of governmental entities such as municipal utilities. The current limitation of the ISO's Operational Control to the facilities of California's investor-owned utilities, subject to pre-existing transmission service rights set forth in Existing Contracts (defined in the ISO Tariff as “Existing Rights”), presents substantial complications for the ISO's operations, including, among other things, limited ability to utilize inter-Control

Area ties and the need to reserve capacity on the ISO Controlled Grid to accommodate the exercise of Existing Rights.

Amendment No. 27 to the ISO Tariff was filed, in compliance with the legislative directive, to modify the calculation of the transmission Access Charge two years after the ISO's Commercial Operation Date. The amendment facilitates the addition of governmental entities as Participating TOs. Among other things, Amendment No. 27 proposes a process through which the Transmission Revenue Requirements of new Participating TOs and existing Participating TOs will be combined over a transition period that ultimately results in a single Access Charge for the recovery of the costs of all Participating TOs' High Voltage Transmission Facilities. In Amendment No. 27, the ISO has striven to develop and implement an equitable balance of costs and benefits among those entities that choose to turn control of their transmission facilities over to the ISO and their customers. The Commission conditionally accepted Amendment No. 27, effective June 1, 2000, subject to settlement judge and hearing procedures.²

Vernon is the first governmental entity that has applied to become a Participating TO. The instant filing is part of the process through which Vernon's interests in transmission facilities and Entitlements to use the ISO Controlled Grid will be placed under the ISO's integrated Operational Control. Other steps in that process include the following:

² Amendment No. 27 was conditionally approved by the Commission on May 31, 2000. See *California Independent System Operator Corp.*, 91 FERC ¶ 61,205 (2000).

- A Participating TO is a party to the Transmission Control Agreement (“TCA”), an agreement between the ISO and Participating Transmission Owners, whose application under Section 2.2 of the TCA has been accepted by the ISO and who has placed its transmission Entitlements under the ISO’s Operational Control. Vernon submitted its application to become a Participating TO on August 2, 2000. The ISO Board is expected to act on Vernon’s application by the end of November 2000. A copy of Vernon’s application is included as part of Exhibit G to this Application.
- In addition, under Schedule 3, Appendix F, Section 9.2 of the ISO Tariff (as added by Amendment No. 27), a Transmission Revenue Requirement (“TRR”) must be established for a new Participating TO so that the ISO’s transmission Access Charge can be adjusted to incorporate the costs of the new Participating TO’s High-Voltage Transmission Facilities that will be made available to the ISO’s transmission customers. The High-Voltage Access Charge, incorporating both the new Participating TO’s High Voltage TRR and those of existing Participating TOs, provides the basis on which the Participating TO receives payments from the ISO for the use of the Participating TO’s High Voltage Transmission Facilities by the ISO’s transmission customers. The ISO Tariff provides that if a new Participating TO is not FERC-jurisdictional, it shall, at its sole option, submit its TRR to either the ISO or the Commission for approval.

Vernon submitted its TRR petition for approval to the Commission on August 30, 2000, in Docket No. EL00-105-000. The Commission issued an order on October 27, 2000 stating that, as modified, the Commission found Vernon's TRR just and reasonable.³ A copy of Vernon's TRR petition and a copy of the Commission's order approving Vernon's petition are included as part of Exhibit G to this Application.

II. DESCRIPTION OF FACILITIES

The interests in transmission facilities that Vernon intends to place under the ISO's Operational Control include its minority ownership interests in the California-Oregon Transmission Project, the Mead-Adelanto Project, and the Mead-Phoenix Project. Exhibit I to this Application provides detail regarding those transmission projects and Vernon's interests in each of them. Also included in Exhibit I are maps showing the location of the transmission projects in which Vernon has minority interests.

In the case of each of these transmission projects, the rights and obligations associated with Vernon's interests are governed by multilateral contracts among the project participants. Typically these joint projects have a development contract, construction contract, and operation and maintenance contract. All participants in the project are required to execute these contracts. As a minority participant, Vernon has only limited rights regarding the operation

³ See 93 FERC ¶ 61,103 (2000) ("Order on Proposed Transmission Revenue Requirement").

and maintenance of the transmission projects. Additionally, Vernon is not the operating agent for any of these transmission projects and the transmission projects are not currently in the ISO Control Area. It therefore cannot transfer Operational Control of its interests in those facilities in the same manner that it could do so if it were the sole owner of the facilities or if the facilities were in the ISO Control Area; it can only transfer to the ISO the scheduling rights to use its share of the project's transfer capability that are conferred by the governing multilateral agreements. Consistent with the treatment of similar interests held by the current Participating TOs, Vernon's interests in these facilities are treated as "Entitlements" created by the agreements governing the respective projects. Following the effectiveness of the transfer, the ISO will be able to provide transmission service using the transfer capability represented by Vernon's interests in the jointly owned transmission projects.

