C. EXISTING RIGHTS

C.1 Should the ISO and affected Participating Transmission Owner(s) be required under ISO Tariff §§ 2.4.4.1, et seq. to honor Existing Contract provisions and practices that allow netting in the accounting and billing treatment of wheeling in and wheeling out transactions? [Issue No. 546, Docket Nos. EC96-19-000 and ER96-1663-000 and EC96-19-029 and ER96-1663-030. Proponent - DWR]

DWR asserts that "[b]ecause DWR's Existing Rights permit netting of transmission transactions, and the ISO can and has allowed netting for other Existing Rightsholders, DWR should be allowed to continue this practice, with refunds for amounts overcollected." Initial Brief of DWR at 3. DWR is incorrect.

Section 2.4.4 of the ISO Tariff governs the rights and obligations of non-Participating TOs under Existing Contracts. Participating TOs and holders of transmission rights under an Existing Contract provide the ISO with operating instructions, which allow existing contractual rights to be exercised in accord with Section 2.4.4. *See* ISO Tariff, Section 2.4.3.1. Financial arrangements between Participating TOs and holders of transmission rights under an Existing Contract remain the responsibility of the contracting parties. The ISO did not take assignment of these contracts, and the ISO does not interpret Existing Contracts. *See* October 1997 Order, 81 FERC at 61,473.

The ISO has Wheeling Out and Wheeling Through transactions, but does not have wheeling in transactions.[112] DWR, as a non-Participating TO in the ISO's Control Area, has to pay the Wheeling Out charge for all non-Existing

[112] "Wheeling" is defined in the ISO Tariff as "Wheeling Out or Wheeling Through." *See* ISO Tariff, Appendix A, definition of "Wheeling."

Contract transactions. Except for Existing Rights exercised under an Existing Contract, a Wheeling Out transaction is "the use of the ISO Controlled Grid for the transmission of Energy from a Generating Unit located within the ISO Controlled Grid to serve a Load located outside the transmission and distribution system of a Participating TO." *See* ISO Tariff, Appendix A, definition of "Wheeling Out." The Wheeling Access Charge for transmission service is the utility-specific Wheeling Access Charge at the point in the ISO Controlled Grid where the Energy is scheduled to exit the ISO Controlled Grid (the Scheduling Point). *Id.*, Section 7.1.4.1. Any Scheduling Coordinator scheduling a Wheeling transaction pays the ISO the product of (1) the applicable Wheeling Access Charge and (2) the total hourly schedules of Wheeling (in kilowatt-hours) for each month at each Scheduling Point associated with that transaction. *Id.*, Section 7.1.4. The ISO collects and pays to Participating TOs all Wheeling revenues at the same time as other ISO charges and payments are settled.

DWR is entitled to its rights under an Existing Contract. However, the ISO is only responsible for the operating instructions from the Participating TO in order to implement those rights. The ISO is not responsible for financial settlements attributable to such contracts. Moreover, the ISO Tariff, as approved by the Commission, specifically and appropriately provides that the ISO will not interpret the terms and conditions of Existing Contracts and properly places that responsibility on the parties to the Existing Contract. As the ISO Tariff provides, to the extent that there are any differences between the charges assessed by the ISO and those assessed pursuant to an Existing Contract, the parties to that

contract should settle the differences. Therefore, if DWR uses transmission in excess of its Existing Contract amount, the ISO must charge for this new firm use and DWR must pay for it, like all other Market Participants. To the extent DWR disagrees with the operating instructions submitted by the Participating TO to the ISO, DWR and the Participating TO must resolve their disagreement through the dispute resolution provisions in their Existing Contract. *See* October 1997 Order, 81 FERC at 61,473. *See also* ISO Tariff, Section 2.4.4.1.4. In the meantime, the ISO must rely on the operating instructions submitted to it by the Participating TO. *See* October 1997 Order, 81 FERC at 61,473. Therefore, the ISO is not in a position to be required to net Access Charges to Scheduling Coordinators that schedule the use of Existing Contracts; instead, this responsibility properly rests with the parties to the Existing Contract.

C.2. Is the ISO's use of specific Adjustment Bid values for Existing Rights in Schedules and Bids Protocol ("SBP") section 4.6 appropriate and adequately justified or does it improperly modify the terms of Existing Contracts? [Issue No. 317, Docket Nos. EC96-19-029 and ER96-1663-030. Proponents - MWD and DWR]

This issue has been consolidated with Issue C.7 (Unresolved Issue No. 351), which is discussed below. *See* Initial Brief of DWR at 14.

C.3. With respect to the honoring of Existing Rights:

a. Whether Scheduling Protocol Section 4.3, rather than assigning responsibility for losses under an Existing Contract to the Participating TO, should provide for Losses to be specified in the operating instructions to be developed jointly by the Participating TO and the Existing Contract rights holder?

b. Whether Scheduling Protocol Section 4.3 should indicate how the ISO will determine for such difference in Losses its mechanism acceptable to the Participating TO to roll any associated shortfall or surplus into the ISO rates and charges applicable to the PTO in accordance with Section 2.4.4.4.4.5 of the ISO Tariff.

Proponents contend that Section 2.4.4.4.4.5 of the ISO Tariff is inconsistent with the ISO's determination that it will honor Existing Contracts, i.e., contracts granting transmission service rights that predate the ISO Operations Date. Joint Initial Brief on Issues B.10 and C.3, at 8-10. This contention is baseless. Section 2.4.4.4.4.5 in fact implements the ISO's commitment to honor Existing Contracts. Under Section 2.4.4.4.4.5, the terms of each Existing Contract governing the provision of and payment for Transmission Losses and Ancillary Services remain in effect. To the extent that those terms differ from the applicable provisions of the ISO Tariff, Section 2.4.4.4.4.5 provides that the ISO will not adjust charges or credits to the Participating TO providing service under the Existing Contract. Instead, the ISO will provide the parties to the Existing Contract with details of the applicable Transmission Losses and Ancillary Services calculations under the ISO Tariff to enable *them* "to settle the differences bilaterally or through the relevant TO Tariff," in whatever

way they see fit. ISO Tariff, Section 2.4.4.4.4.5. Section 3.4 of the SP is essentially identical.

