

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator Corporation Docket No. ER07-805-000

ORDER CONDITIONALLY ACCEPTING
NERC/WECC CHARGE INVOICING AMENDMENT

(Issued June 25, 2007)

1. On April 27, 2007, the California Independent System Operator Corporation (CAISO) proposed to amend its tariff to bill Scheduling Coordinators in CAISO's control area for costs that the North American Electric Reliability Corporation (NERC), Western Electric Coordinating Council (WECC), and the Western Interconnection Regional Advisory Body (WIRAB) incur in performing their obligations under section 215 of the Federal Power Act (FPA) (NERC/WECC Charges).¹ The Commission accepts CAISO's proposal subject to the conditions that are discussed below.

I. Background

A. Relevant Orders

2. On July 20, 2006, the Commission approved a proposal by NERC to have Regional Entities bill balancing authorities for costs that NERC incurs in its capacity as an Electric Reliability Organization (ERO). The Commission distinguished between costs that are related to the ERO's reliability functions under section 215 of the FPA (statutory costs) and other costs that the ERO incurs (non-statutory costs). The Commission provided for Regional Entities to allocate NERC's statutory costs among the regions' balancing authorities on the basis of "net energy for load," which, in general terms, is the net amount of electricity that is generated in or received into a balancing authority's territory for serving load.²

¹ Energy Policy Act of 2005, Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), *to be codified at* 16 U.S.C. § 824o.

² *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 at P 135 (2006) (*ERO Certification Order*), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006) (*Certification Rehearing and Compliance Order*).

3. On October 24, 2006, in Docket No. RR06-3-000 the Commission approved a NERC proposal to have the WECC “invoice LSEs [load serving entities] designees within its footprint, collect the assessments and remit the funds to NERC.”³ The Commission stated that “NERC may contract with an ISO [independent system operator] or RTO [regional transmission organization] for collection purposes.”⁴

4. On April 19, 2007, the Commission accepted a delegation agreement between NERC and WECC (Delegation Agreement) that established WECC as the Regional Entity for the Western Interconnection and that provided for the allocation of NERC/WECC Charges⁵ under section 215 of the FPA to LSEs in the Western Interconnection.⁶ The Commission stated that, with the necessary authorizations, WECC could either bill the charges directly to LSEs or bill the charges to balancing authorities (such as CAISO) and leave it to the balancing authority to collect the charges from LSEs.⁷ Details of the agreement that would allow WECC to invoice CAISO for NERC/WECC Charges are still being worked out between CAISO and WECC. In the present proceeding, CAISO needs and is seeking Commission authority to invoice these NERC/WECC Charges to the LSEs’ Scheduling Coordinators on behalf of WECC.⁸

³ *North American Electric Reliability Corp.*, 117 FERC ¶ 61,091 (2006) (*Business Plan and Budget Order*) at P 135, *order on reh’g*, 119 FERC ¶ 61,059 (2007).

⁴ *Business Plan and Budget Order* at P 136.

⁵ *Governors of Arizona, California, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming*, 116 FERC ¶ 61,061 (2006).

⁶ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 at P 529 (2007) (*Delegation Agreement Order*).

⁷ *Id.*

⁸ LSEs are responsible for paying NERC/WECC Charges. Each LSE within CAISO has a Scheduling Coordinator who coordinates the load and charges assessed to that load, however, in some cases the LSE and the Scheduling Coordinator may be the same entity. CAISO will bill the Scheduling Coordinators for NERC/WECC Charges because: (1) Scheduling Coordinators are the parties with which CAISO has a contractual relationship and (2) the Scheduling Coordinators are responsible for paying for such charges under CAISO tariff. CAISO states that the Scheduling Coordinators are responsible for making any arrangements with their customers to obtain payment. Therefore, in the case of CAISO, the Scheduling Coordinators will be billed in the place of the LSEs. CAISO Application at 8.

