

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation )  
Docket No. ER99-3339-000 )  
)  
)

**ANSWER OF  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO MOTIONS TO INTERVENE,  
COMMENTS AND PROTESTS**

**I. INTRODUCTION AND SUMMARY**

On June 23, 1999, the California Independent System Operator Corporation (“ISO”) filed Amendment No. 19 to the ISO Tariff.<sup>1</sup> Amendment No. 19 modifies the ISO Tariff to implement the New Generator Interconnection Policy (“NewGen Policy”) approved by the ISO Board of Governors. The NewGen Policy establishes unified procedures and requirements for processing requests for interconnection to the ISO Controlled Grid, as well as policies regarding the obligations of applicants to mitigate certain cost-related impacts of their interconnection that would otherwise be borne by other users. In accordance with the Notice of Filing issued June 28, 1999, and a Notice granting an extension of time issued on

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<sup>1</sup> Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

July 9, 1999, a number of interventions were filed on or before July 27, 1999, some of which included comments on or protests of Amendment No. 19.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the ISO submits its Answer to the Motions to Intervene, Comments and Protests submitted in the above-captioned docket. The ISO does not oppose the intervention of any of the parties that have sought leave to intervene in this proceeding. The ISO notes that most intervenors and virtually all classes of entities represented on the ISO Governing Board support Amendment No. 19, or seek only minor modifications to the manner in which the new interconnection policy is implemented. These representative classes include, among others, Transmission Owners, end-user groups, and Generation developers. Notwithstanding the opposition of intervenors like The Utility Reform Network and a specific subset of Generation developers with concerns about the application of the NewGen Policy to their specific cases, the vast majority of customer-class and Generation representatives support the ISO's proposal.

Other intervenors raise substantive objections to the NewGen policy. Some argue that the policy does not go far enough in requiring new Generators to mitigate incremental Congestion caused by their interconnection. Others argue that the NewGen policy imposes requirements on new Generators that could stand as an obstacle to the development of new Generating Units in California. As explained below, neither position has merit. The ISO and the majority of the stakeholders that participated in the

development of the NewGen Policy concluded that the policy represents an appropriate balance of interests that treats both new and existing Generators fairly. It allocates the costs of mitigating increased Intra-Zonal Congestion costs associated with the interconnection of new and modified Generating Units in a manner that is consistent with the zonal approach to Congestion Management embodied in the ISO Tariff and with the Commission's policies. It provides appropriate price signals to new Generators so that they will have an incentive to locate at sites where they will not create substantial additional Intra-Zonal Congestion and supports the use of competitive markets to relieve Congestion, where they are available. There is no reason to expect that the NewGen Policy will deter the entry of efficient new Generators.

The Commission should accordingly accept Amendment No. 19 without substantive modification.

## **II. BACKGROUND**

### **A. Overview of the NewGen Policy**

The NewGen Policy is the product of a lengthy and intensive stakeholder process conducted over the year preceding the filing, through which the ISO has been working with Market Participants to develop its policy concerning requirements for new Generators requesting interconnection to the ISO Controlled Grid and existing Generators that seek to increase their capacity. The purpose of the ISO's NewGen policy is to both send enhanced price signals to Generators as to where to locate on the grid and to provide a certain level of

price certainty so that Generators can obtain necessary financing for their plants. In order to address these concerns, the ISO and stakeholders focused their efforts on the issue of whether, and the extent to which, new or modified Generators would be responsible for mitigating the incremental Intra-Zonal Congestion created by their interconnection to the ISO Controlled Grid.<sup>2</sup>

Under the NewGen Policy, incremental Intra-Zonal Congestion attributable to the interconnection of a new or modified Generator would be handled using the ISO's existing Intra-Zonal Congestion Management protocols, unless the following circumstances are present: (1) the required System Impact and Facility Studies demonstrate that the requested interconnection will cause a significant increase in Intra-Zonal Congestion (*e.g.*, if the increased flow on the overloaded element is greater than five percent (5%) of the element's rating), and (2) the incremental Congestion cannot otherwise be mitigated through the use of competitive Adjustment Bids or Supplemental Energy bids. The new or modified Generator may mitigate the incremental Intra-Zonal Congestion through a number of means described in proposed Section 5.7.2.3.5, including providing financial support for a system expansion that eliminates the incremental Congestion. In addition, if the new or modified Generator supports a system expansion, it will receive the associated System Benefits to the extent that it provides benefits that exceed the expansion needed to mitigate the new or modified Generator's incremental Intra-Zonal Congestion, including, if applicable,

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<sup>2</sup> There was no substantial disagreement that incremental Inter-Zonal Congestion associated with a new or modified Generator would be addressed in accordance with the existing Congestion Management protocols.

FTRs and explicit recognition of any cost savings resulting from the deferral of Participating TO-planned transmission expansions.

The NewGen Policy also addresses the priority afforded interconnection applications. All interconnection requests submitted to the ISO during a given calendar month will be processed simultaneously, effectively assigning them the same queue position. Certain milestones are established that must be met for a New Generator to maintain its queue position. A new or modified Generator is only responsible for mitigation of the Intra-Zonal Congestion which exceeds that which was already present, based on the evaluation of all prior interconnection applications.

Finally, the NewGen Policy addresses the procedures for the submission and processing of applications to interconnect to the ISO Controlled Grid. The affected Participating TO will perform necessary System Impact Studies and Facilities Studies, with ISO oversight, according to deadlines set forth in the Participating TO=s Tariff. An applicant may sponsor its own studies, subject to the approval of the ISO. As the entity with the ultimate responsibility for maintaining the reliability of the ISO Controlled Grid, the ISO will make the final determination regarding the adequacy of any studies, subject to the dispute resolution provisions of the ISO Tariff.

## **B. Interventions**

A notice of intervention was filed by the Public Utilities Commission of the State of California ("CPUC") and motions to intervene were filed by a number of parties.<sup>3</sup>

Most intervenors indicated support for Amendment No. 19. Many of the intervenors, however, accompanied their interventions with Comments and/or Protests. In many cases, the intervenor's comments propose refinements or minor modifications to the changes proposed by the amendment. As discussed below, the ISO has agreed to make certain minor, non-substantive modifications to Amendment No. 19.

The ISO does not oppose the intervention of any of the parties that have sought leave to intervene. The ISO does not believe, however, that any of the substantive challenges to the NewGen Policy has merit.

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<sup>3</sup> Motions to intervene were filed by the California Electricity Oversight Board ("CEOB"); California Department of Water Resources ("DWR"); California Power Exchange ("PX") (out of time); Calpine Corp. ("Calpine"); Cogeneration Association of California ("CAC"); Duke Energy Moss Landing, LLC ("Duke"); Electric Clearinghouse, Inc. ("ECI"); Electric Power Supply Association ("EPSA"); Enron Power Marketing, Inc. ("Enron"); Independent Energy Producers Association ("IEPA"); Metropolitan Water District ("MWD"); Modesto Irrigation District ("Modesto"); Northern California Power Agency ("NCPA"); Pacific Gas & Electric Company ("PG&E"); the Cities of Redding and Santa Clara, et al. ("Cities"); Sacramento Municipal Utility District ("SMUD"); San Diego Gas & Electric Company (SDG&E); Southern California Edison Company ("SCE"); Southern Energy Delta LLC ("Southern"); City and County of San Francisco; Southern Energy California, L.L.C., et al.; Sempra Energy ("Sempra"); Transmission Agency of Northern California ("TANC"); Turlock Irrigation District ("Turlock"); The Utility Reform Network, et al. ("TURN"); Western Area Power Administration ("WAPA"); and Williams Energy Marketing & Trading ("Williams"). Some parties filed separate protests or comments, including a coalition of Sempra, TURN and other entities that did not seek intervention ("Coalition").

### **III. ANSWER TO COMMENTS AND PROTESTS<sup>4</sup>**

#### **A. Cost Responsibility of New Generators**

The NewGen policy affects only one component of the cost responsibility of a new or modified Generator interconnecting to the ISO Controlled Grid. It does not modify the responsibility of a new or modified Generator to pay for the costs of facilities through which its Generating Unit is interconnected to the grid and for expansions and reinforcements to the transmission system necessary to maintain its reliability. Neither does it alter the manner in which costs of Inter-Zonal Congestion are assigned to any Scheduling Coordinator scheduling the delivery of Energy or Ancillary Services from the new or modified Generator. On this point, all proposals considered by the ISO and stakeholders were the same. As described above, the NewGen Policy does place responsibility upon a new or modified Generator to mitigate incremental Intra-Zonal Congestion that is caused by its interconnection, when that Congestion is significant and cannot be resolved through competitive bidding. Intra-Zonal Congestion is expected to occur infrequently and in small amounts. The NewGen Policy is intended to apply in those instances where Intra-Zonal Congestion becomes significant as a result of the interconnection of a new or modified Generator.