The ISO can only implement the terms of the Existing Contract as they are reflected in the operating instructions provided to the ISO by the Participating TO. *See* October 1997 Order, 81 FERC at 61,473. Consequently, the ISO Tariff contemplates that the parties to the Existing Contract will agree upon such operating instructions. The mechanism currently in place, under which the ISO provides information to the contracting parties allowing them to resolve differences between themselves. The question of how to handle differences between ISO and Existing Contract losses is an appropriate part of this approach, as the Commission has recognized. *See id.*

Thus, Proponents are mistaken in asserting that Section 2.4.4.4.4.5 of the ISO Tariff or Section 3.4 of the SP in any way prejudge or influence the treatment of any differences between losses calculations. Instead, these provisions leave it up to the Participating TO and the Existing Rights holder to determine such treatment.

c. Should the last sentence of section 2.4.4.4.4.5 be modified to eliminate an implication that an Existing Rights holder will be responsible for payment of additional rates or charges not contemplated by the Existing Contract, and to eliminate an inconsistency with section 2.4.4.4.4.3, which provides that "the holders of Existing Rights and Non-Converted Rights shall continue to pay the providers of the Existing Rights and Non-Converted Rights at the rates provided in the associated Existing Contracts?"

d. Should the last sentence of section 2.4.4.4.4.5 of the ISO Tariff be modified to eliminate the suggestion that Existing Rights may be subject to "the relevant TO Tariff", which implies such rights are subject to the Transmission Owner Tariff of the Participating TO with whom the Existing Rightsholder has an Existing Contract?

e. Whether the Commission should clarify that the Transmission Owner Tariff will not be applicable to a party to an Existing Contract until and unless that party converts its rights and becomes a Participating Transmission Owner.

[Issue No. 318, Docket Nos. EC96-19-006 and ER96-1663-007, EC96-19-007 and ER96-1663-008, EC96-19-008 and ER96-1663-009, EC96-19-029 and ER96-1663-030. Proponents - MWD and TANC]

Proponents assert that the last sentence of Section 2.4.4.4.4.5 of the ISO Tariff contains an implication that Existing Rights holders should pay additional charges beyond those included in their Existing Contracts, and that this sentence is inconsistent with Section 2.4.4.4.4.3, under which Existing Rights holders continue to pay the rates in their Existing Contracts. Joint Initial Brief on Issues B.10 and C.3, at 9. However, these two Tariff sections were not intended to contradict each other, and in fact work in tandem. Thus, the last sentence of Tariff Section 2.4.4.4.4.5 reads as follows:

> To the extent that Transmission Losses or Ancillary Service requirements associated with Existing Rights or Non-Converted

> Rights are not the same as those under the ISO's rules and protocols, the ISO will not charge or credit the Participating TO for any cost differences between the two, but will provide the parties to the Existing Contracts with details of its Transmission Losses and Ancillary Services calculations to enable them to determine whether the ISO's calculations result in any associated shortfall or surplus and to enable the parties to the Existing Contracts to settle the differences bilaterally or through the relevant TO Tariff.

This sentence simply provides that information will be supplied to the parties to enable them to identify any differences between the Transmission Losses and Ancillary Services calculations in the ISO Tariff and those contained in their Existing Contracts. A promise to supply information is entirely consistent with an obligation to honor Existing Contracts, as provided in Section 2.4.4.4.4.3. Proponents' suggested change (*see* Joint Initial Brief on Issues B.10 and C.3, at 10) is thus unnecessary, and could result in ambiguity as to whether the ISO is required to provide this information to the parties.

Thus, Section 2.4.4.4.4.5 of the ISO Tariff and Section 3.4 of the SP do not impede the continued functioning of Existing Contracts or interject the ISO into the relationship between the parties to those contracts. There is no basis for Proponents' claim that these provisions are somehow inconsistent with the ISO's commitment to honor Existing Contracts. The provisions do not "imply" that either party to any Existing Contract is liable to make or receive payments to reflect differences between the contract's provisions regarding Transmission Losses and Ancillary Services and those applicable under the ISO Tariff. *Cf.* Joint Initial Brief on Issues B.10 and C.3, at 9. Neither do they establish that the Participating TO's TO Tariff is necessarily the proper vehicle for settling any such differences. *Cf. id.* The ISO Tariff is studiously neutral on both questions,

as is the ISO. All that Section 2.4.4.4.4.5 of the ISO Tariff and Section 3.4 of the SP do is confirm that such differences will not serve as the basis for adjustments to the ISO's treatment of Transmission Losses or Ancillary Services, and that the ISO will provide information to the parties to enable *them* to address the implications of any such differences.

For the foregoing reasons, the ISO respectfully requests that the Commission reject Proponents' proposed modifications to the ISO Tariff.

C.4. With respect to ISO Tariff provisions regarding Existing Rights and the ISO's compliance with the Commission's orders regarding charges assessed to Existing Rightsholders:

a. Does the ISO have authority to charge Existing Rightsholders using firm transmission contracts for Intra-zonal Congestion through the Grid Operations Charge?

b. Should ISO Tariff sections 2.4.4.4.4.1 and 7.3.2 be amended to provide that holders of Existing Rights and Non-Converted Rights shall have no responsibility for payment of Grid Operations Charges for load served by transmission service obtained pursuant to such rights in conformance with section 2.4.4.4.1, which provides that such rights holders have no responsibility for payment of Usage Charges?

c. Should ISO Tariff sections 7.3.2 and 7.2.6.2 be amended to clarify that the ISO may only utilize Schedule Coordinators that provide adjustment bids to implement Intra-Zonal Congestion Management, unless emergency conditions exist, in which case section 5.1.3 of the ISO Tariff shall apply?