B. Summary of Filing

5. CAISO has filed tariff sheets that would enable CAISO to recover NERC/WECC Charges from Scheduling Coordinators in CAISO's control area. CAISO proposes to allocate the NERC/WECC Charges based on NERC/WECC Metered Demand data, a proxy for net energy for load, using metered demand data from two years prior to the year for which the NERC/WECC Charges are being assessed (Charge Assessment Year). The NERC/WECC Charges that are allocated to CAISO and that would be recovered under the proposed tariff sheets have been or will have been approved by the Commission.⁹

II. Notice

6. Notice of CAISO's filing was published in the *Federal Register* on May 14, 2007 with interventions and protests due May 18, 2007.¹⁰ Notices of intervention and motions to intervene were filed by Williams Power Co., California Electric Oversight Board, Alliance for Retail Energy Markets (AReM),¹¹ California Department of Water Resources and State Water Project (SWP), Sacramento Municipal Utility District (SMUD), Modesto Irrigation District, M-S-R Public Power Agency/City of Santa Clara (M-S-R), PacifiCorp, Cogeneration Association of California/Energy Producers and Users Coalition (CAC/EPUC). WECC filed a motion to intervene out of time. Protests and comments were filed by numerous entities as discussed below. CAISO filed an answer to these protests.

III. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, given their interests, the early stage of this proceeding, and the absence of undue prejudice or delay, we will grant

⁹ The NERC/WECC Charges for 2007 were approved in the *Business Plan and Budget Order*. NERC proposes to make a filing with the Commission in August 2007 seeking authorization to collect the charges for 2008 and will make a similar filing in August 2008 to collect the charges for 2009.

¹⁰ 72 Fed. Reg. 27,111 (2007).

¹¹ AReM describes itself as "a California non-profit, mutual benefit corporation and regulatory alliance of electric service providers ("ESPs") that are active in the California retail direct access market as LSEs. AReM's members are also active participants in CAISO's markets, including the buying, selling or scheduling of power on a wholesale basis. Most of AReM's members operate as their own Scheduling Coordinators." AReM Motion to Intervene and Protest at 2.

¹² 18 C.F.R. § 385.214 (2006).

WECC's unopposed motion to intervene out of time. Our rules prohibit answers to protests unless otherwise ordered by the decisional authority.¹³ We will accept CAISO's answer because it provided information that assisted us in our decision.

IV. Discussion

A. 2005 NERC/WECC Metered Demand data

8. CAISO proposes to use a two-year lag in NERC/WECC Metered Demand data to determine the load of each Scheduling Coordinator in CAISO's control area, which determines LSEs' shares of NERC/WECC Charges. CAISO has provided a table that shows the 2007 administrative and reliability center budget for the WECC region. The table lists, for each Control Area in the Western Interconnection, the assessed statutory costs for 2007, which include the costs for NERC, WECC and WIRAB and are based on 2005 net energy for load data. CAISO proposes to use its NERC/WECC Metered Demand data as a proxy for NERC's net energy for load data.¹⁴

Protests

9. AReM has protested use of 2005 data, stating that it unreasonably burdens their members, is anti-competitive and should be rejected. AReM argues that their members tend to have large fluctuations in load over time which will cause their members' customers to subsidize the customers of the investor owned utilities for at least the first few years. AReM states that the load served by their members has decreased by approximately 20 percent since 2005 and that 20 percent load shift is now being serviced by investor-owned utilities. Accordingly, AReM requests that CAISO be required to base the assessments on the LSE's Previous Quarter's Metered Demand, which would reflect its current customer load.

CAISO's Answer

10. In its answer, CAISO argues that its proposal to base NERC/WECC Charges on demand data from two years prior to the Charge Assessment Year tracks the Commission-approved allocation methodology and allocates NERC/WECC Charges to Scheduling Coordinators based on demand during the same period that NERC/WECC Charges are allocated to all load-serving entities in CAISO's control area in the aggregate.

Commission Determination

11. The Commission accepts CAISO's proposal to use a two-year lag in metered data. Specifically, CAISO proposes to use 2005 metered data to develop the 2007 assessment

¹³ 18 C.F.R. § 385.213(a)(2) (2006).