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<sup>4</sup> Some of the intervenors commenting substantively on Amendment No. 19 do so in portions of their pleadings variously styled as "Comments," "Protest," or "Comments and Protest," without differentiation. There is no prohibition on the ISO's responding to the comments in these pleadings. In addition, where an intervenor seeks affirmative relief, the ISO is entitled to respond to such requests notwithstanding the label applied to them. *Florida Power & Light Company*, 67 FERC ¶ 61,315 (1994). To the extent this answer responds 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 given the nature and complexity of this proceeding and the usefulness of this answer in ensuring the development of a complete record. *See, e.g., Enron Corporation*, 78 FERC ¶ 61,179 at 61,733, 61,741 (1997); *El Paso Electric Company*, 68 FERC ¶ 61,181 at 61,899 & n.57 (1994).

The ISO Tariff does include a mechanism for the creation of new Zones where there is significant Intra-Zonal Congestion, however, there are circumstances where the creation of new Zones would do more harm than good by limiting the price a new Generator may receive and thereby suppressing revenues in an amount greater than the cost of the plant. This would occur in instances where the price of energy in the new constrained-off Zone is limited to the cost of the highest-cost plant in the Zone and where the unconstrained zonal clearing price would have been much higher had the pre-existing Zone not been split. Generation developers have informed the ISO that the uncertainty surrounding their ability to capture these potentially “forgone revenues” impairs their ability to secure financing. Absent their ability to potentially secure the unconstrained zonal clearing price, Generation developers state that financing institutions will not back their projects.

While most intervenors support the cost responsibility aspect of the NewGen Policy, two groups of intervenors do not. One group of intervenors argues that the NewGen Policy does not go far enough to protect consumers against cost shifts that could result when a new or modified Generator interconnects with the ISO Controlled Grid.<sup>5</sup> Another group of intervenors argues that new or modified Generators should not be assigned any responsibility for the costs associated with mitigating any increases in Intra-Zonal Congestion that follow their interconnection.<sup>6</sup> They contend that the NewGen policy: (1) is unduly preferential toward existing generators and discriminates against new Generators

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<sup>5</sup> Cities at 8-11.

<sup>6</sup> Calpine at 17-20; Coalition at 19-23.

and customers; (2) is inconsistent with existing protocols for the management of Inter-Zonal Congestion and Intra-Zonal Congestion on the ISO Controlled Grid; (3) creates barriers to entry by new Generators; and (4) creates opportunities for the exercise of market power, in part by using inappropriate criteria to determine whether a workably competitive market exists for the relief of Congestion.

Neither of these sets of criticisms is well-founded. The ISO and the majority of the stakeholders that participated in the development of the NewGen Policy concluded that the policy represents an appropriate balance of interests that treats both new and existing Generators fairly. It allocates the costs of mitigating increased Intra-Zonal Congestion costs associated with the interconnection of new and modified Generating Units in a manner that is consistent with the zonal approach to Congestion Management and with the Commission's policies. It provides appropriate price signals to new Generators so that they will have an incentive to locate at sites where they will not create substantial additional Intra-Zonal Congestion. Far from creating barriers to entry by new Generators, the NewGen Policy facilitates the development of new Generating Units by affording them a measure of price certainty that otherwise is unavailable.

The fact that new Generation projects have to factor in the cost of mitigating Intra-Zonal Congestion costs does not make that a barrier to entry and is no different than a developer having to consider the cost of environmental remediation, and local zoning ordinances and improvements. Intra-Zonal Congestion is just one more cost to consider. To argue that Generators should

not consider Intra-Zonal Congestion in their evaluation and selection of a Generation site when there is no competitive market through which to mitigate the Congestion is to argue that a Generator should not consider, nor bear the cost of, any necessary environmental remediation.

**1. The NewGen Policy Is Not Unduly Discriminatory or Preferential.**

Intervenors argue that the NewGen Policy unduly discriminates against new or modified Generators, insofar as they are required to mitigate Intra-Zonal Congestion caused by their interconnection, while existing Generators have no such obligation. TURN also argues that the NewGen Policy is unduly preferential in that it gives “first rights” to transmission within a Zone to existing Generators, while giving no such rights to customers. Neither argument has merit.

The first argument rests on the proposition that new or modified Generators have a legal entitlement to pay costs for Intra-Zonal Congestion on the same basis as existing Generators. The Commission has long recognized, however, that it is not unduly discriminatory to charge a new customer a rate that reflects the incremental costs that are created when its request for service is met. To the contrary, such pricing appropriately assigns to the new customer the costs caused by its request, shielding other customers from bearing in inordinate share of those costs.<sup>7</sup> Absent the new customer's request, those costs would not be incurred. The Commission's standard policy for transmission pricing authorizes a utility to charge a transmission customer the higher of a share of the embedded

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<sup>7</sup> See, e.g., *Pennsylvania Electric Co.*, 58 FERC ¶ 61,278 at 61,873-75, *order on reh'g*, 60 FERC ¶ 61,034 (1992); *Cincinnati Gas & Electric Co.*, 71 FERC ¶ 61,380 62,478-81 (1995).

costs of the transmission system or the incremental costs of accommodating its transaction.<sup>8</sup> This policy explicitly recognizes that the addition of a new transmission customer can cause the transmission provider to incur additional costs, including Congestion costs, that can appropriately be assessed to that customer, rather than spread among all customers.

More recently, the Commission approved an interconnection cost allocation policy for another ISO that, like the NewGen Policy, assigns to new generators responsibility for the costs of upgrades to the regional transmission system that are necessitated by their interconnection.<sup>9</sup> The Commission did not find the cost allocation policy it accepted in *PJM* to be unduly discriminatory or preferential, even though it assigned to new generators the costs of upgrades that were necessary to accommodate reliably the combined output of new and existing generators.

Intervenors recognize the problem that *PJM* presents for their argument (and, indeed, for their opposition to the NewGen Policy). They attempt to evade this difficulty by arguing that *PJM* is inapplicable here, because PJM has an installed capacity requirement for load-serving entities, while the California market has none. This, however, is a distinction without a difference. Whatever reserve obligations are imposed on entities serving loads in a region, those entities must rely on the region's transmission system to obtain access to existing Generating Units and new Generating Units to fulfill those obligations. The

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<sup>8</sup> *Pennsylvania Electric Co.*, 58 FERC at 61,873-75; see also *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Policy Statement*, III FERC Stats. & Regs. ¶ 31,005 (1994).

<sup>9</sup> *PJM Interconnection L.L.C.*, 87 FERC ¶ 61,299 (June 17, 1999) ("*PJM*").

Commission determined in *PJM* that it is not unduly discriminatory or preferential to assign to new generators responsibility for certain of the incremental costs caused by their addition to the grid. The same result must apply in this case.

CEOB contends that the NewGen Policy differs from the policy approved in *PJM* in that the latter policy requires a new generator to pay the cost of grid upgrades that were not included in the ISO's regional transmission expansion plan.<sup>10</sup> CEOB is mistaken, however, regarding the manner in which the NewGen Policy is intended to function. The NewGen Policy, like the policy approved in *PJM*, is intended to operate together with an enhanced regional transmission planning process. That process, which was approved by the ISO Board of Governors at its June 1999 meeting, contemplates that needs for grid enhancements to enable the ISO to accommodate load growth and other system needs will be reflected in the development of the ISO's statewide integrated transmission plan.<sup>11</sup> That plan is intended, among other purposes, to provide information for entities contemplating the addition of new generating facilities. Studies of new Generator interconnections therefore will not be the only process through which needed grid enhancements will be identified. CEOB agrees that, operating in tandem with an integrated regional planning process, the NewGen Policy need not "constitute a practical impediment to efficient new entry" by Generators.<sup>12</sup>

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<sup>10</sup> CEOB at 7.

<sup>11</sup> The conceptual framework of the ISO's Long-Term Grid Planning proposal is outlined in a memorandum to the ISO Governing Board, dated June 17, 1999, provided as Attachment A to this Answer.

<sup>12</sup> CEOB at 7.

If anything, the NewGen Policy is more limited than the policy approved in *PJM*, since the NewGen Policy requires new or modified Generators to mitigate only a portion of the incremental costs caused by their interconnection – costs of additional Intra-Zonal Congestion – and only under defined circumstances. A pricing policy that so closely tailors the cost responsibility of a new or modified Generator to the incremental costs caused by its interconnection plainly is not unduly discriminatory.

TURN's argument that the NewGen Policy discriminates against customers has no better foundation. The NewGen Policy does not grant any kind of transmission service or right to existing Generators or take any rights away from customers. All entities requesting service over the ISO Controlled Grid are provided equal and non-discriminatory access. When accommodating service requests gives rise to Congestion, the ISO will apply its existing Inter-Zonal Congestion management protocols, and, if a sufficient market exists, its existing Intra-Zonal Congestion Management protocols. The fact that the ISO explicitly recognizes the presence of existing Generators (as well as existing Loads) when modeling the impact of the interconnection of a new generator is not equivalent to a grant of superior rights to use available transmission capacity. The contention that the ISO's model is somehow "artificial" and not representative of reality is wrong. The ISO's System Impact Study procedures will only model that Generation which is realistically expected to be running and will not model or include all potential Generation.

TURN also ignores the fact that, under the ISO Tariff, all costs of relieving Intra-Zonal Congestion are borne by Scheduling Coordinators in proportion to the Loads they serve within the Zone (and their exports to neighboring Control Areas). The NewGen Policy *reduces* the Intra-Zonal Congestion costs that otherwise would be borne by customers by requiring new or modified Generators to mitigate Intra-Zonal Congestion under certain circumstances and by providing price signals that encourage Generators to locate where they will not create significant additional Intra-Zonal Congestion. In the absence of this proposal, costs to customers for Intra-Zonal Congestion would *increase*. Far from being victims of discrimination under the NewGen Policy, customers are among its principal beneficiaries.