[Issue No. 79, Docket Nos. EC96-19-008 and EC96-1663-009, and Issue No. 507, Docket Nos. EC96-19-029 and ER96-1663-030. Proponents - MWD, SMUD, and DWR]

Proponents contend that the ISO may not charge Load served by Existing Contracts for the Grid Operations Charge, through which the ISO recovers costs of managing Intra-Zonal Congestion with Adjustment Bids by Market Participants.

Joint Initial Brief on Issue C.4, at 3-7.[113] They argue that Load served under Existing Rights should be exempted from the Grid Operations Charge because Existing Contracts already include protection from Congestion costs "as part of their firm rights." *Id.* at 2-3.

As an initial matter, this argument is premature. As Proponents acknowledge (*id.* at 6), the ISO has undertaken a comprehensive review of its approach to Congestion Management. The current distinction between Inter-Zonal Congestion Management and Intra-Zonal Congestion Management may be modified or even eliminated as part of that process. Questions about the allocation of the costs of relieving Intra-Zonal Congestion under the current approach may become moot.

Proponents' argument is unfounded, as well. The ISO Tariff allocates Grid Operations Charges among Scheduling Coordinators based on Demand associated with the Zone experiencing Intra-Zonal Congestion. ISO Tariff, Section 7.3.2. This approach fairly allocates the costs of relieving Congestion within a Zone to all Loads in the Zone, which are the primary beneficiaries of Intra-Zonal Congestion Management. For a number of reasons, it would be inappropriate for the ISO to reduce the allocation of Grid Operations Charges to a Scheduling Coordinator (thereby increasing the allocation of such charges to other Scheduling Coordinators) on the ground that some of the Load it represents is served under an Existing Contract.

[113] Proponents also refer to a second argument, covered by sub-issue (c), but only to acknowledge that it repeats an issue raised elsewhere.

First, the ISO manages Intra-Zonal Congestion only in real-time operations. *See id.*, Section 7.2.6.2. When it relieves Intra-Zonal Congestion with Adjustment Bids by Market Participants, the ISO therefore is not adjusting Day-Ahead or Hour-Ahead Balanced Schedules submitted by Scheduling Coordinators, as it does when it manages Inter-Zonal Congestion in the Day-Ahead and Hour-Ahead Markets. Instead, the ISO directs Scheduling Coordinators to make adjustments to individual resources during real-time Dispatch operations, based on Adjustment Bids, Imbalance Energy bids or, when such bids are unavailable, its rights to call upon Reliability Must-Run Generation or to issue operating orders to Redispatch other Participating Generators. *Id.* The ISO is not allocating capacity on the constrained Intra-Zonal Interface to different schedules, but adjusting resource output levels so that constraints are respected. The fact that part of a Scheduling Coordinator's Load in a Zone is served by schedules that rely on Existing Rights has no bearing on this process and would not justify shifting the costs of Intra-Zonal Congestion Management to other Scheduling Coordinators.

Second, the ISO's management of Intra-Zonal Congestion in this manner does not violate Existing Contracts or require entities exercising Existing Rights to bear duplicative charges. The ISO Tariff does not dictate how the Grid Operations Charges assigned to a Scheduling Coordinator based on its Demand associated with a Zone are to be allocated among the entities the Scheduling Coordinator represents. Any claim that an entity should not bear those costs, whether because to the terms of an Existing Contract or for any other reason, is

appropriately resolved between the entity and its Scheduling Coordinator. This approach is consistent with the ISO Tariff's clear specification that "[t]he ISO shall have no role in interpreting Existing Contracts." *Id.*, Section 2.4.4.4.1.1. Requiring the ISO to exempt a Scheduling Coordinator from Grid Operations Charges shifts those costs to *other* Scheduling Coordinators and the entities they represent. No justification for such a cost shift is presented.

Proponents claim that the Commission has already ruled that holders of Existing Rights will not be subject to duplicative charges for transmission, citing the October 1997 Order. Joint Initial Brief on Issue C.4, at 3. This claim is inapposite. Proponents refer to the Commission's discussion of Section 2.4.4.1.2, which calls upon the parties to an Existing Contract to "attempt to negotiate [to eliminate] duplicative charges for access to the ISO Controlled Grid." The Commission interpreted this provision "to provide a framework for any voluntary negotiations." *See* October 1997 Order, 81 FERC at 61,474. The Commission's approval of this provision is thus entirely consistent with a framework in which the parties' respective rights and obligations under an Existing Contract are to be addressed by the parties themselves, not by having the ISO allocate costs to other Market Participants. Additionally, if the Participating TO is no longer the Scheduling Coordinator for an Existing Contract, it is still the responsibility of the contracting parties to resolve settlement issues. The contracting parties should negotiate the settlement of charges in accordance with Section 2.4.4.1.2 of the ISO Tariff, prior to a Scheduling Coordinator

receiving any such charges. Again, the ISO cannot be made responsible for interpreting an Existing Contract to which it is not a party.

Proponents also point to ISO Tariff provisions and Commission rulings that exempt holders of Existing Rights from the payment of Usage Charges. Joint Initial Brief on Issue C.4, at 3-4.[114] Usage Charges, however, are paid for the use of Inter-Zonal Interfaces in Day-Ahead and Hour-Ahead Schedules. As explained above, the management of Inter-Zonal Congestion in forward markets is fundamentally different than the ISO's real-time management of Intra-Zonal Congestion. The former involves adjustments to Balanced Schedules, including schedules that are identified as using Existing Rights. It is feasible and appropriate to exclude such schedules from Usage Charges. The ISO does not, however, receive Balanced Schedules for real-time operations and its real-time management of Intra-Zonal Congestion therefore does not involve adjustments to Balanced Schedules.