In addition, Vernon is converting its Existing Rights under contracts with existing Participating TOs for the use of capacity on the ISO Controlled Grid to rights as a Participating TO. Those contracts are listed and described in Exhibit G. The rights that are on congested paths will be given Firm Transmission Rights.

III. JURISDICTION

Vernon is the first municipally owned utility to apply for Participating TO status in the ISO. Since specific procedures have not been established for the transfer of Operational Control of non-jurisdictional facilities, the ISO is submitting this Section 203 application. As discussed below, the ISO believes that the

Commission has jurisdiction over the transfer of Operational Control, regardless of whether the facilities to be transferred are jurisdictional or non-jurisdictional.

In Order No. 888, the Commission ruled that, through its exercise of Operational Control over transmission facilities, the ISO operates facilities subject to the jurisdiction of the Commission such that it is a “public utility” within the meaning of the FPA.⁴ The Commission also ruled that the ISO’s assumption of Operational Control over the transmission facilities of a jurisdictional public utility constitutes a “change in control” requiring the Commission’s approval under Section 203.⁵ The ISO’s extension of its Operational Control to encompass transmission facilities or transmission Entitlements of another entity, even one that is not itself subject to the Commission’s jurisdiction, likewise appears to require the Commission’s approval under Section 203 since the ISO would be consolidating its operation of the transmission facilities that currently form the ISO Controlled Grid with the operation of transmission facilities or Entitlements of another entity.

The ISO recognizes that this Application presents a novel jurisdictional question and requests that the Commission provide guidance for future transfers of Operational Control over non-jurisdictional facilities and transmission Entitlements. If the Commission concludes that the transfer of Operational

⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036, 31,730-72 (1996), *order on reh’g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998) (“Order No. 888”).

⁵ *Id.*

Control, to the extent described above in connection with Vernon's minority interests in transmission projects, does not require approval under Section 203, the ISO requests guidance on the appropriate procedures to be followed.

IV. THE TRANSFER IS CONSISTENT WITH THE PUBLIC INTEREST

Under Section 203 of the FPA, certain dispositions of jurisdictional facilities require prior Commission approval. Section 203 states, in pertinent part:

No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof . . . by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person . . . without first having secured an order of the Commission authorizing it to do so.

If the Commission finds that the proposed disposition, consolidation, acquisition, or control is consistent with the public interest, it will approve the transaction.

The ISO submits that the proposed transfer of Operational Control of Vernon's transmission Entitlements to the ISO, in the manner described above, is plainly consistent with the public interest. As a general matter, the transfer to the ISO of control over Vernon's transmission interests is in the public interest for the same reasons that the transfer to the ISO of Operational Control over the initial Participating TOs' transmission facilities was found, in the November 26 Order, to be consistent with the public interest.⁶ The proposed transfer of control over Vernon's transmission interests to the ISO will increase the ability of the ISO to afford open and non-discriminatory access to the regional grid to Market Participants. Capacity available for Market Participants in other Control Areas to

⁶ 77 FERC ¶ 61,204 at 61,823 (1996).

deliver Energy and Ancillary Services to Loads on the ISO Control Grid will be expanded. Similarly, capacity available for the transfer of Energy and Ancillary Services through the ISO Controlled Grid and out of the ISO Controlled Grid (“Wheeling Through” and “Wheeling Out” transactions, respectively) will also expand. Further, the ISO will be able to operate the ISO Controlled Grid more efficiently, for the benefit of all transmission customers, once it no longer has to reserve capacity for Vernon’s potential exercise of Existing Rights to transmission service. This will reduce what has been called “phantom congestion.”⁷

In addition, this transfer is consistent with the Commission’s goals of fostering participation by government-owned utilities in regional transmission organizations, as expressed in Order No. 2000. In Order No. 2000, the Commission reaffirmed its belief that “[A] properly formed RTO should include all transmission owners in a specific region, including municipals, cooperatives, Federal Power Marketing Agencies (PMAs), Tennessee Valley Authority and other state and local entities.”⁸ The Commission pointed out that participation by such governmental entities and cooperatives would enhance the reliability and economic benefits of a regional transmission organization. Furthermore, the Commission stressed that participation by governmental entities and cooperatives was necessary to ensure that each RTO is appropriate in size and

⁷ 91 FERC ¶ 61,205 at 61,727 (2000).