**2. The NewGen Policy Is Consistent With and Complements the Zonal Approach to Congestion Management.**

TURN contends that the NewGen Policy is inconsistent with the ISO Tariff's protocols for Intra-Zonal Congestion Management and Inter-Zonal Congestion Management.<sup>13</sup> These contentions are groundless. In fact, the NewGen Policy is carefully designed to complement the zonal approach to Congestion Management embodied in the ISO Tariff.

Under that approach, the ISO relieves Congestion between Active Zones by adjusting the output of Generators and Dispatchable Loads that submit Adjustment Bids in the Day-Ahead and Hour-Ahead Markets to reflect the value they place on the use of the interface between the Zones. Inter-Zonal

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<sup>13</sup> TURN at 4-5; 9-11.

Congestion that remains in real-time operations is relieved using incremental and decremental bids in the real-time Imbalance Energy Market.<sup>14</sup> The Usage Charges function as a signal to Market Participants of the economic value of the use of a congested Inter-Zonal Interface based on their Adjustment Bids, enabling them to make efficient decisions regarding the usage of that resource. When Firm Transmission Rights (“FTRs”) are implemented next year, Scheduling Coordinators (as well as other entities) will be able to acquire FTRs to hedge their potential exposure to Usage Charges.

Intra-Zonal Congestion (including Congestion between Inactive Zones) is managed, and its costs recovered, through a different process. At present, the ISO manages Intra-Zonal Congestion only in real-time. The ISO uses available Adjustment Bids and incremental and decremental bids in the real-time Imbalance Energy markets to redispatch resources as necessary to relieve Intra-Zonal Congestion. The ISO may also call upon resources available under Reliability Must-Run (“RMR”) contracts for that purpose.<sup>15</sup> The net redispatch costs incurred by the ISO to manage Congestion within a Zone are paid by all Scheduling Coordinators serving Load within the Zone and making exports from

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<sup>14</sup> If insufficient economic bids are available, the ISO may curtail schedules on a pro rata basis to relieve Inter-Zonal Congestion, both in forward markets and in real-time.

<sup>15</sup> TURN is correct that the ISO’s existing operating procedure for managing Intra-Zonal Congestion provides for the exclusive use of RMR Generation to manage Intra-Zonal Congestion on all Intra-Zonal paths where adequate competition in the provision of Adjustment Bids does not exist. The ISO had previously determined that adequate competition does not exist on all Intra-Zonal paths where Intra-Zonal Congestion has been experienced except Path 26. This is consistent with the principal design feature of the RMR contracts - mitigation of locational market power. The ISO is in the process of reevaluating the adequacy of available Intra-Zonal Congestion management tools in light of the Commission’s acceptance of Amendment No. 18, which will enable the ISO to call on Adjustment Bids and Imbalance Energy bids both within and outside a Zone.

resources in the Zone to neighboring Control Areas as a Grid Operations Charge. Because the costs of Intra-Zonal Congestion Management are spread in this manner, economic signals to Scheduling Coordinators are muted. In addition, because FTRs are not defined within Zones, there is no mechanism available to enable Market Participants to hedge their exposure to Intra-Zonal Congestion costs.

The NewGen Policy complements the existing zonal approach to Congestion Management. It provides price signals to developers of new or modified Generating Units regarding the extent to which a proposed project will increase Intra-Zonal Congestion. It also provides a mechanism for developers to obtain price certainty by mitigating in advance their exposure to curtailments due to incremental Intra-Zonal Congestion. The NewGen Policy requires mitigation only of incremental *Intra-Zonal* Congestion because the costs of Inter-Zonal Congestion are already assigned in a manner that provides appropriate price signals. A developer contemplating a new or expanded Generating Unit therefore has an incentive and ability to take into account in its siting decision the impact that its project will have on Inter-Zonal Congestion costs. In addition, FTRs will provide a financial hedge to protect against volatile Usage Charges. The NewGen Policy accordingly does not require a new or modified Generator to mitigate any increased costs of Inter-Zonal Congestion that its project may cause.

In the case of Intra-Zonal Congestion, however, the same price signals and hedges are unavailable. In the absence of the NewGen Policy, any increase

in Intra-Zonal Congestion caused by the interconnection of a new or modified Generator would be spread among all Scheduling Coordinators serving Loads in the Zone. The Generator has only a limited incentive to take these costs into account in deciding where to locate his project. In effect, a Generator could rely on other Market Participants to subsidize a decision to locate a project where it will increase Intra-Zonal Congestion costs. At the same time, the prospect that a new or modified Generator could be subject to reduced operations when Intra-Zonal Congestion restricts its output creates price uncertainty that will deter the development of new Generating Units. To the extent that Intra-Zonal Congestion is permitted to increase, unchecked, by the addition of new Generation to the grid, Generators will face increasing exposure to potential Inter-Zonal Congestion costs, insofar as increasing Intra-Zonal Congestion will lead to the creation of new Zones. The NewGen Policy focuses on providing price signals to developers of new or modified Generating Units that would significantly increase the amount of Congestion experienced within a Zone, while providing a vehicle for them to mitigate in advance the costs for which they would be responsible.

Intervenors contend that the NewGen Policy is unnecessary, even limited to Intra-Zonal Congestion because the ISO Tariff already includes a mechanism to address changed circumstances (such as the interconnection of a new Generator) that increase Intra-Zonal Congestion: the creation of a new Zone. They argue that, by requiring new or modified Generators to mitigate Intra-Zonal Congestion, the NewGen Policy avoids the creation of new Zones and thereby

precludes the use of Inter-Zonal Congestion protocols to relieve Congestion caused by the addition of the new or modified Generator.

These arguments, however, disregard the fact that Inter-Zonal Congestion Management applies only to the use of interfaces between *Active Zones*.<sup>16</sup> While a new Zone may be created whenever substantial Intra-Zonal Congestion is experienced for a significant period, a new *Active Zone* may be created only upon a determination that a workably competitive Generation market exists on both sides of the Inter-Zonal Interface for a substantial portion of the year.<sup>17</sup> Consistent with these provisions, the NewGen Policy specifies that a new or modified Generator is responsible for mitigating Congestion only if its interconnection would cause significant incremental Intra-Zonal Congestion and only if that Congestion cannot be relieved through a workably competitive market for Adjustment Bids and Supplemental Energy bids. The NewGen Policy thus requires a new or modified Generator to mitigate incremental Intra-Zonal Congestion only when a new *Active Zone* would *not* otherwise be created, so that Inter-Zonal Congestion Management would not be available to relieve the resulting Congestion in a manner that provides locational price signals for developers of Generation and that makes financial hedges available in the form of FTRs.

To a large extent, intervenors base their opposition to the NewGen policy on their dissatisfaction with the zonal approach to Congestion Management that is incorporated in the ISO Tariff and implemented by the ISO. In addition to

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<sup>16</sup> See ISO Tariff § 7.2.7.3.2.

<sup>17</sup> See ISO Tariff §§ 7.2.7.2; 7.2.7.3.1.

expressing explicitly their opposition to zonal Congestion Management, they propose alternative approaches to addressing increases in Congestion associated with the addition of new or modified Generating Units that would require substantial revisions to the zonal Congestion Management approach. These proposals include the creation of intra-Zonal FTRs and separate Zones for scheduling purposes whenever significant Intra-Zonal Congestion arises.<sup>18</sup> These proposals suffer from three defects. First, unlike the NewGen Policy, they represent fundamental departures from the zonal approach to Congestion Management embodied in the ISO Tariff and accepted by the Commission. They attempt to use the question of accommodating new or modified Generators as an excuse to revisit questions that have long been settled for the California electricity market, at least as an initial matter. Those questions are simply beyond the scope of this proceeding. Second, even if the ISO Tariff did incorporate a nodal-based Congestion Management system, it still would not send appropriate price signals reflecting the Congestion caused by the location of new generation. Most nodal systems in use today calculate prices at buses which are at voltages of 230kV and above. The vast majority of Intra-Zonal Congestion created by the interconnection of new generation, however, will occur at sub-transmission voltages (*e.g.*, 60 kV). Therefore, unless the ISO were to adopt a more refined nodal pricing system than those in place elsewhere, it still would not send the necessary locational price signals to generators. Finally, even if the intervenors' proposals had merit in the context of a different overall approach to Congestion Management, they could not be implemented in

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<sup>18</sup> Calpine at 28; Coalition at 31-32.

California without costly and time-consuming modifications to the ISO's procedures and software. The attendant delay and uncertainty would create a far greater barrier to the development of new resources to serve the California market than the limited obligations to mitigate Intra-Zonal Congestion that are proposed in the NewGen Policy.