Finally, Proponents claim that the ISO should be required to refund Grid Operations Charges previously charged to Scheduling Coordinators representing holders of Existing Rights. *Id.* at 7. There is no basis for refunds here. As Proponents admit (*id.* at 4), the ISO's charges to Scheduling Coordinators for Grid Operations Charges have been in accordance with the ISO Tariff. Proponents' claims that the Commission has already decided this issue are baseless. To the contrary, the Commission has consistently refused to require a

[114] In particular, Proponents refer to the Commission's statement that holders of Existing Rights should not pay Congestion charges when they use Path 26 or any other new Inter-Zonal Interface, except in certain circumstances. *See California Independent System Operator Corporation,* 89 FERC ¶61,229, at 61,682 (1999).

modification to the ISO's approach concerning the allocation Grid Operations Charges, despite what Proponents describe as numerous requests by one of their number. *Id.* at 5. If one of their number believes it has been charged incorrectly because of an Existing Contract, then such an entity should settle in accordance with the Existing Contract, not with the ISO. The ISO cannot discriminate among Scheduling Coordinators; it can only suggest that the Existing Rights holders reach an agreement with the Participating TO as to the terms of the Existing Contract, in accordance with the Existing Contract.

Even if the Commission were now to direct the ISO to take a different approach to allocating Grid Management Charges among Scheduling Coordinators – an outcome that the ISO believes to be untimely with respect to the Congestion Management reform stakeholder process, and also unwarranted – it should not require the ISO to undertake the substantial burden of recalculating bills for all Grid Operations Charges assessed to date, issuing refunds to some Scheduling Coordinators and requiring others to make additional payments.

C.5. With respect to ISO operating instructions:

a. Whether section 9.9 of the SP should provide for information regarding Ancillary Services under Existing Contracts to be set forth in the operating instructions to be developed jointly by the RPTO and the Existing Contract rights holder;

b. Whether section 3.3.5.2 of the SBP should require the ISO to notify an Existing Rights holder, as well as a Participating TO, of any perceived problem with operating instructions submitted to the ISO; and

c. Whether the Schedules and Bids Protocol ("SBP"), including Sections 3.3.5.1, 3.3.5.2, and 3.4, should be revised to provide that parties other than Responsible Participating Transmission Owners may submit operating instructions, as provided by SBP Section 3.2? [Issue No. 124, Docket Nos.EC96-19-006, EC96-19-007, EC96-19-008, ER96-1663-007, ER96-1663-007, and ER96-1663-009. Proponent - TANC]

d. Whether SBP Section 3.3.5.2 should be revised to more precisely define permissible bases for the ISO's discretion to reject revised operating instructions and to limit the ISO's discretion to delay as long as seven days in implementing those instructions? [Issue Nos. 124 and 125, Docket Nos.EC96-19-006, EC96-19-007, EC96-19-008, ER96-1663-007, ER96-1663-007, and ER96-1663-009. Proponent - TANC]

TANC contends that the ISO's protocols do not give Existing Rights holders direct participation in the implementation of their Existing Contracts and provide no valid reason for prohibiting participation. According to TANC, the requirement that Existing Rights holders must work through third parties results in increased operating costs for the Existing Rights holders, the ISO, and the third parties. In order to provide Existing Rights holders with more input and to reduce operating costs to all parties, TANC proposes several amendments to the SBP. First, TANC argues that the ISO should be required under Section 3.3.5.2

of the SBP to notify Existing Rights holders of problems with operating instructions submitted by the Participating TO. TANC also argues that Existing Rights holders should be allowed to submit operating instructions or revised operating instructions under Sections 3.3.5.1 and 3.3.5.2 of the SBP. Finally, TANC argues that the ISO should amend Section 3.3.5.2 of the SBP to clarify the basis upon which the ISO may reject revised operating instructions and limit the ISO's discretion to delay implementing those instructions. Initial Brief of TANC at 10-11.

The ISO's proposal for honoring Existing Contracts provides, in compliance with the Commission's October 1997 Order, a mechanism for parties to Existing Contracts to submit to the ISO the necessary operating instructions for Existing Contracts. Section 2.4.4.4.1.1 of the ISO Tariff states that the ISO has no role in interpreting Existing Contracts. Parties to an Existing Contract are to attempt to jointly agree on operating instructions that will be submitted to the ISO. Section 2.4.4.4.1.1 further provides that disagreements between the parties regarding operating instructions are to be resolved pursuant to the dispute resolution provisions of the Existing Contract. Unless the Existing Contract provides otherwise, the ISO is required to implement the Participating TO's operating instructions until the dispute is resolved. The Commission agreed with this proposal, finding that it was reasonable for the ISO to rely on the operating instructions of the Participating TO because the Participating TO is the entity most familiar with performing the operating instructions under the Existing Contract. October 1997 Order, 81 FERC at 61,473. The Commission found

"TANC's recommendation to not implement the disputed instructions until the dispute is resolved to be unworkable." *Id.* Accordingly, the Commission has concluded that it is proper for the ISO to receive the operating instructions from the Participating TO. Moreover, Section 3.3.5.1 of the SBP concerns "Initial Submittal of Instructions." TANC has failed to identify specific problems associated with the instructions the ISO has already received for its Existing Contracts.

The ISO must retain its discretion to reject received operating instructions if the information submitted is incomplete. TANC's argument that Section 3.3.5.2 of the SBP should be revised to define more precisely the basis for the ISO's rejection of revised operating instructions is without merit. The Commission has recognized that the ISO "must have full and complete information, including all necessary operating instructions; to the extent it does not, the ISO should reject any schedule submitted under that contract." *Id.* Moreover, the timing provisions of Section 3.3.5.2 are reasonable. TANC states that "the ISO has no valid reason to take seven days to review changes in operating instructions." Initial Brief of TANC at 11. However, the ISO is to notify the Responsible Participating TO within 48 hours, "indicating the nature of the problem," if any, and must implement the changed instructions "as soon as practicable but not later than seven (7) days after receiving clear and unambiguous details of the updated or changed instructions." SBP 3.3.5.2. These are reasonable and appropriate deadlines.