¹⁴ CAISO Application, Attachment C.

for the Scheduling Coordinators in its control area. That proposal is consistent with the Commission's directives in the *Business Plan and Budget Order*¹⁵ and, accordingly, with practices throughout the Western Interconnection.¹⁶ CAISO's proposal is also consistent with the way that WECC has calculated its membership dues in the past.¹⁷

12. Furthermore, we are not inclined at this time to allow changes to the prescribed allocation methodology since the opportunity for timely adjustments already exists. In the *Business Plan and Budget Order*, the Commission stated that to the extent an LSE's net energy for load changes materially, the LSE will need to inform the Regional Entity in a timely manner and the Regional Entity will need to be diligent and timely in identifying for NERC the new LSE or designee to be billed for assessment associated with that load. Therefore, AReM's members will have the ability to have *pro forma* adjustments made to their individual NERC/WECC Metered Demand; however, it will be AReM's members' responsibility to inform WECC of large fluctuations in load from one year to the next in a timely manner. We believe that the opportunity to reflect adjustments to load addresses AReM's concern.¹⁸

B. Definition of NERC/WECC Metered Demand

13. CAISO proposes to allocate NERC/WECC Charges among Scheduling Coordinators/LSEs based on each entity's share of "NERC/WECC Metered Demand." CAISO proposes to define "NERC/WECC Metered Demand" as:

A Demand Scheduling Coordinator's metered CAISO Demand plus Transmission Losses for metered CAISO Demand, less metered CAISO Demand for Station Power and for Energy required for storage at electric energy storage facilities, such as pumped storage (provided such pumped storage load is included in a Scheduling Coordinator's metered CAISO Demand). For purposes of calculating NERC/WECC Metered Demand, Transmission Losses allocable to metered CAISO Demand will be allocated pro rata to each Scheduling Coordinator based on the Scheduling Coordinator's metered CAISO Demand.

CAISO states that its definition of "NERC/WECC Metered Demand" is CAISO's equivalent of net energy for load, which the Commission has stated is an appropriate

¹⁵ 117 FERC ¶ 61,091 at P 151.

¹⁶ *Id.*

¹⁷ CAISO Application at 4.

¹⁸ Consistent with the *Business Plan and Budget Order* at P151, it is our understanding that WECC will be responsible for handling *pro forma* adjustments regarding changes in the LSEs' net energy for load.

basis on which to allocate statutory costs. The Commission's definition of net energy for load is:

[B]alancing authority area generation (less station use), plus energy received from other balancing authority areas, less energy delivered to balancing authority areas through interchange. It includes balancing authority area losses, but excludes energy required for storage at electric energy storage facilities, such as pumped storage.¹⁹

Protests

14. SWP supports CAISO's definition; however, they request that the Commission require CAISO to clarify the meaning of its proposed tariff language "*provided such pumped storage load is included in a Scheduling Coordinator's metered CAISO Demand.*" SWP states that the language indicates that some pumped storage load is not metered. SWP points out that in a March 29, 2007 Whitepaper CAISO stated that "CAISO collects metered demand from SCs [Scheduling Coordinators], including pumped storage units."²⁰

15. In addition, SWP requests that CAISO clarify that NERC/WECC Charges should be calculated using "Gross Demand" – which includes a Scheduling Coordinator's Unaccounted for Energy.²¹ SWP states that imposing NERC/WECC Charges only to the metered portion of CAISO Demand provides a free ride to the non-metered or inadequately metered LSEs. SWP provides a definition of "Gross Demand."²²

¹⁹ Order No. 672 at P 213 & n.7.

²⁰ California Independent System Operator Corp., White Paper on CAISO Invoicing of NERC/WECC Charges at 1-2 (March 29, 2007).
<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11324694>.

²¹ Unaccounted for Energy is the difference in Energy, for each utility Service Area and Settlement Period, between the net Energy delivered into the utility Service Area, adjusted for utility Service Area Transmission Losses (calculated in accordance with section 27.2.1.2), and the total metered Demand within the utility Service Area adjusted for distribution losses using Distribution System loss factors approved by the Local Regulatory Authority. This difference is attributable to meter measurement errors, power flow modeling errors, energy theft, statistical Load profile errors, and distribution loss deviations. See CAISO Open Access Transmission Tariff Third Replacement Volume II (CAISO Tariff), Appendix A).