⁸ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 810 (Jan. 6, 2000), FERC Statutes and Regulations ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Statutes and Regulations ¶ 31,092, 31,200 (2000).

scope. In these respects, Order No. 2000 is consistent with California state policy, as expressed in the electricity restructuring legislation, A.B. 1890, which envisioned participation in the ISO by both investor-owned and government-owned utilities.⁹

Since Vernon is transferring Operational Control of its transmission Entitlements to the ISO, a jurisdictional entity, this transaction, arguably, constitutes a merger and must meet the standard set forth in the Commission's merger policy statement. Order No. 592, *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, FERC Stats. & Regs. (Regulations Preambles) ¶ 31,044 (1996), *order on reconsideration*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) ("Merger Policy Statement"). Although it is unclear whether the three-factor test set out in the Merger Policy Statement is applicable in this instance, since the Commission has not applied this standard in previous applications involving the formation of independent system operators, the proposed transfer easily satisfies this standard.

First, the proposed transfer will not adversely affect competition. As the Commission has found, the ISO is not a Market Participant,¹⁰ and Vernon is not transferring any generation facilities or power purchase contracts in connection with its application to become a Participating TO. There are thus no issues relating to generation market power. With respect to transmission market power, the proposed transfer is pro-competitive since it will expand the scope of the

⁹ See Cal. Pub. Util. Code § 365(a).

¹⁰ Order No. 888, FERC Stats. and Regs. ¶ 31,036 at 31,730-72 (1996).

ISO's regional control over transmission facilities and reduce inefficiencies in the operation of the ISO Controlled Grid created by the need to accommodate Vernon's Existing Rights.

Second, the transaction will not subject wholesale customers to increased rates. If there is any effect on prices in the Imbalance Energy and Ancillary Service markets operated by the ISO, it is likely to be positive, due to expanded access for Market Participants and increased efficiency. While the introduction of a new Participating TO will affect transmission Access Charges, in accordance with the formula proposed in Amendment No. 27, there is no need for the Commission to consider mechanisms to address these effects in this proceeding. The Commission established settlement judge and, if necessary, hearing procedures in Docket No. ER00-2019-000 to determine whether the Access Charge rate methodology filed in Amendment No. 27 is just and reasonable. The outcome of that proceeding will govern Vernon's collection of its High Voltage Transmission Revenue Requirement through the ISO's Access Charge. Moreover, Vernon submitted its High Voltage Transmission Revenue Requirement for the Commission's review in Docket No. EL00-105-000. That proceeding provided a forum for any entity to address concerns associated with the level of Vernon's TRR.

Third, the proposed transfer will not adversely affect either federal or state regulation. In particular, neither the Commission's authority over the transmission rates charged under the ISO Tariff nor the authority of any California state agency over Vernon is impaired by the proposed transfer.

Because the proposed transfer would expand and enhance the integrated regional operation of the transmission grid in California and satisfies all of the requirements of Section 203 of the FPA, the Commission's regulations and, if applicable, the Merger Policy Statement, the Commission should find that the transaction is consistent with the public interest and approve the Application by January 1, 2001, without modification or condition and without holding a trial-type hearing.

V. OTHER REQUIREMENTS

Pursuant to Section 33.2 of the Commission's Regulations (18 C.F.R. § 33.2), the ISO submits the following information:

A. Names and Addresses of Principal Business Offices

The exact name and the address of the principal business offices of the companies involved are as follows:

City of Vernon, California
Utilities Department
4305 Santa Fe Avenue
Vernon, CA 90058

The California Independent System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630

B. Names and Addresses of the Persons Authorized to Receive Notices and Communications with Respect to the Application

*Kenneth J. DeDario, Director of Utilities
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*Denotes persons to be placed on the Official Service List.