C.6. Has the ISO appropriately integrated scheduling rights under Existing Contracts?

a. Should section 2.4.4.5.1.6 which gives the ISO the right to use Existing Rights and Non-Converted Rights that have not been scheduled by the start of the ISO's Hour-Ahead Scheduling process be stricken if such a requirement is inconsistent with the Existing Rights or Non-Converted Rights at issue;

b. Do sections 7.4.4, 7.5, 7.5.1 and 7.5.2 of the SP preserve Existing Contract rights that give parties scheduling flexibility after the close of the ISO's Hour-Ahead scheduling process;

c. Is the ISO's proposed treatment, that any use of such Existing Contract scheduling flexibility gives rise to Imbalance Energy deviations to be priced and accounted to the Scheduling Coordinator for that rights holder, just and reasonable;

d. Is the second sentence of ISO Tariff section 2.4.4.5.1.6 inconsistent with the Commission's ruling that the ISO must honor flexible scheduling rights;

e. Should the final sentence of ISO Tariff section 2.4.4.5.1.6 be deleted as being inconsistent with the Commission's directive in its October 30, 1997 Order that the ISO must honor flexible scheduling rights; and

f. Does SP 7.4.4 run counter to the contractual provisions for a majority of the holders of Existing Contracts, inasmuch as such rights holders can schedule up to 20 minutes before the operating hour, while the ISO's market is two hours prior to the beginning of the operating hour?

[Issue No. 251, Docket Nos. Docket Nos. EC96-19-006 and ER96-1663-007, EC96-19-007 and ER96-1663-008, EC96-19-008 and ER96-1663-009, and EC96-19-029 and ER1663-030. Proponents TANC, Southern Cities, SMUD, and Dynegy]

Proponents raise two issues under this heading. Neither has merit.

(1) Section 2.4.4.5.1.6 of the ISO Tariff.

Section 2.4.4.5.1.6 of the ISO Tariff requires the ISO to do the following:

> For those Existing Rights and Non-Converted Rights that have not been scheduled by the rights-holders by the start of the ISO's Hour-Ahead scheduling process, the ISO shall coordinate the scheduling of Existing Rights and Non-Converted Rights with the scheduling of ISO transmission service, using the ISO's Hour-Ahead scheduling protocols.

Proponents contend that this sentence conflicts with the Commission's ruling in the October 1997 Order that the ISO must recognize the within-the-hour scheduling rights of some parties to Existing Contracts. Joint Initial Brief on Issue C.6, at 4, citing October 1997 Order, 81 FERC at 61,471.

This contention is unfounded. Section 2.4.4.5.1.6 does not permit the ISO to override within-the-hour scheduling rights under Existing Contracts; it merely explains one aspect of the methodology the ISO will use to coordinate parties' exercise of those rights with its scheduling of other uses of the ISO Controlled Grid. In particular, the ISO will coordinate the scheduling of capacity under Existing Contracts that has not been scheduled by the beginning of the Hour-Ahead process with its scheduling of other transmission service.

The ISO's desire to coordinate the scheduling of all uses of the ISO Controlled Grid is neither remarkable nor tantamount to overriding Existing Rights. To the contrary, the ISO takes care in that coordination process to ensure that parties with Existing Rights that permit scheduling changes after the Hour-Ahead deadline can exercise those rights. The ISO reserves sufficient capacity to accommodate the remaining unscheduled uses of capacity reserved under Existing Contracts, just as it does in the Day-Ahead scheduling process (*see* ISO Tariff, Section 2.4.4.5.1.5).[115] This process is spelled out in Sections

7.4.3, 7.4.4, and 7.5 of the SP. Those provisions make it clear that the ISO will adjust the transmission capacity available for other uses downward to account for the unused portions of firm Existing Rights and Non-Converted Rights: "holders of Existing Rights and Non-Converted Rights are still able to exercise whatever scheduling flexibility they may have under their Existing Contracts after the Schedules and bids submittal deadline of the ISO's Hour-Ahead scheduling process, as described further in SP 7.5." SP 7.4.4.

Section 2.4.4.5.1.6's reference to the coordination in the Hour-Ahead scheduling process of schedules that rely on Existing Rights, and those that do not, therefore does not represent an attempt to restrict the holders of Existing Rights from exercising the scheduling flexibility permitted by their contracts.

(2) Sections 7.5.1 and 7.5.2 of the SP.

Proponents also challenge Sections 7.5.1 and 7.5.2 of the SP. They recognize that those provisions permit Scheduling Coordinators representing holders of Existing Rights with within-the-hour scheduling flexibility to notify the ISO during real-time operations of scheduling changes that reflect the exercise of that flexibility.[116] They nevertheless challenge the statement contained in these provisions that deviations from a Scheduling Coordinator's Final Hour-Ahead Schedule will be treated as sales or purchases of Imbalance Energy and will be

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[115] If capacity reserved under Existing Rights is still not scheduled in the Hour-Ahead process, the ISO is authorized by Section 2.4.4.5.1.6 to make that capacity available to other customers. The ISO does so only after reserving enough capacity to meet within-the-hour schedules that holders of Existing Rights may submit later in the hour.

[116] They do not acknowledge, however, that the SP's accommodation of within-the-hour scheduling changes undermines completely their attack on Section 2.4.4.5.1.6 of the ISO Tariff.

paid or charged accordingly to the Scheduling Coordinator. Joint Initial Brief on Issue C.6, at 6.