²² Under the proposed definition, "Gross Demand" would be a Scheduling Coordinator's metered CAISO Demand plus the Unaccounted for Energy attributed to that Scheduling Coordinator. Motion to Intervene and Comments of the California Department of Water Resources at 6-8.

16. M-S-R states that the proposed definition of NERC/WECC Metered Demand should be revised to reflect the concept of netting energy. M-S-R claims that the concept of netting for interchanges is absent from the definition and should be explicitly referenced in the definition. It proposes a revision to the definition of NERC/WECC Metered Demand to more explicitly reference the concept of netting for interchanges.²³

17. SMUD states that it reads CAISO filing to mean that NERC/WECC Charges recovered by CAISO will be recovered solely from load internal to CAISO's control area, and that exports of power from the CAISO grid will not be included in the billing determinant for NERC/WECC Charges. SMUD requests that the Commission confirm that under CAISO tariff amendments, exports from the CAISO balancing authority area are not included and shall not be included in the demand amounts used for NERC/WECC invoices.

18. CAC/EPUC states that it supports the definition of NERC/WECC Metered Demand because the definition indicates to CAC/EPUC that CAISO will not impose charges on load served by generation behind the meter.

CAISO's Answer

19. CAISO states that there are numerous Commission-approved charges under the ISO Tariff based on metered Demand which do not take into account Unaccounted for Energy but are based on metered Demand such as the Grid Management Charge and FERC Annual Charges. CAISO therefore argues that its proposal for allocating the costs for NERC/WECC Charges is wholly consistent with Commission precedent concerning the allocation of costs under the ISO Tariff. Further, CAISO argues that SWP has not provided a basis for departing from this precedent. Finally, CAISO points out that similar tariff provisions for PJM and NYISO were approved by the Commission and that they do not include Unaccounted for Energy.

20. In response to SWP, CAISO asserts that to its knowledge, all pumped storage facilities in CAISO's control area are metered and states that it seeks to ensure that metered pumped storage load is correctly deducted from the calculation of NERC/WECC Metered Demand.

21. CAISO states that the definition of CAISO Demand already encompasses the components of the Commission's definition of "net energy for load," therefore no further change to the definition is required. In addition, CAISO confirms SMUD's

²³ M-S-R's revised definition for NERC/WECC Metered Demand would read: "For the purposes of calculating NERC/WECC Charges, a Scheduling Coordinators' Metered Demand (which adds energy associated with imports and subtracts energy associated with exports to and from other balancing area authorities), less metered CAISO demand for..." See Motion to Intervene and Protest of M-S-R Public Power Agency and the City of Santa Clara at 7.

understanding that exports from CAISO's balancing authority area will not be included in the metered Demand amounts used for assessing NERC/WECC Charges to the Scheduling Coordinators.

22. In response to CAC/EPUC's comment on behind-the-meter generation, CAISO states that it will not assess NERC/WECC Charges to load served by behind-the-meter generation.

Commission Determination

23. We agree with the protesting parties that CAISO should revise and clarify its definition of NERC/WECC Metered Demand. We accept CAISO's clarification that its definition of NERC/WECC Metered Demand includes the concept of netting energy. However, CAISO should revise its definition of NERC/WECC Metered Demand to reflect its clarification that its definition includes the concept of netting energy delivered to and received from other balancing authority areas through interchange.

24. We accept CAISO's clarification that all pumped storage load is excluded from the calculation of NERC/WECC Metered Demand, however, we direct CAISO to revise the definition to reflect its clarification. The exclusion of pumped storage from the calculation of net energy for load is an important part of the definition of net energy for load.²⁴ Therefore, it is important that the exclusion of pumped storage is clear in CAISO's proxy for net energy for load, NERC/WECC Metered Demand.

25. We also agree with SWP that Unaccounted for Energy, as it is defined in the ISO tariff, should be included in the definition of NERC/WECC Metered Demand, either through the creation of the term "Gross Demand" or by adding Unaccounted for Energy directly into the definition for NERC/WECC Metered Demand. The problem of Unaccounted for Energy arises out of CAISO's use of metered demand to allocate statutory costs. Net energy for load, which is the Commission approved measurement for the allocation of statutory charges, begins with generation and delineates which forms of energy are exempted from inclusion in net energy for load. Since Unaccounted for Energy is not a form of energy that is marked for exclusion from net energy for load, it is included in net energy for load. Therefore, for NERC/WECC Metered Demand to be equivalent to net energy for load, it must include Unaccounted for Energy in its definition.