### **3. The NewGen Policy Promotes the Entry and Efficient Location of New Generators.**

Intervenors claim that the NewGen Policy will deter the entry of efficient new Generators because they will have to bear the costs of mitigating the additional Intra-Zonal Congestion they cause. This claim would treat the incremental Intra-Zonal Congestion caused by the interconnection of a new or modified Generator at a given location as costs that do not need to be considered in determining whether the addition of that Generator is efficient. This presumes that new or modified Generators are entitled to have their entry subsidized by the customers in the Zone where they are located. Without the NewGen Policy, those customers will bear increased costs for Intra-Zonal Congestion Management when the interconnection of a new or modified Generator increases Congestion within a Zone. What the intervenors call a barrier to entry is in fact simply a mechanism to avoid a subsidy that would otherwise promote the inefficient siting of new or expanded Generation.

Moreover, the argument that the NewGen Policy will promote inefficient investments in new Generation and transmission facilities is simply wrong. Intervenors claim that the investments that would result from the application of the NewGen Policy to the ISO's zonal Congestion Management regime are

different than those that would result if the ISO employed a nodal approach to Congestion Management, under which Generators receive and Loads pay different prices depending upon their locations within a Zone. In fact, however, expected investments in new Generation and transmission, as well as expected patterns of real-time energy production are essentially identical under both approaches. More importantly, prices paid by Loads (other than Loads in the immediate vicinity of a node with substantial excess Generation) are also the same. As explained in the attached paper by the ISO's Department of Market Analysis ("DMA"), the NewGen Policy is designed to result in the same economic outcome and behavior as would result under a system where there existed a true market for available transmission capacity.<sup>19</sup>

As a general matter, the ISO agrees that a certain level of congestion may be "economic." That is, it may not make sense to upgrade the transmission system or take other actions when the cost of such measures is greater than the Congestion cost. In fact, investor-owned utilities have historically operated their systems in such a manner through out-of-market dispatch of their resources (*i.e.*, the utilities determined that it was less expensive to redispatch the system than to build transmission). That is the reason why one of the options available under the NewGen Policy is not to build. However, the ISO believes that the intervenors are wrong in four important and vital respects:

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<sup>19</sup> This paper is provided as Attachment B to this Answer.

- 1) The ISO's proposal is directed at addressing local Congestion, not system-wide Congestion, as was the case in New England<sup>20</sup>;
- 2) The intervenors' position is premised on a faulty assumption that alternative resources are always available to manage Congestion competitively;
- 3) Intervenor's arguments are based on an economic outcome whereby efficient new Generation always "displaces" existing, less-efficient, Generation. First, this is not always the case. Secondly, and more importantly, it does not address the fundamental issue that the ISO does need all of the available capacity from both the new efficient Generators and the old less-efficient Generators. As noted by the intervenors, the ISO does not operate a capacity market, and therefore must rely on the market to build sufficient Generation to satisfy all load and reserve requirements. Under intervenors' preferred model, new efficient Generators located in the same local area (or a new Generator and a marginally less efficient existing Generator) would be forced to compete for available transmission capacity, while an old, less efficient, Generator located five miles away may still run; and
- 4) The "real-world" timing of Generation and transmission additions (*i.e.*, time to develop, site and build) is so disparate that transmission expansion is unlikely to occur on a timetable that will address the needs of Generation developers.

Finally, as explained above, the NewGen Policy enables new or modified Generators to obtain price certainty that is otherwise unavailable under the zonal approach to Congestion Management. That enhanced price certainty is intended to facilitate the entry of new resources that could otherwise be deterred by exposure to uncertain and fluctuating costs of Intra-Zonal Congestion Management. Subsequent to the entry of the new Generator, all Generators will

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<sup>20</sup> Intervenor's inaccurately state that the ISO's NewGen policy is analogous to the "full integration" test proposed in New England and subsequently rejected by the Commission. *New England Power Pool*, 85 FERC ¶ 61,141 (1998). In *New England Power Pool*, the applicants proposed that all generation be capable of reliably serving all load on the system. Conversely, the ISO's policy is limited to, and is directed at mitigating, the incremental Intra-Zonal (*i.e.*, local) Congestion created by the interconnection of a Generator.

be on equal footing. As explained above, Intervenors' attempts to propose alternative means of providing price certainty are incompatible with the ISO Tariff's approach to Congestion Management and infeasible from a practical perspective.

#### **4. The NewGen Policy Prevents the Creation of Additional Opportunities for the Exercise of Market Power.**

Intervenors also contend that the NewGen Policy creates opportunities for the exercise of market power, principally by existing Generators. In fact, however, the NewGen Policy is intended and expected to have precisely the opposite effect. As noted above, the NewGen Policy requires a new or modified Generator to mitigate Congestion in a Zone only when its interconnection otherwise create significant Intra-Zonal Congestion that could not be mitigated by bids in a workably competitive market. Without this requirement, the ISO could be placed in the position of having to rely on non-competitive markets for the relief of substantial amounts of Intra-Zonal Congestion. Recent experience, which led to the filing and approval of Amendment No. 18 to the ISO Tariff, demonstrates that this situation will create high costs for consumers.

A number of intervenors take issue with the ISO's threshold test for determining whether adequate competition exists to address the incremental Intra-Zonal Congestion. The ISO's proposal applies the same threshold criteria the Commission uses in determining whether adequate competition exists for electric capacity or energy. Like the Commission, the ISO intends to use the 20 percent threshold as an initial screen to determine whether adequate competition exists for purposes of Intra-Zonal Congestion Management. One of the purposes

served by placing such criteria in a planning procedure, rather than in the ISO Tariff, is to maintain the ISO's flexibility to consider other pertinent information in its evaluation of competition. Moreover, the ISO is currently in the process of developing more specific criteria for determining whether "workable competition" exists. To the extent that the ISO Governing Board approves such criteria, the ISO intends to incorporate them in a revised version of the procedure.

Intervenors also argue that the NewGen policy gives existing Generators the opportunity to exercise market power by agreeing to curtail output as a means of mitigating the Intra-Zonal Congestion caused by a new Generator and that the resulting agreements are anti-competitive. This argument, however, ignores several critical factors. First, when Intra-Zonal Congestion exists, the transmission system cannot accommodate the output of all of the Generators within a Zone. Because all Generators within the Zone receive the same price when they operate, this feature of the NewGen Policy (mitigation of Intra-Zonal Congestion) promotes the substitution of newer, more economical Generators for existing high-cost Generators. Rather than subsidizing the continued operation of high-cost suppliers, it facilitates their replacement, which is consistent with the outcome that would be produced by a workably competitive market, if one existed. Second, an existing Generator with higher costs cannot demand an unreasonable price for curtailing its output, because the new Generator has other options available to mitigate the incremental Intra-Zonal Congestion, including paying the ISO's costs of relieving the Congestion or curtailing its own output, as necessary. These options ensure that an existing Generator can demand no

more in a curtailment agreement than the expected costs of mitigating the incremental Intra-Zonal Congestion. Where the revenue that an existing Generator would forego by curtailing its output to eliminate the incremental Intra-Zonal Congestion is less than the costs of these other options, it has every incentive to do so.

Finally, because the incremental Intra-Zonal Congestion will be mitigated through one or another of these means, any mitigation arrangement between a new Generator and an existing Generator will not affect the prices paid by customers. Regardless of the outcome of the negotiations between Generators or whether the new Generator opts for a different mitigation measure, the Intra-Zonal Congestion Management costs borne by customers are reduced.

## **B. Procedural and Tariff Issues**

Several intervenors that support the substance of the proposed NewGen Policy request changes to or clarifications of certain of the specific tariff provisions through which that policy is to be implemented. The ISO responds to those requests in this section of its Answer.

### **1. Consistency of Amendment No. 19 With the TO Tariffs.**

The Participating Transmission Owners raise a number of concerns regarding the interaction among the ISO Tariff, as it would be modified by Amendment No. 19, the Transmission Control Agreement, through which the Participating Transmission Owners have agreed to give Operational Control of their transmission facilities to the ISO (“the TCA”), and the provisions of their Participating Transmission Owner Tariffs (“TO Tariffs”) relating to

interconnections. They argue that the ISO should be required to refile Amendment No. 19 as part of a package that also includes necessary changes to the TCA and the TO Tariffs and which preserves the existing division of responsibilities among the ISO and the TO Tariffs.<sup>21</sup>

The ISO agrees that the provisions of the ISO Tariff and the TO Tariffs relating to interconnections should be consistent with one another. The ISO further agrees with SCE that both the Participating TOs and the ISO are bound by their respective obligations under the TCA.<sup>22</sup> SCE, however, does not identify any respect in which Amendment No. 19 is inconsistent with the ISO's obligations under the TCA, nor could such a claim be sustained. The TCA requires Participating TOs to accept interconnection requests, to provide interconnection on a non-discriminatory basis, and to coordinate with the ISO on the processing of those requests and on the conduct of necessary studies.<sup>23</sup> The ISO believes that Amendment No. 19 sets forth a reasonable mechanism for the coordination of the ISO's and the Participating TOs' receipt and processing that is entirely consistent with these provisions. As modified by Amendment No. 19, the ISO Tariff continues to assign to the Participating TOs responsibility for conducting System Impact and Facilities Studies, while giving the ISO the role of coordinating that process and ensuring that all interconnection applications are processed in a fair and non-discriminatory manner.

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<sup>21</sup> SCE at 5-6; PG&E at 3; SDG&E at 7.