Proponents' claim that these provisions undermine the economic value of scheduling flexibility under Existing Contracts is groundless. Nothing in Sections 7.5.1 or 7.5.2 of the SP requires the holder of Existing Rights to pay any amount when its exercise of within-the-hour scheduling flexibility subjects its Scheduling Coordinator to Imbalance Energy charges (or entitles it to revenues when deviations provide Imbalance Energy revenues to the Scheduling Coordinator). Responsibility for those costs is a matter between the holder of Existing Rights and its Scheduling Coordinator, which is typically the Participating TO that committed to provide transmission service under the Existing Contract.[117] If a particular Existing Contract shields the holder of Existing Rights from exposure for additional costs incurred by the Scheduling Coordinator in these circumstances (and the Existing Contract has not been modified with the Commission's approval), the assignment of Imbalance Energy market costs to the Scheduling Coordinator does not affect the economic value of the Existing Rights. Conversely, if an Existing Contract requires the Existing Rights holder to bear some or all of those additional costs, the Existing Rights holder cannot claim that the ISO Tariff infringes on its contractual rights.

Proponents do not address the consequences that would follow if the ISO did *not* assign deviations from Final Hour-Ahead Schedules to the Scheduling

[117] Responsible Participating Transmission Owner Agreements have been filed on behalf of PG&E in Docket No. ER98-1057-000, and on behalf of SCE in Docket No. ER98-1058-000. Portions of both agreements have subsequently been revised.

Coordinator representing an Existing Rights holder whose exercise of within-the-hour scheduling flexibility created the deviation. In that event, the ISO would have to spread the cost responsibility for the deviation from the schedule to all Scheduling Coordinators, including those whose actual Generation and Demand exactly matched their schedules. This approach would violate well-recognized principles of cost causation.[118]

Sections 7.5.1 and 7.5.2 of the SP represent the appropriate approach to the treatment of schedule deviations associated with Existing Rights holders' exercise of their scheduling flexibility. Those deviations should be assigned to the Scheduling Coordinator whose actual use of the ISO Controlled Grid departed from its schedule due to the exercise of that flexibility. As between the Scheduling Coordinator and the Existing Rights holders it represents, the ISO Tariff should not attempt to dictate the allocation of cost responsibility. Rather, that question should be resolved by the parties to the Existing Contract.

C.7. Should the ISO be required to implement ISO Tariff section 2.4.4.3.1.4 by giving express recognition to different priorities for firm service under Existing Contracts on Path 15, for purposes of allocating constrained capacity and for purposes of allocating Usage and Wheeling Revenues for PTOs who have converted their Existing Contracts, and should the ISO be required to reconcile ISO Tariff sections 7.3.1.6 and 7.1.4.2 with section 2.4.4.3.1.4? [Issue No. 351, Docket Nos. EC96-19-000 and ER96-1663-000, EC96-19-016 and ER96-1663-017, EC96-1663-023 and ER96-1663-024, EC96-19-029 and ER96-1663-030. Proponent - DWR]

DWR notes that in Docket No. ER99-1770-000 the Commission has accepted a set of priorities regarding use of Existing Contracts for Path 15.

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[118] *See, e.g., New England Power Pool*, 86 FERC ¶ 61,262, at 61,966 (1999) ("It has long been a central tenet of our regulation that cost responsibility should track cost causation.").

Initial Brief of DWR at 16. DWR, however, faults the ISO for failing to reflect these priorities in its mechanism for Firm Transmission Rights FTRs upon the conversion of Existing Contracts or in "any explicit way its day to day Tariff and protocols provisions governing scheduling and curtailment." *Id*. DWR alleges that the ISO has established FTR mechanisms that "do not allocate Usage Charges and Wheeling revenues from converted Existing Contracts in proportion to the degree of firmness." *Id*. at 20-21. DWR proposes the following: (1) that FTRs be given to converting Existing Rights holders without interposing an auction process; (2) that FTRs be derived from converted Existing Contracts by using the highest priority contract as a benchmark for one FTR; (3) that holders of lower priority contracts should receive fractional proportions of FTRs; and (4) that Usage Charge and Wheeling revenues should be allocated on the basis of those relative FTRs. *Id*. at 21. DWR also alleges that the ISO has established scheduling and curtailment priorities without regard to Existing Rights. *Id.* at 22. The only example cited by DWR is the priority given to RMR pursuant to Amendment No. 7 of the ISO Tariff. *Id*. at 22-23.

DWR's assertions are unpersuasive. First, DWR fails to mention in its initial brief that the Commission considered certain of its arguments in the context of DWR's rehearing request of the Commission's order on Amendment No. 9. The Commission stated as follows:

> Regarding DWR's claim that the May 3, 1999 order fails to address the disbursement of congestion revenues to converted rights holders in proportion to the degree of firmness and the terms and conditions of their service, we note that the ISO's proposal applies to all converted rights under Existing Contracts. Under ISO Tariff Section 2.4.4.3, if a recipient of firm transmission service under an Existing contract converts its rights to ISO transmission service, it becomes a Participating Transmission Owner. As a Participating Transmission Owner, the converting entity would be entitled to a share of the net Usage charges received by the ISO under Tariff Section 7.3.1.6, and a share of the proceeds of the ISO's FTR

> auction under Tariff Section 9.5.1. Furthermore, the ISO has indicated its willingness to consider alternative mechanisms to handle the conversion of rights under Existing Contracts.

California Independent System Operator Corporation, 88 FERC ¶ 61,156, 61,527-28 (1999).