26. With respect to CAISO's statement that the definition of NERC/WECC Metered Demand excludes load served by behind-the-meter generation, we note that this is

²⁴ Order No. 672 at P 213 & n.7.

consistent with the use of net energy for load that we have previously approved to assess section 215 related costs.²⁵

C. Collection Timing

27. CAISO proposes three different collection processes for the 2007 Charge Assessment Year, the 2008 Charge Assessment Year, and Charge Assessment Years after 2008, respectively. For the 2007 Charge Assessment Year, CAISO proposes to begin the process by issuing a market notice which will include (1) the total NERC/WECC Charges for 2007 invoiced to CAISO by WECC, and (2) the total of all the Scheduling Coordinators' NERC/WECC Metered Demand for 2005. On or after the date CAISO issues this market notice, CAISO will notify each Scheduling Coordinator of their individual NERC/WECC Metered Demand for 2005. Within 30 days of FERC accepting the relevant amendment to the CAISO Tariff, CAISO proposes to issue a market notice setting forth a charge based on the total NERC/WECC Charges for that Charge Assessment Year divided by the total of all Scheduling Coordinators' NERC/WECC Metered Demand for 2005 (Final NERC/WECC Charge Rate). Within 30 days of that market notice, CAISO will issue invoices allocating NERC/WECC Charges for the 2007 Charge Assessment Year to Scheduling Coordinators based on each Scheduling Coordinator's NERC/WECC Metered Demand for 2005 multiplied by the Final NERC/WECC Charge Rate (Final NERC/WECC Charge Invoices).

28. CAISO proposes to begin the process for the 2008 Charge Assessment Year by issuing a market notice including the total of all Scheduling Coordinators' NERC/WECC Metered Demand for 2006 and setting forth a preliminary rate based on the total NERC/WECC Charges for 2007 divided by the total all Scheduling Coordinators' NERC/WECC Metered Demand for 2006 (Preliminary NERC/WECC Charge Rate). On or after that date, CAISO proposes to notify each Scheduling Coordinator of its individual NERC/WECC Metered Demand for 2006. Within 60 days of FERC accepting the relevant amendment to the CAISO Tariff, CAISO will issue invoices to each Scheduling Coordinator based its NERC/WECC Metered Demand for 2006 multiplied by the Preliminary NERC/WECC Charge Rate (Preliminary NERC/WECC Charge Invoice). Within 30 days after the receipt of WECC's invoice to CAISO setting forth the

²⁵ Consistent with our prior practice, our action herein should not be construed as defining the term end user or its related load or granting a blanket waiver for load served behind the meter for funding purposes. Although the net energy for load method, in general, appears to apportion section 215 cost responsibility only to the more readily available load of most end users (*i.e.*, end users ultimately served by the Bulk-Power System through load serving entities), we have previously approved the use of this method because it meets the threshold requirements of section 39.3(b)(2)(ii) that an ERO candidate have established Rules that allocate equitably reasonable fees and charges among end users. Order No. 672 at P 35, 84-96, 101, 203-209, 213-214, 238-242; *Certification Order* at P 155-172; and *Delegation Agreement Order* at P 528, 537 and n. 124, 233, 261 and 262.

assessment of NERC/WECC Charges for 2008, CAISO proposes to begin the true up process by issuing a market notice setting forth the 2008 Final NERC/WECC Charge Rate, this time using metered demand data from 2006 and the 2008 NERC/WECC Charges. Within 30 days after CAISO issues that market notice, CAISO proposes to issue the Final NERC/WECC Charge Invoices to each Scheduling Coordinator. The Final NERC/WECC Charge Invoices will act as a true up of the preliminary payment.