<sup>22</sup> SCE at 7-9.

<sup>23</sup> TCA §§ 10.3 – 10.5.

The ISO also acknowledges that, while Amendment No. 19 is largely consistent with the interconnection procedures and timetables contained in the TO Tariffs, there are some inconsistencies where the stakeholders participating in the process that produced Amendment No. 19 (which included the Participating TOs) determined that the interconnection process could be improved. The ISO disagrees with the suggestion that the existence of variances between the ISO Tariff and the TO Tariffs requires the rejection of Amendment No. 19 until its provisions can be reconciled in every respect with TO Tariffs. Such a requirement – which cannot be found in the ISO Tariff, the TO Tariffs or the TCA – would effectively permit the Participating TOs to exercise a veto over changes to the ISO Tariff's interconnection procedures or, by implication, any other provision of the ISO Tariff that can be said to relate to a provision of a TO Tariff. That would be directly contrary to one of the principle purposes of the restructuring of the electricity industry in California, the independence of the ISO from Transmission Owners.

The consistency sought by the Participating Transmission Owners can easily be assured by the Participating TOs' submitting the few necessary changes to the interconnection provisions of their respective TO Tariffs to conform them to Amendment No. 19, including any modifications that the Commission may prescribe. To ensure that applicants for interconnection and the Participating TOs are not subject to conflicting requirements in the interim, the Commission can indicate that it will establish effective dates for conforming amendments to the TO Tariffs that coincide with the effective date established for

Amendment No. 19. There is no need to start over, as the Participating Transmission Owners urge.

**2. Specific Proposals for Changes to Amendment No. 19's Interconnection Process.**

**Timelines and Procedures for Applications and Interconnection Agreements.** Amendment No. 19 would give equal priority to all Interconnection Applications filed during a calendar month, for purposes of conducting studies and for determining responsibility for cost mitigation. SCE argues that this priority should only apply for the latter purpose, while the TO Tariffs' "first come, first served" approach should govern priority for System Impact and Facilities Studies.<sup>24</sup> It also argues that other deadlines set forth in the TO Tariff should apply to matters such as an applicant's execution of an interconnection agreement, to the extent those deadlines are more restrictive than those in Amendment No. 19.<sup>25</sup> PG&E states that the queuing provisions of Amendment No. 19 and the TO Tariffs should be reconciled, without expressing any explicit opposition to the one-month window proposed by the ISO. It also claims that Amendment No. 19's provision for the submission of applications to the ISO and the TO Tariffs' provisions for the submission of applications to the Participating TO should be reconciled.<sup>26</sup>

The ISO believes that the use of different queues for different purposes would be confusing. The ISO and the participating stakeholders agreed to use a one-month window for all purposes so that System Impact Studies could address

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<sup>24</sup> SCE at 17, 23, 25.

<sup>25</sup> SCE at 26.

<sup>26</sup> PG&E at 6.

on an equal basis all projects applying for interconnection within roughly the same time frame. The one-month window assures that minor differences in the timing of applications would not have potentially large implications for projects' progress through the application process or their cost responsibility. This approach also avoids the need for Participating TOs to undertake potentially duplicative System Impact Studies, on different time lines, for projects that apply near in time to one another.

The stakeholders also determined appropriate deadlines for the execution of interconnection agreements, as well as procedures for an applicant to maintain its position in the queue by converting its Good Faith Deposit to non-refundable payments. SCE identifies no substantive reason why the proposed requirements for the execution of agreements are inappropriate.

Amendment No. 19's specification that interconnection applications be submitted initially to the ISO establishes a single point of contact for applicants, which is consistent with Commission policy.<sup>27</sup> The ISO will assume responsibility for promptly forwarding applications to the affected Participating TO, thereby satisfying any requirement of its TO Tariff. The Participating TOs can easily modify any provisions that state or imply a requirement for an applicant to submit an application directly.

The ISO believes the Commission should approve the one-month window approach, the deadlines for execution of an interconnection agreement, and the requirement that the ISO, rather than the Participating TO, initially receive the

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<sup>27</sup> *New England Power Pool*, 85 FERC ¶ 61,141.

application. As discussed above, it should also provide an opportunity for the Participating TOs to make any necessary amendments to conform their TO Tariffs to the revised procedures.

**Expedited Applications and Requests for Additional Information.**

SCE proposes to insert language in Section 5.7.1.3 to preserve the option of an interconnection applicant to pursue the expedited application procedures in the TO Tariffs. SCE also proposes to specify that the Participating TO can contact an applicant directly to obtain additional information needed to evaluate an application.<sup>28</sup> While nothing in Amendment No. 19 would prohibit these procedures, the ISO would not object to the insertion of the specific references proposed by SCE, provided that the Participating TO is required to notify the ISO when it seeks additional information from an interconnection applicant, so that the ISO will be aware of the request in the event the applicant disputes the need for the information.

**Authority of the ISO To Ensure a Fair Interconnection Study Process.**

SCE and PG&E challenge provisions of Amendment No. 19, including primarily Section 5.7.1.4, that would give the ISO the authority to direct a Participating TO to perform additional studies, arguing that, consistent with the TCA, the ISO's role should be limited to that of a coordinator.<sup>29</sup> SCE and PG&E would also strip out references to the ISO's authority to determine an interconnection applicant's responsibility for expansion costs, System Benefits, or the adequacy of a study

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<sup>28</sup> SCE at 17-18.

<sup>29</sup> SCE at 19-20; PG&E at 8.

proposed by an applicant.<sup>30</sup> The ISO believes that the proposed language is appropriate and consistent with the TCA. The TCA includes only a general statement that the ISO and the Participating TOs will coordinate their activities. It does not preclude the specification in the ISO Tariff of a more specific description of how that coordination will take place. In particular, it is appropriate for the ISO to have the authority, subject to review through the dispute resolution provisions of the ISO Tariff, to determine whether additional studies are necessary to process an application for interconnection. Similarly, while Participating TOs also participate in the review of interconnections, calculations of System Benefits, and reviews of the adequacy of a study proposed by an applicant, the ISO is appropriately given the authority, subject to dispute resolution, to determine these matters in the event of a disagreement.<sup>31</sup> Nothing in the TCA precludes the specification of these matters in the ISO Tariff.

**Limitations on Participating TO Obligations.** SCE proposes other changes to Section 5.7.1.4 and to Section 5.7.2.1 to confirm that a Participating TO's obligation to provide interconnection or to perform studies are not expanded by Amendment No. 19. It would condition a Participating TO's obligation to perform studies on the satisfaction of the requirements of the TO Tariff and repeat the TO Tariff's limitations on the obligation of a Participating TO to provide an interconnection.<sup>32</sup> It would also add an explicit statement in Section 5.7.1

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<sup>30</sup> SCE at 24, 28; PG&E at 7.

<sup>31</sup> SCE and PG&E note that the use of the phrase "final determination" in Section 5.7.2.3.5.1 might be read to exclude the ISO's determination of System Benefits from the dispute resolution provisions of Section 13 of the ISO Tariff. SCE at 28; PG&E at 3. This result was not intended. The ISO would be willing to delete the word "final" to ensure that there is no confusion.

<sup>32</sup> SCE at 19, 21.

regarding the applicability of technical interconnection standards established by Participating Transmission Owners.<sup>33</sup> These modifications are unnecessary. Section 5.7.1.4, as proposed in Amendment No. 19, covers only the ISO's role in coordinating the conduct of studies. It does not modify the eligibility of an entity to obtain interconnection and does not eliminate the requirement that an applicant satisfy the applicable requirements of the TO Tariff before the Participating TO can be obligated to undertake studies. Similarly, Section 5.7.2.1 only ensures that a new Generator is not interconnected to the ISO Controlled Grid before it demonstrates its ability to satisfy the obligations that the ISO Tariff imposes on Participating Generators; it does not require a Participating TO to energize the interconnection of a Generator that has not complied with the TO Tariff. Nor does anything in Amendment No. 19 undermine the ability of the Participating TOs to develop technical interconnection standards, in coordination with the ISO, and to require compliance with those standards.<sup>34</sup>

**Return or Application of Good Faith Deposits.** Proposed Section 5.7.1.3 provides for the return of Good Faith Deposits to applicants who are found not to be responsible for interconnection costs other than study costs or who withdraw their applications. It also allows applicants who are found to be responsible for expansion costs the option to apply their deposits to those costs. SCE suggests changes to clarify that study costs for which an applicant is

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<sup>33</sup> SCE at 14.

<sup>34</sup> SDG&E contends that the ISO should establish uniform technical standards for interconnections. SDG&E at 4. While the ISO agrees that more uniformity among the Participating TOs' interconnection standards would be desirable, this suggestion goes beyond the scope of Amendment No. 19. As SDG&E acknowledges, the TCA already provides a mechanism for the coordination of the Participating TOs' technical interconnection standards through the ISO. See TCA § 10.3.1

responsible will be deducted from the amount of the deposit returned to the applicant.<sup>35</sup> The ISO does not believe any modification is necessary because Section 5.7.1.3 already provides for the deposit to be returned net of study costs. PG&E argues that the option for application of a deposit to the expansion costs for which an applicant is responsible should be eliminated.<sup>36</sup> The ISO disagrees. There is no reason to deprive applicants of the option of directing the ISO to pay the remaining amount of their deposit to the Participating TO that is constructing a system expansion for which the applicant is wholly or partially responsible.