C. Designation of Territories Served, by Counties and States

Vernon provides retail electric service to the City of Vernon, which is located in Los Angeles County, California.

D. Description of Jurisdictional Facilities

All of Vernon's facilities are municipal facilities and are thus non-jurisdictional.

E. Description of Transaction and Statement as to Consideration

The proposed transfer of Operational Control and the relevant consideration are described in Sections I. and IV., *supra*.

F. Description of Facilities

Vernon's transmission Entitlements are described in Exhibit I, which is appended to this Application.

G. Statement of the Cost of the Facilities Involved in the Transaction

The costs of the facilities involved in the transaction are included in Vernon's TRR petition filed with the Commission, a copy of which is included in Exhibit G. Vernon will retain ownership of all of its facilities that are the subject of this application, and will continue to recover the capital costs of these facilities through utility rates set by the City Council of Vernon, California and through the ISO's Access Charge following the Commission's acceptance of Vernon's TRR.

H. Statement as to the Effect of the Transaction upon any Contract for the Purchase, Sale or Interchange of Electric Energy

This transaction will not have any known effect on the rights, interests or obligations of the parties to contracts for the purchase, sale, transmission or interchange of electric energy.

I. Statement as to the Other Required Regulatory Approvals

The following are the other regulatory approvals or filings that are required to be made. Copies of the filings and/or approvals are included with this Application as Exhibit G.

1. In accordance with the ISO Tariff, Appendix F, Sections 4.1 and 4.2, Vernon submitted a Notice of Intent to the ISO on June 30, 2000, to become a Participating TO on January 1, 2001.

2. In accordance with Section 2.2 of the TCA, Vernon filed its application with the ISO on August 2, 2000.

3. In accordance with the ISO Tariff, Appendix F, Section 9.2, Vernon submitted its TRR petition to the Commission for approval on August 30, 2000, in Docket No. EL00-105-000. Vernon's petition was approved by the Commission, as modified, on October 27, 2000.

4. Vernon filed with the Commission its Transmission Owner Tariff on August 31, 2000, as a supplement to its TRR petition.

5. The Vernon City Council adopted Vernon's TRR by Resolution No. 7608 on August 30, 2000.

J. Facts Showing that the Sale will be Consistent with the Public Interest

See Section IV, supra.

K. Brief Statement of Franchises Held

The ISO requests waiver of this requirement. Vernon's franchised retail operations will not be transferred, merged, or consolidated as part of this transaction.

L. Form of Notice

A form of notice concerning the Application suitable for publication in the *Federal Register* is included in the filing package accompanying this Application, together with an electronic version of the notice on a 3.5" diskette in Word Perfect format.

The ISO respectfully requests waiver of the Commission's requirement pursuant to Section 33.3 (18 C.F.R. § 33.3) to file Exhibits A, B, C, D, E, F, and H. In as much that Vernon is a municipal utility and given the nature of this Application, the information required in these exhibits is inapplicable or irrelevant.

Such a waiver is consistent with the Commission's Notice of Proposed Rulemaking: Revised Filing Requirements Under 18 C.F.R. Part 33,¹¹ in which the Commission proposed to streamline the filing requirements associated with applications filed under Section 203 of the FPA. Good cause exists to waive the requirement to file these exhibits because they are not necessary for the Commission to render a decision on this Application.¹²

Exhibit G. Applications Filed with Other Federal or State Regulatory Bodies in Connection with the Proposed Transaction

Copies of the applications for regulatory approval in connection with the proposed transaction are attached to this Application as Exhibit G.

Exhibit I. Maps

Maps showing Vernon's facilities, which distinguish the facilities over which Vernon has Entitlements whose Operational Control is to be transferred, are attached to this Application as Exhibit I.

¹¹ 63 Fed. Reg. 20340 (1998).

¹² See *PSI Energy, Inc.*, 60 FERC ¶ 62,131 (1992) (waivers of filing requirements granted because applicant provided sufficient information to evaluate the proposed transaction); *PP&L Resources, Inc.*, 90 FERC ¶ 61,203 (2000) (accord).

VII. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission approve the proposed transfer of Operational Control over the transmission facilities identified in this filing to the ISO, to the extent described above, to be effective on the January 1, 2001.

Respectfully submitted,

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Dated: November 1, 2000