29. In the years after 2008, CAISO proposes to begin the process by issuing a market notice setting forth the Preliminary NERC/WECC Charge Rate using NERC/WECC Metered Demand data from the last full calendar year and NERC/WECC Charges for the most recent year for which CAISO has received an invoice. After it issues the market notice, it would issue Preliminary NERC/WECC Charge Invoices on a quarterly basis, beginning in July of the year two years prior to the Charge Assessment Year and ending April of the year prior to the Charge Assessment Year.²⁶ Within 30 days after receipt of WECC's invoice setting forth the NERC/WECC Charges for the Charge Assessment Year, CAISO will begin the process by issuing a market notice including the Final NERC/WECC Charge Rate, this time using metered demand data from two years prior to the Charge Assessment year, and NERC/WECC Charges from that Charge Assessment Year. Within 30 days after the market notice, CAISO will issue the Final NERC/WECC Charge Invoices to each Scheduling Coordinator. The Final NERC/WECC Charge Invoices will act as a true-up of the preliminary payments.

30. For all years, payment is due from the Scheduling Coordinators to CAISO 30 days after invoices are issued.

Protests

31. AReM states that CAISO's proposal to collect nearly three years of assessments in 2007 is unjust and unreasonable and should be rejected. AReM points out that the collection timing is unrelated to dates on which WECC assessments are due to NERC. AReM states that its members have the right and obligation to retain the capital for their own use and should not be required to pre-pay bills months and years in advance. In addition, the electric service providers that make up AReM have individual customer contracts which govern their ability to collect the assessments and its 2007 customers may be unwilling to pay the assessments for 2008 and 2009 if their contracts terminate before those dates. AReM also requests that CAISO be required to make "quarterly" Progress Payments to WECC.

32. WECC requests guidance from the Commission concerning its obligations, given that CAISO's proposed changes to its tariff are not consistent with the Commission's

²⁶ The quarterly charges schedule would be as follows: July of the year two years prior to the Charge Assessment Year, October of the year two years prior to the Charge Assessment Year, January of the year prior to the Charge Assessment Year, and April of the year prior to the Charge Assessment Year.

approved Exhibit E of the Delegation Agreement. For example, the CAISO Tariff does not specify when CAISO will forward payments to WECC, or whether preliminary payments will be forwarded.²⁷ In addition, CAISO Tariff proposes that the final payments by Scheduling Coordinators to CAISO for post-2008 assessments may be up to 90 days after receipt of WECC's invoice.²⁸ Further, the Commission required WECC to address the requirement that collected funds be transferred to NERC in a timely manner.²⁹ WECC seeks clarification as to the schedule CAISO must employ in order to be consistent with the Commission's directive.

CAISO's Answer

33. In its answer, CAISO states that WECC is incorrect, that, under proposed section 11.2.19.8(a), CAISO will provide to WECC the amounts collected and a list of all Scheduling Coordinators that have failed to make full payment and the amount that are unpaid within 30 Calendar Days after the deadline for timely payments. CAISO argues that the actual date of its payment to WECC depends on many factors, including: the actual timing of CAISO's issuance of the market notices and invoices, Scheduling Coordinators' payments to CAISO, and CAISO's remission of the final payment to WECC. In addition, CAISO argues that it is impractical to require CAISO to forward payments to WECC on or before January 2 of each year given that WECC is supposed to invoice CAISO by the preceding November 15 and that there are more steps involved given that CAISO is performing the billing and collection services instead of WECC.

34. In response to AReM's protest concerning the proposed billing schedule, CAISO argues that its schedule is designed to first "catch up" the allocation of costs for 2007 services and then to consistently allocate costs as soon as possible after CAISO has metered Demand data for the applicable period. CAISO states that that this approach will minimize the risk that a Market Participant will leave CAISO's market before the Market Participant can be assessed its NERC/WECC Charges for a time-period for which it is responsible. Finally, CAISO points out that it believes that AReM's payments will be relatively small for 2007 and that the three largest public utilities in California will account for approximately 80 percent of the NERC/WECC Metered Demand for 2007. Based on the NERC/WECC Metered Demand for 2007 CAISO states that AReM's payments for 2008 and 2009 will be a relatively small amount.

35. CAISO requests that the Commission permit the WECC Delegation Agreement to be modified to allow CAISO to perform invoicing services consistent with its proposed tariff amendments.