**Other Changes.** SCE and PG&E suggest a number of other changes to the provisions proposed in Amendment No. 19. With the exception of the changes discussed below, the ISO believes that the changes proposed are unnecessary and, in some cases, confusing. For example, it is unnecessary to change “ISO Controlled Grid” to “Participating TO’s facilities” in Section 5.7.1, since the ISO Controlled Grid is defined as the system of transmission facilities turned over to the ISO by the Participating TOs. Nor would any purpose be served by shifting from Section 5.7.1.4 to Section 5.7.1 language addressing interconnections to the Participating TOs’ distribution-level facilities or by adding additional cross-references to Section 3.2.<sup>37</sup> Similarly, since there is nothing in Amendment No. 19 that would obligate a Participating TO to provide data to an applicant that desires to perform its own studies to support an interconnection request, there is no need to specify that an applicant must compensate the

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<sup>35</sup> SCE at 18-19.

<sup>36</sup> PG&E at 7.

<sup>37</sup> SCE at 13; PG&E at 8.

Participating TO for information that it provides.<sup>38</sup> The ISO also does not believe additional milestones are required for projects seeking interconnection, as PG&E proposes.<sup>39</sup>

The ISO would agree to make the following changes proposed by SCE, in addition to changes to which the ISO previously agreed in this section:

- The ISO would agree to use the terms “Interconnection Application” and “Completed Application,” as defined in the current TO Tariffs to confirm that applicants need only submit the requisite number of copies of a single application.<sup>40</sup>
- The ISO agrees that it is appropriate to specify in Section 5.7.2.3.3 that a new or modified Generator is responsible for the costs of maintaining interconnection facilities.<sup>41</sup>
- The ISO agrees that it is appropriate to add references in Section 5.7.2.3.4 and Section 5.7.2.3.5.1 to the possibility that entities other than a Participating TO may perform studies.<sup>42</sup>
- The ISO would agree to add language to Section 5.7.2.3.5.1, which is now in the ISO’s proposed planning procedure, regarding the treatment of projects included in a Participating TO’s five-year transmission planning assessment and approved in the ISO’s grid planning process.<sup>43</sup>

### **3. System Benefits**

PG&E argues that a new or modified Generator should not be entitled both to a credit for System Benefits under Section 5.7.2.3.5.1, based on the deferral of a transmission expansion project and a payment under a Reliability Must-Run (“RMR”) contract or other arrangement that is based on the deferral of

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<sup>38</sup> SCE at 24. Such a provision, moreover, might lead to claims that a Participating TO is entitled to compensation when an applicant uses data that the Participating TO is otherwise required to make publicly available.

<sup>39</sup> PG&E at 10.

<sup>40</sup> SCE at 16.

<sup>41</sup> SCE at 27.

<sup>42</sup> SCE at 27.

<sup>43</sup> SCE at 28-29.

the same project.<sup>44</sup> The ISO agrees that no Generator should be paid twice for providing the same benefit. The ISO does not believe, however, that any modification to Amendment No. 19 is necessary. Section 5.7.2.3.5.1 provides that new or modified existing Generation will only receive System Benefits with respect to benefits of a transmission expansion. Any benefit associated with the location or existence of Generation is intended to be captured through the ISO's long-term grid planning process. In any event, the ISO Tariff provides for the Participating TO to make the initial calculation of System Benefits. In the process of calculating those benefits, the Participating TO and the ISO can ensure that a Generator is not paid twice for any System Benefit provided by its support of an expansion project that mitigates Intra-Zonal Congestion.

#### **4. Status of Interconnection-Related Upgrades**

PG&E requests confirmation that a transmission addition associated with an interconnection application will be considered an “economically driven project,” for purposes of Section 3.2.1.1 of the ISO Tariff.<sup>45</sup> Characterization of an upgrade project as economically driven implicates procedures (i) for the resolution of disputes regarding the economic benefits of a project and (ii) for the allocation of its costs to Market Participants that are expected to benefit from the project.<sup>46</sup> Reliability-driven expansion projects are subject to different procedures.<sup>47</sup>

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<sup>44</sup> PG&E at 11.  
<sup>45</sup> PG&E at 5.  
<sup>46</sup> See ISO Tariff §§ 3.2.1.1; 3.2.7.  
<sup>47</sup> See ISO Tariff § 3.2.1.2.

The ISO does not believe that all interconnection-related upgrades are appropriately treated as economically driven projects to which Section 3.2.1.1 of the ISO Tariff applies. To the contrary, except with respect to upgrades sponsored by a new or modified Generator to mitigate incremental Intra-Zonal Congestion, transmission upgrades constructed in connection with an interconnection application are driven by reliability concerns. While projects constructed to mitigate incremental Congestion created by a new or modified Generator are economically driven, the Generator's willingness to support the project eliminates any need to apply the procedures applicable under Section 3.2.1.1. The Congestion mitigation procedures of Amendment No. 19 represent a specific application of the principles reflected in Section 3.2.1.1 and 3.2.7 of the ISO Tariff. PG&E's requested confirmation is thus in part inaccurate and in part unnecessary.

**C. Preservation of the Ability of the ISO and Participating TOs To Honor Encumbrances**

The ISO is required to operate the transmission facilities comprising the ISO Controlled Grid in a manner that honors the legal restrictions and covenants to which the Participating Transmission Owners are subject with respect to those facilities. These restrictions and covenants are defined as "Encumbrances" and include Existing Contracts for transmission service, as well as other restrictions and covenants.<sup>48</sup>

To ensure that the interconnection of a new or modified Generator does not impair the ability of the ISO and the Participating TOs to honor these

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<sup>48</sup> Encumbrances are listed in Appendix B to the Transmission Control Agreement among the ISO and the Participating Transmission Owners.

restrictions, Section 5.7.2.3.4, as modified by Amendment No. 19, would provide that a new Generating Unit must mitigate any adverse impact that its interconnection would have on the ability of a Participating TO to honor Existing Contracts identified as encumbrances as of the ISO Operations Date. A number of intervenors argue that this provision is too narrow, because it does not extend to all Encumbrances.<sup>49</sup> The ISO agrees that this provision should extend to all Encumbrances existing as of the time the Interconnection Application is submitted and accordingly would agree to modify Section 5.7.2.3.4 to read as follows:

No Generating Unit interconnecting to the ISO Controlled Grid shall adversely affect the ability of a Participating TO to honor ~~Existing Contracts, identified as Encumbrances existing as of the ISO Operations Date~~ time a Generating Units submits its Interconnection Application to the ISO. The applicable Participating TO shall identify any such adverse effect on ~~Existing Contracts Encumbrances~~ when it performs the System Impact Study provided for under Section 5.7.2.3.1. To the extent the applicable Participating TO determines that the interconnection of a new Generating Unit will have an adverse effect on ~~Existing Contracts Encumbrances~~, such Generating Unit shall mitigate such adverse effect. Each Generating Unit responsible for mitigating such adverse effect shall do so using the options outlined in Section 5.7.2.3.5.

MWD goes further, arguing that when a transmission expansion is constructed in connection with the interconnection of a new or modified Generating Unit, the rights of parties to an Encumbrance should be expanded, to the extent the Encumbrance so provides.<sup>50</sup> The ISO does not believe any change to the proposed Tariff language is necessary or appropriate. The

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<sup>49</sup> See, e.g., MWD at 7; SDG&E at 3

<sup>50</sup> MWD at 7.

Participating TO can, in evaluating the impact of an interconnection on its ability to honor Encumbrances, take into account any rights of parties to an Encumbrance to share in the benefits of an expansion of the capacity of the transmission system. The ISO will honor the obligations reflected in an Encumbrance, including any changes in those obligations made in accordance with the terms of the Encumbrances. Accordingly, no change to Amendment No. 19 is necessary to address this concern.

**D. The ISO Should Not Be Required To Include the Planning Procedures in the ISO Tariff.**

As part of the stakeholder process that led to the development of the NewGen Policy, the ISO developed two draft planning procedures, which provide certain examples and guidelines to Participating TOs and other Market Participants in performing System Impact and Facility Studies and assessments of System Benefits in accordance with Amendment No. 19. The ISO has posted these two documents, "CAISO Planning Procedure P-101: System Impact and Facility Study Procedures" and "CAISO Planning Procedure P-102: Assessment of System Benefits Associated with a Generator's System Reinforcement Beyond the First Point of Interconnection", on the ISO Home Page. The ISO also submitted these planning procedures as attachments to Amendment No. 19 in order to provide the Commission with additional information about how the ISO intends to implement the NewGen Policy. As explained in the Amendment No. 19 transmittal letter; these planning procedures have not been finalized and will continue to be refined through the stakeholder process as the ISO receives

additional input from affected parties and gains experience with the NewGen Policy.<sup>51</sup>

A number of intervenors argue either that these planning procedures should be submitted to the Commission in a filing under Section 205 of the Federal Power Act ("FPA") or that certain aspects of the procedures should be incorporated into the ISO Tariff. In addition, some intervenors raise issues related to or request clarification of components of these planning procedures.