Second, the ISO has been working extensively with stakeholders to develop a successor transmission Access Charge proposal. The balancing of interests in these discussions has included consideration of whether FTRs should be given to converting Existing Rights holders without interposing an auction process and whether distinctions should be made in the amount of FTRs reflecting different priorities on various paths. The ISO made its transmission Access Charge filing on March 31, 2000, in Amendment No. 27. The stakeholder process for the Access Charge included numerous discussions regarding FTRs for the conversion of Existing Contracts, but ultimately no consensus could be reached. Consequently, Amendment No. 27 states that FTRs will be provided commensurate with a potential Participating TO's Existing Rights. The amount of FTRs, and the distribution of Usage Charges, auction revenues, and Wheeling revenues will be determined as part of the TCA negotiation. Any party will be able to present its views concerning the appropriate arrangements for the conversion of Existing Contracts in the Amendment No. 27 docket. Accordingly, there is no need for the Commission to order that a conversion proposal be developed in the present proceeding. The issue is premature and should be decided in the docket that presents it to the Commission.

Third, the ISO discusses the appropriateness of the priority for Reliability Must-Run Generation in relation to Issue O.13, below. As noted in that discussion, the requests for rehearing on this issue, including DWR's request, fail to recognize that the fundamental purpose of the Dispatch of Reliability Must-Run Generation is to maintain the reliability of the ISO Controlled Grid, thereby

facilitating the deliveries called for by the Existing Contracts. If the output of RMR Generation could not be delivered, it could not serve its intended purpose: the maintenance of reliability for all those that rely on the ISO Controlled Grid, including Existing Contracts. Accordingly, Reliability Must-Run Generation must have a higher priority of use than all other uses of congested transmission paths.

In sum, DWR's concerns either have been addressed in prior Commission orders, may well be related to upcoming filings, or pertain to issues discussed later in this brief.

C.8. Should Participating TOs who are Existing Rightsholders, but who do not own and operate transmission and have no transmission customers, be required under ISO Tariff §§ 7.3.1.6, 7.1.4.2 to develop an Access Charge, Transmission Revenue Requirement and/or Transmission Revenue Balancing Account in order to receive Usage Charge and Wheeling revenues pursuant to ISO Tariff § 2.4.4.3.1.4 upon conversion of their Existing Contracts? [Issue No. 558, Docket Nos. EC96-19-029 and ER96-1663-030. Proponent - DWR]

DWR asserts that the ISO Tariff lacks an accurate term to describe entities such as DWR – that have no transmission customers and do not own or operate transmission assets – when they turn their Existing Rights over to the ISO's Operational Control. Initial Brief of DWR at 26. DWR argues that such entities should not be required to develop an Access Charge, TRR, or TRBA in order to receive Usage Charge and Wheeling Revenues pursuant to the ISO Tariff.

One flaw in DWR's argument is its belief that Existing Rights holders that do not currently have transmission customers will continue to lack transmission customers after the ISO assumes Operational Control of the Existing Rights. The other flaw in DWR's argument is that even Existing Contracts have a

Transmission Reserve Requirement associated with them – the payment to the existing Participating TO. Once such an entity joins the ISO, its rights to revenues and its access to the ISO are indistinguishable from those of owners of physical transmission facilities. When an entity becomes a Participating TO by "plac[ing] its transmission assets and Entitlements under the ISO's Operational Control,"[119] it makes the capacity available to the ISO for scheduling the transactions of transmission customers under the ISO Tariff. The Participating TO does not cede ownership of the physical facilities to the ISO, but merely the right to control the operation of the transmission facilities and to make its capacity available to transmission customers. This is true whether the Participating TO's rights arise from ownership of the physical transmission assets or from contractual rights to use those same assets.

Thus, if a new Participating TO transfers Operational Control of a line with 1200 MW of transfer capacity to the ISO, and there are Existing Contracts for 500 MW of capacity on the line, the ISO can only schedule 700 MW worth of transactions over that line. Any Scheduling Coordinators whose transactions are scheduled over that line by the ISO are *de facto* transmission customers of the new Participating TO, taking service under the ISO Tariff. If the holders of the rights under the Existing Contracts subsequently transfer all of these Entitlements to the ISO, the ISO can schedule the entire 1200 MW.
A Scheduling Coordinator whose transaction is scheduled over the line by the

[119] *See* ISO Tariff, Appendix A, definition of "Participating TO." The ISO Tariff defines "Operational Control" as the "rights of the ISO . . . to direct the Participating TOs how to operate their transmission lines and facilities and other electric plant . . . for the purpose of affording

ISO is then a transmission customer both of the new Participating TO and of the holders of the rights under the former Existing Contract.

The transmission pricing framework under the ISO Tariff reflects this concept. If a Scheduling Coordinator wheels electricity out of the ISO Controlled Grid at a Scheduling Point on a line owned by one or more Participating TOs and at which another Participating TO has Entitlements that have been transferred to the ISO's Operational Control, the Scheduling Coordinator is charged a blended rate based on the TRRs and TRBAs of the owner(s) of the facility and Entitlement(s).[120] The ISO Tariff explicitly recognizes that a Participating TO that has only Entitlements is nonetheless due payments from Wheeling customers. Wheeling revenues are thus distributed according to Participating TOs' TRRs.[121]

DWR's circumstances actually illustrate the importance of requiring entities that become Participating TOs by virtue of Existing Contracts to develop an Access Charge. It is the ISO's understanding that DWR pays approximately $20 million for contractual rights on facilities owned by PG&E and SCE, including a significant portion of Path 15. The ISO further understands that much of this capacity is in excess of DWR's on-peak needs. If DWR becomes a Participating TO and turns its Entitlements over to the ISO, customers scheduling transactions

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comparable and non-discriminatory transmission access and meeting Applicable Reliability Criteria."

[120] Under Section 7.1.4.2 of the ISO Tariff, "[t]o the extent that more than one Participating TO owns *or has a firm entitlement to* transmission capacity exiting the ISO Controlled Grid at a Scheduling Point, the Scheduling Coordinator shall pay . . . a rate for Wheeling . . . which reflects an average of the Wheeling Access Charge of those Participating TOs, weighted by the relative share of such ownership or firm entitlement to transmission capacity." (Emphasis added.) Under Section 7.1.4.1, the Wheeling Access Charge is based on the TRR and the TRBA of the Participating TO.