²⁷ CAISO Tariff §§ 11.2.19.4(g)-(h) and 11.2.19.5-6.

²⁸ February 15, assuming a November 15 WECC invoice.

²⁹ See *Delegation Agreement Order* at P 531.

Commission Determination

36. The Commission agrees with WECC that CAISO has not adequately addressed how the collected funds will be transferred to WECC in a timely manner. Section 11.2.19.6 merely states that CAISO will disburse funds from the Trust Account in order to pay WECC any and all NERC/WECC charges invoiced to CAISO. While section 11.2.19.8(a) lists tasks which CAISO needs to complete before transferring the collected funds to WECC, it does not provide a specific date for the transfer. The Commission finds inappropriate CAISO's failure to commit to a specific date for forwarding to WECC the Scheduling Coordinators' payments in a timely manner, thus allowing WECC to forward the payments to NERC by January 2,³⁰ especially given the time CAISO has proposed to allocate for invoicing and collection of the NERC/WECC Charges. Therefore, CAISO is directed to revise its procedures to include a specific date for the transfer of the collected funds to WECC in time to allow WECC to forward the payments to NERC by January 2.

37. In the *ERO Certification Order*, the Commission approved NERC's proposal to delegate billing and collection functions to Regional Entities.³¹ However, the Commission required that appropriate safeguards be adopted in the delegation agreement to ensure that the Regional Entity will transfer the money it collects to NERC in a timely manner and that the Regional Entity will not use its position as a billing and collection agent to unduly influence NERC's decisions. In the *Delegation Agreement Order* the Commission found that the WECC's Exhibit E did not address these required safeguards and directed NERC and WECC to do so. In addition, the Commission stated that "to the extent that a balancing authority agrees to act as the collection agent, these safeguards must be addressed in that context as well."³² Similarly, in the instant filing, CAISO's proposal does not include appropriate safeguards to ensure that it will transfer the money it collects to WECC in a timely manner, nor does it include appropriate safeguards to ensure that CAISO will not use its position as a billing and collection agent to unduly influence NERC's decisions. Accordingly, we direct WECC and CAISO to include appropriate safeguards in the agreement governing the delegation by WECC to CAISO for its collection services. We remind both WECC and CAISO that this agreement governing the delegation must be filed with the Commission.

38. We also agree with AReM that the billing schedule is unjust and unreasonable. In general, the billing schedule should not require payments to be remitted to the ISO well before they are necessary to reimburse NERC and WECC. Funding imperatives require that CAISO collect the 2007 and 2008 NERC/WECC Charges in 2007, since the 2007

³⁰ Under the terms and conditions of WECC's Delegation Agreement with NERC, WECC is obligated to forward the regions' payments by January 2.

³¹ *ERO Certification Order*, 116 FERC ¶ 61,062 at P 166 and P 169.

³² *Delegation Agreement Order* at P 531.

NERC/WECC Charges are now overdue and the 2008 NERC/WECC Charges are due to WECC at the beginning of 2008. However, no such funding requirements exist for the 2009 NERC/WECC Charges. CAISO proposes that preliminary quarterly payments for calendar year 2009 charges begin in July 2007 and end in April 2008.³³ We find that CAISO has not adequately supported why it is necessary for it to be in possession of the Preliminary NERC/WECC Charges for nine full months before the Final NERC/WECC Charges are due. Therefore, CAISO is directed to revise section 11.2.19.4(c) so that the quarterly Preliminary NERC/WECC Charge Invoices are not issued until January of one year before the Charge Assessment Year at the earliest.

39. Finally, CAISO does not specify what interest rate it will use for the trust account where it places the preliminary charges. CAISO is directed to clarify what interest rate percentage they will be using in the trust account.