The Commission should reject these arguments. The planning procedures are simply intended to provide examples of and an additional level of guidance on implementation of the NewGen Policy and are not the type of documents which must or should be filed with the Commission under applicable precedent. In addition, these documents are "works-in-progress" which the ISO will continue to revise and refine through various public stakeholder processes. Accordingly, any comments on and requests for clarification of the planning procedures are best addressed through those stakeholder processes.

**1. The Planning Procedures Should Not Be Filed Under Applicable Commission Precedent**

CAC contends that the Commission's "rule of reason" mandates that the ISO include certain elements of the planning procedures in the ISO Tariff. CAC also suggests that the ISO has somehow misinterpreted a single Commission order related to the rule of reason so as to circumvent the inclusion in the ISO

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<sup>51</sup> June 23, 1999 Transmittal Letter at p. 8 n.10.

Tariff of fundamental details related to cost responsibility under the NewGen Policy.<sup>52</sup> CAC is incorrect on both counts.

The Commission applies its "rule of reason" to decide which of an "infinite of practices affecting rates and services" must be submitted for Commission approval and to determine the level of detail concerning those practices which must be included in jurisdictional filings.<sup>53</sup> In applying this rule, the Commission has made the distinction between those documents that establish rates, terms and conditions, and those documents which provide additional detail on how a utility will implement those rates, terms and conditions. For example, the Commission has held that another independent system operator, PJM, was not required to submit its operating manuals for Commission approval and could retain certain references to those manuals in its jurisdictional tariff:

There are many areas where a tariff can deal with general matters and leave the specifics for the application process, the service agreement, or the operating procedures. For example, the *pro forma* tariff establishes a general standard for creditworthiness with the expectation that the transmission provider will maintain a list of its specific requirements in its standard service application.<sup>54</sup>

The Commission has held in numerous cases that the rule of reason does not require submission of every document which describes the details of how a utility

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<sup>52</sup> CAC at 2-12.

<sup>53</sup> *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,988 (1993), citing *City of Cleveland v. FERC*, 773 F.2d 1368 (D.C. Cir. 1985).

<sup>54</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 at 62,242 n.50 (1997).

will implement its rates, terms and conditions.<sup>55</sup> Contrary to CAC's suggestion, the ISO placed no special emphasis on the Commission's November 16, 1998 order accepting a revised rate schedule in *Automated Power Exchange, Inc.*, although that order does represent another instance where the Commission's application of the rule of reason led it to conclude that excessive detail should not be included in a filed rate schedule.<sup>56</sup>

In the instant case, the rule of reason does not support inclusion of the details of the planning procedures in the ISO Tariff. The planning procedures do not establish any cost responsibilities for Market Participants or any requirements with respect to System Impact and Facility Studies. The applicable cost responsibility provisions are set forth in the ISO Tariff, as revised by Amendment No. 19, including Sections 3.2.1.3, 5.7.1.3, 5.7.2.3, 5.7.2.3.3, 5.7.2.3.4, 5.7.2.3.5, 5.7.2.3.5.1, and 5.7.2.4. Similarly, the requirements concerning System Impact and Facility Studies are set forth in the Tariff at Sections 5.7.1.4, 5.7.2.3.1, and elsewhere. The planning procedures simply provide the Participating TOs, and any third party wishing to do so, with guidance on how to conduct System Impact and Facility Studies and how to assess System Benefits in accordance with these Tariff provisions.<sup>57</sup> The planning procedures also discuss examples of

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<sup>55</sup> See, e.g., *Commonwealth Edison Co.*, 21 FERC ¶ 61,096 (1982) (holding that the Commission would deprive a utility of needed flexibility in providing "economy energy" if it required the submission of additional detail on the exercise of the utility's authority to offer such service).

<sup>56</sup> 85 FERC ¶ 61,232 at 61,972-73 (1998).

<sup>57</sup> Where intervenors have identified details in the planning procedures which should be included in the Tariff, the ISO has committed in this filing to make the necessary revisions to the relevant Tariff provisions. For example, the ISO has agreed to add language to Section 5.2.7.3.5.1 which is currently in the draft planning procedure regarding the treatment of projects included in a Participating TO's five-year transmission planning assessment approved by the ISO.

how these provisions will be applied. As mentioned above, the planning procedures will also provide additional detail on certain standards set forth in the ISO Tariff, such as what constitutes "workable competition" under Section 5.7.2.3.5. This additional level of detail will not establish any absolute criteria, but will merely provide guidelines for making the determinations required by the ISO Tariff. Since the planning procedures do not establish any additional requirements that are not set forth in the Tariff, they do not contain the type of details which should be incorporated into the ISO Tariff.

Calpine and the Coalition attempt to characterize the planning procedures as "protocols" and claim that the ISO is required to submit these documents in a Section 205 filing pursuant to the Commission's October 30, 1997 order which directed that the ISO identify the ISO Protocols which would be subject to such filing requirements.<sup>58</sup> This is a mischaracterization. First, the relevant portion of the October 30 Order is expressly based on the Commission's "rule of reason," and, as explained above, Commission precedent on the rule of reason does not support the filing of the planning procedures. Moreover, the planning procedures are documents of a different nature than the ISO Protocols. The Protocols are a part of the ISO Tariff which, in part, establish binding standards and requirements for the ISO and Market Participants, while the planning procedures do not establish any requirements, and are intended only to provide examples of and

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As discussed below, the ISO has also committed to revise Section 5.7.2.3.5 to include additional details on the circumstances requiring an interconnecting generator to bear mitigation costs.

<sup>58</sup> *Pacific Gas and Electric Co. et al.*, 81 FERC ¶ 61,122 at 61,442 (1997) ("October 30 Order").

guidance on the implementation of the interconnection standards set forth in Section 5.7 *et seq.* of the ISO Tariff.

In addition, the fact that the existing ISO Protocols contain a certain level of detail does not mean that the planning procedures are required to be filed under section 205 of the Federal Power Act. Prior to the start of ISO operations, the Commission had asked the ISO to determine which provisions of the Protocols required Commission approval under section 205.<sup>59</sup> When the ISO asked for an extension of time to perform the analysis, the Commission ordered that all of the Protocols be filed with the Commission. However, in so doing, the Commission encouraged all interested parties to review the Protocols to determine which provisions are more appropriately included in the Tariff.<sup>60</sup> The fact that the ISO will engage in a Tariff simplification effort with regard to its existing Tariff and Protocols, does not mean that the ISO must, in the interim, add to the existing detail as it submits proposed amendments to the Tariff. On the contrary, the ISO's intent has been to begin the simplification effort with regard to its proposed changes to the Tariff.

PG&E and SCE cite the *PJM* order in support of a similar argument that the Commission must require the ISO to incorporate the planning procedures, in their entirety, into the ISO Tariff. In the *PJM* order, the Commission accepted a proposal, unopposed by PJM, that cost responsibility rules related to the interconnection of generation be included in the PJM Tariff rather than the PJM

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<sup>59</sup> See, *Pacific Gas and Electric Co., et al.*, 81 FERC ¶ 61,230 at 62,470 (1997).

<sup>60</sup> *Id.* at 62,471.

Operating Agreement.<sup>61</sup> This portion of the *PJM* order has little bearing on the question of whether the ISO's draft planning procedures should be incorporated, in whole or in part, into the ISO Tariff. At most, the order required PJM to include a level of specificity in its tariff similar to that which the ISO has already proposed in Amendment No. 19 to the ISO Tariff. In PJM's initial filing, the provisions of the PJM Tariff governing "Cost Responsibility for Necessary Facilities and Upgrades" were limited to the following two sentences:

The Interconnection Customer's responsibility for the costs of necessary Attachment Facilities, Local Upgrades, and Network Upgrades shall be determined in accordance with Schedule 6A of the Operating Agreement. In addition, the Interconnection Customer shall receive Capacity Interconnection Rights as set forth in Schedule 6A of the Operating Agreement.<sup>62</sup>

All applicable terms, conditions, and provisions governing cost responsibility were set forth in proposed Schedule 6A of the PJM Operating Agreement, a document which contains a comparable level of detail to that set forth in Section 5.7 *et seq.* of the ISO Tariff, as revised by Amendment No. 19.

Of greater relevance to the instant proceeding is the fact that the Commission approved PJM's proposed interconnection procedures despite what the Commission described as a certain lack of clarity in the "implementing details" of PJM's pricing proposal.<sup>63</sup> The Commission properly recognized that there is a level of detail related to the application of Tariff provisions which need

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<sup>61</sup> *PJM*, 87 FERC at 62,204.

<sup>62</sup> See Original Sheet No. 74k of the PJM Tariff submitted in Docket No. ER99-2340 on March 31, 1999.

<sup>63</sup> *PJM*, 87 FERC at 62,204.

not be included in the Tariff of an ISO for the Commission to approve that ISO's proposed generation interconnection policy.