[121] *See* ISO Tariff, Section 7.1.4.3.

over Path 15 or any other of DWR's Entitlements will effectively be transmission customers of DWR, as well as transmission customers of the other Participating TOs. If DWR does not create a Wheeling Access Charge, the ISO will be unable to determine the Wheeling Access Charge applicable to transactions that exit the ISO Controlled Grid at Scheduling Points where DWR has Entitlements. If DWR does not establish a TRR, the ISO's calculation of Wheeling Access Charge disbursements will not include DWR, and DWR will have no opportunity to recoup any portion of the payments it makes for that capacity from transmission customers scheduling transactions under the ISO Tariff.[122]

Contrary to DWR's assertions (*see* Initial Brief of DWR at 28), it is not "absurd" to require that it develop a transmission rate and a TRBA. If DWR transfers Operational Control of its Entitlements to the ISO, a transmission rate and TRBA will be *necessary* for the ISO to allocate revenues collected from customers for use of the capacity represented by such Entitlements, including Wheeling revenues, Usage Charges, and FTR auction revenues.

DWR also points to Amendment No. 24 to the ISO Tariff (which the ISO has subsequently withdrawn) to show that, if it were deemed a Participating TO, it would be subject to transmission planning data and reports even though it owns no transmission. *See id.* at 28 & n.23. DWR's argument is misplaced. Amendment No. 24 would have required Participating TOs to submit transmission planning data and reports *for their Service Areas*. Under the ISO

[122] Thus, under the current structure of the ISO's Access Charge, the only Participating TOs who do not have customers, and who do not need to develop an Access Charge, are those who own or control facilities with no Take-Out Points.

Tariff, a Service Area is "[a]n area in which, as of December 20, 1995, an IOU or a Local Publicly Owned Electric Utility was obligated to provide electric service to End-Use Customers." ISO Tariff, Appendix A, definition of "Service Area." DWR has no Service Area as defined under the ISO Tariff. It would therefore have had no transmission planning responsibilities under Amendment No. 24.

DWR asks that the ISO Tariff be amended so that it can receive its entitlement, in the form of a refund or compensation to a customer, to Usage Charge revenues, Wheeling revenues, and FTR revenues. *See* Initial Brief of DWR at 30. DWR is indeed a transmission customer, and the ISO does not contest that fact. The ISO Tariff, however, does not provide any entity *in its capacity as a customer* with entitlement to Usage Charge revenues, Wheeling revenues, or FTR revenues. Rather, these payments are made to entities *in their capacity as transmission providers*, i.e., entities who have legal rights to use transmission capacity and who *provide* that capacity to the ISO to enable the ISO to serve transmission customers. Although DWR may at this time be only a transmission customer, if DWR subsequently transfers Operational Control of its Entitlements to the ISO, DWR would then also be a Participating TO, i.e., a transmission provider. DWR would be no different in this regard than *any* holder of transmission rights converted to the ISO's Operational Control.

Many potential Participating TOs have Existing Contract rights similar to those of DWR. The ISO Tariff currently treats these rights identically to physical ownership for purposes of collecting revenues (including determination of Self-Sufficiency and determination of Wheeling Access Charges), until their

termination, and the distribution of revenues (distribution of Wheeling revenues, Usage Charge revenues, and FTR auction revenues). DWR's proposal would consider these rights for the purpose of distributing revenues, but not for the purpose of collecting them, severely skewing the cost allocation system under the ISO Tariff.

DWR also uses this issue as a springboard to resurrect its claim that Existing Rights holders should be provided FTRs in return for converting their Existing Rights to the ISO's Operational Control. *See id.* at 32-37. DWR asserts that, among other purposes, FTRs are to make Existing Rights holders who join the ISO "whole to the extent that they themselves must pay congestion charges that would not have been required under the Existing Contract, and that FTRs are to compensate Existing Rights holders "for losing the benefits of their bargain under Existing Contracts for long-term, firm physical capacity rights." *Id.* at 32-33. The latter is not, and has never been, a purpose of FTRs, as evidenced by the fact that none of the current Participating TOs have such rights after having converted their Existing Rights to the ISO's Operational Control. If an Existing Rights holder transfers Operational Control of its Entitlements to the ISO, it competes for the right to firm capacity in ISO markets in return for other benefits. If it wishes to retain the benefits of long-term firm capacity, it must purchase FTRs. FTRs do, in combination with other factors, compensate Participating TOs for the surrender of FTRs. They do this, however, by providing the Participating TOs with a share of the revenue from the auction of FTRs, not

with FTRs themselves. As the Commission has stated in an order which DWR quotes:

> [I]f a recipient of firm transmission service under an Existing contract converts its rights to ISO transmission service, it becomes a Participating Transmission Owner. As a Participating Transmission Owner, the converting entity would be entitled to a share of the net Usage charges received by the ISO . . . and a share of the proceeds of the ISO's FTR auction . . . .

California Independent System Operator Corporation, 88 FERC at 61,528. The Commission also noted that the ISO has expressed a willingness to consider alternative mechanisms to handle the conversion of Existing Contracts. *Id.* The provision of FTRs as compensation to Existing Rights holders that join the ISO, however, is not the subject of any pending proceeding or rehearing request. As noted above in the discussion of Issue C.7, this issue was addressed as part of the revised transmission Access Charge process and has been deferred until a Transmission Owner actually decides to become a Participating TO. More significantly, it is not among the Unresolved Issues that are the subject of this proceeding. The Commission should not allow DWR to further complicate this proceeding by introducing additional issues, particularly those that have previously been resolved or that have been brought before the Commission for consideration in another matter.