Several intervenors submit comments which support such an approach. For example, Enron states that "more work needs to be done on the development of the guidelines for assessment of System Benefits, as they are currently stated in Procedure P-102," but urges that "this refinement need not delay the Commission's approval of the ISO's filing."<sup>64</sup>

**2. Although the Planning Procedures Contain A Level Of Detail Which Should Not Be Included in the ISO Tariff, the ISO Has Established A Mechanism For Stakeholder Notice and Review of New and Revised Procedures.**

Some intervenors argue that aspects of the planning procedures should be incorporated into the ISO Tariff because otherwise the ISO could revise such procedures on a whim and rob the marketplace of a level of certainty as to how the ISO will implement the NewGen Policy. This argument is unsupported and is, in fact, contradicted by a document submitted as an attachment by one of these intervenors. CAC attaches a June 17, 1999 Memorandum to its pleading which describes the ISO's proposed Policy on Procedures Development. This policy, which was adopted by the ISO Governing Board at its June meeting, establishes a formalized process by which stakeholders can participate in the development of new or revised ISO procedures and receive advance notice of the implementation of any such new or revised procedures.<sup>65</sup> Thus, even though the implementing details of the ISO's planning procedures need not be submitted

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<sup>64</sup> Enron at 4.

for Commission review, stakeholders and any affected parties will still have the opportunity to help shape those procedures and will receive the requisite notice of any changes in those procedures.

The Commission has relied an approach similar to that embodied in the ISO Procedures Development Policy in determining that certain details need not be included in the ISO Tariff. In its order approving Tariff revisions related to the ISO's Generation Communication Project proposed in Amendment No. 14, the Commission determined that waiver criteria need not be incorporated into the ISO Tariff and could instead be posted on the ISO Home Page.<sup>66</sup> The Commission accepted the ISO's approach as an appropriate mechanism for making these criteria public and ensuring that they would be applied in a non-discriminatory manner. To the extent that parties believe there is a need for a public process concerning the development and refinement of the planning procedures associated with the NewGen Policy, that need will be fulfilled by the ISO Procedures Development Policy.

**3. Section 5.7.2.2 Accurately Reflects the Role of the Planning Procedures in Providing Additional Detail on the Implementation of the ISO's NewGen Policy**

MWD proposes certain revisions which it contends should be made to Section 5.7.2.2 if the planning procedures are not incorporated into the ISO

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<sup>65</sup> CAC's claim that this policy was adopted "in the face of opposition from stakeholders" (CAC at 3) is somewhat ironic, since, as the Commission, is well aware, the ISO is governed by a stakeholder Governing Board, which approved the policy.

<sup>66</sup> *AES Redondo Beach, L.L.C. et al.*, 87 FERC ¶ 61,208 at 61,816 (1999). The Commission also recognized that performance standards to be met by generators supplying Regulation service also did not need to be included in the ISO Tariff.

Tariff.<sup>67</sup> First MWD, proposes changing the caption of that provision from "Detailed Operating Procedures" to "Detailed Planning Procedures." Although the captions of Tariff provisions have no substantive effect pursuant to Section 20.6 of the ISO Tariff, the ISO agrees that this is a reasonable change for the purposes of internal consistency. MWD also proposes eliminating the capitalization of the term "Planning Procedures" in that section. The Cities of Redding And Santa Clara *et al.* also contend that this term should not be capitalized unless a definition for "Planning Procedures" is added to the Master Definitions Supplement of the ISO Tariff.<sup>68</sup> Section 5.7.2.2 is intended as a reference to planning procedures related to the implementation of the NewGen Policy as those procedures may be developed and refined over time (*i.e.*, "as in effect from time to time"). It would be inappropriate to specifically define what those procedures might be at any given time. The ISO therefore agrees to revise Section 5.7.2.2 to eliminate the capitalization of "Planning Procedures."

The other revisions to Section 5.7.2.2 proposed by MWD are not justified. MWD proposes the addition of a sentence stating that the planning procedures must be consistent with the policies and principles established in the ISO Tariff. As a matter of law, any procedures implemented by the ISO must be consistent with the ISO Tariff, as approved by the Commission. The proposed sentence is therefore unnecessary. MWD also proposes language limiting the planning procedures to those "for performing System Impact and Facility Studies and for determining System Benefits." While it is true that these are the only planning

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<sup>67</sup> MWD at 10.

<sup>68</sup> Cities at 13.

procedures relating to the NewGen Policy which the ISO has developed to date, it may be appropriate in the future to develop additional planning procedures relating to Section 5.7 of the ISO Tariff. Any such additional planning procedures would be developed with stakeholder input under the Procedures Development Policy described above. MWD has not offered any justification for limiting the ISO's ability to develop such additional planning procedures as may be necessary and appropriate to implement the NewGen Policy. The Commission should therefore reject these revisions.

In connection with its comments on Section 5.7.2.2, MWD does identify one instance where the ISO agrees that details currently discussed in the planning procedures should be incorporated into the ISO Tariff. Section 5.7.2.3.5 of the ISO Tariff establishes that a Generating Unit interconnecting to the ISO Controlled Grid shall mitigate any increase in Intra-Zonal Congestion resulting from such interconnection "if the increase in flow on the overloaded element is greater than five percent (5%) of the element rating" as determined by a System Impact Study. Procedure P-101 states that mitigation would also be required if a System Impact Study determines either that: 1) the addition of the interconnected Generating Unit (at maximum output) causes a voltage violation and the change in the voltage is greater than 1% of the rated bus voltage; or 2) the addition of an interconnected Generating Unit (at maximum output) causes a reactive margin criteria violation and the change in the margin is greater than 5% of the required margin or if the change in voltages at the critical bus is greater than 1% of that bus's rated voltage. While the specific voltage and reactive margin limits

referenced are intended to address reliability criteria violations, and the ISO Tariff is clear with respect to the need to satisfy all applicable reliability criteria, the ISO nonetheless agrees that these standards should be incorporated into Section 5.7.2.3.5 of the ISO Tariff. The ISO will submit these revisions, and the revisions to 5.7.2.2 mentioned above, in a compliance filing to be submitted in this proceeding.

#### **4. Comments on the Planning Procedures Will Be Addressed Through the ISO's Stakeholder Processes**

A number of intervenors submit comments on various aspects of the draft planning procedures. These comments will be addressed by the ISO as it refines the planning procedures with stakeholder input. For example, certain intervenors take issue with aspects of Planning Procedure P-101 which establish a 20% threshold test for determining whether adequate competition exists to address the incremental Intra-Zonal Congestion. As discussed above, the ISO intends for this 20% threshold to operate as an initial screen to determine whether adequate competition exists for purposes on Intra-Zonal Congestion management, and this aspect of Planning Procedure P-101 will not limit the ISO's flexibility to consider other pertinent information in its evaluation of competition.

NCPA raises concerns about portions of Planning Procedure P-101 that would limit the study period and responsibility for mitigating impacts to the first year of interconnection.<sup>69</sup> Paragraph 1.3 of draft Planning Procedure P-101 already contemplates situations where studies of system impacts beyond the first year of interconnection might be required. NCPA does not explain the basis for

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<sup>69</sup> NCPA at 4-5.

its concerns other than baldly stating that a one-year period is too short. Nor does NCPA explain why the exceptions already set forth in Planning Procedure P-101 would not address its concerns. In the absence of more information, the ISO can only encourage NCPA to provide additional details on these concerns in the stakeholder process.

ECI seeks clarification that parties sponsoring new generation would be permitted to have input on the System Impact and Facilities Studies to be conducted under the guidelines described in Planning Procedure P-101.<sup>70</sup> Although Planning Procedure P-101 does not contain any discussion of such input, the ISO's NewGen Policy clearly contemplates the participation of parties sponsoring new Generation in the study process. For example, Section 5.7.2.3.1 permits a Generating Unit requesting interconnection to perform its own System Impact Study or to contract with a third party to conduct such a study, with the approval of the ISO and the Participating TO. The ISO believes that input from parties sponsoring Generation will be an important part of its NewGen Policy, but expects that such input will vary on a case-by-case basis which, at this point, could not be accurately reflected in a planning procedure.

ECI also requests that the ISO make its Congestion Management software available to New Generators and Participating TOs in connection with the performance of studies required by the NewGen Policy.<sup>71</sup> This request is based on ECI's concerns that Congestion impacts of an interconnected Generating Unit be accurately reflected in System Impact Studies. The ISO will

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<sup>70</sup> ECI at 3-5.

<sup>71</sup> *Id.* at 5-6.

work with both Participating TOs and parties sponsoring Generation to assure that such impacts are accurately calculated. The ISO's Congestion Management software is a proprietary product which is not available to Market Participants. A Generator proposing to interconnect to the ISO Controlled Grid has no right to demand access to the ISO's proprietary software.

Lastly, SCE suggests a number of revisions to Planning Procedures P-101 and P-102 to make those procedures more consistent with the ISO Tariff. Since the planning procedures do not create any obligations not already set forth in the ISO Tariff, it is unnecessary for the Commission to act on the proposed revisions in this proceeding. To the extent any of SCE's proposed revisions will help clarify the planning procedures, the ISO will take those suggestions into account in the stakeholder processes for revising such procedures.

#### IV. CONCLUSION

For the foregoing reasons, the Commission should accept Amendment No. 19 to the ISO Tariff without modification, other than the minor modifications which the ISO has agreed to above.

Respectfully submitted,

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Dated: August 11, 1999

## **CERTIFICATE OF SERVICE**

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

Dated at Washington, D.C. this 11<sup>th</sup> day of August, 1999.

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Sean A. Atkins