D. Validation and Dispute Periods

40. CAISO proposes two types of dispute periods. The first type of dispute period occurs after CAISO issues each Scheduling Coordinator its individual NERC/WECC Metered Demand. There a Scheduling Coordinator can dispute issues related to the calculation of their NERC/WECC Metered Demand. In 2007, each Scheduling Coordinator will have 20 days to dispute its NERC/WECC Metered Demand after being notified of that amount by CAISO. After 2007, each Scheduling Coordinator will have 30 days to dispute its NERC/WECC Metered Demand after being notified of that amount by CAISO.³⁴

41. The second type of dispute period occurs after CAISO issues each Preliminary and Final NERC/WECC Charge Invoice. In this dispute period, Scheduling Coordinators are limited to raising disputes regarding only “typographical and ministerial errors” in Preliminary and Final NERC/WECC Charge Invoices. CAISO proposes that Scheduling Coordinators should have ten days from the date of issuance of the invoices to identify typographical and ministerial errors.³⁵

Protests

42. M-S-R states that the ten day periods to validate and dispute Preliminary and Final NERC/WECC Charge Invoices are artificially short and should be revised to 30 days. M-S-R states that ten days is too short a time for CAISO to coordinate with its LSEs about the accuracy of the Invoices. Furthermore, M-S-R states that a longer dispute period would allow for more informal resolutions of complaint.

³³ CAISO Application at 9.

³⁴ CAISO Tariff §§ 11.2.19.2, 11.2.19.3, and 11.2.19.4.

³⁵ CAISO Tariff §§ 11.2.19.7.2 and 11.2.19.7.3.

43. Additionally, M-S-R claims that the related rights of disputants are unclear, as it fails to describe the nature of the dispute process and the method for appeals of adverse determination. M-S-R states that if CAISO intends to use the Dispute Resolution provisions of section 13 of CAISO Tariff it should so specify. Otherwise, it should clearly describe whatever alternative provisions CAISO intends to use to resolve such disputes.

44. Finally, M-S-R argues that CAISO's attempts to restrict disputes of the preliminary and final invoices to "ministerial and typographical errors" should be rejected. M-S-R claims that the provision to limit disputes to ministerial and typographical errors may immunize CAISO from errors related to its broad range of duties CAISO performs in its collection of the NERC/WECC assessments.

CAISO's Answer

45. CAISO argues that M-S-R protest of the proposed ten day window for disputing Preliminary and Final NERC/WECC Charge invoices ignores the earlier extended dispute process for CAISO calculation of each Scheduling Coordinator's NERC/WECC Metered Demand, which will be used to determine the amounts the Scheduling Coordinator is required to pay. CAISO clarifies that section 13 dispute provisions will apply to all disputes raised.

Commission Determination

46. We reject M-S-R's protest about the restriction of disputes during the notice period. We find it reasonable that CAISO restrict protests about NERC/WECC Metered Demand to the period after which they notify Scheduling Coordinators about their individual NERC/WECC Metered Demand. It would be unduly burdensome to CAISO to have to continually consider disputes and update charges based on those disputes during the invoice period. Similarly, it is reasonable to restrict disputes during the invoice period to "ministerial and typographical errors" because affected parties have earlier opportunities and obligations to raise substantive issues.

47. With regard to the length of the dispute period, we find that ten days is a sufficient period of time for the Scheduling Coordinator to protest issues related to Preliminary and Final NERC/WECC Charge Invoices. This length is similar to the eight business days given by the ISO to protest Preliminary Settlement Statements in section 11.6.1.2 of CAISO Tariff, and to the ten business days given to protest Final Settlement Statements in section 11.6.1.3. However, we find that since we are allowing CAISO to restrict protests about NERC/WECC Metered Demand to the period following the notification of the Scheduling Coordinator of its Metered Demand, that period must be lengthened from 20 days in 2007 and 30 days in 2008 and beyond to 60 days for all Charge Assessment Years. This is to ensure that the Metered Demand will be accurate by allowing enough time for the Scheduling Coordinators and LSEs to coordinate with each other and to review changes to their load, contracts, or any other issue which may affect Metered

Demand. Metered Demand appears to be the issue which has the most potential for disputes over calculation and assessment, so it is essential that enough time is given to the various entities involved to ensure its accuracy.

E. Interest

48. CAISO proposes to charge Scheduling Coordinators interest when they do not make preliminary or final payments within the prescribed deadlines.³⁶

Protests

49. In its Delegation Agreement, WECC proposed to charge interest if payment was not received in full by January 2. WECC states that CAISO's Tariff provides for interest where preliminary or final payments are not made within the prescribed deadlines. WECC seeks confirmation that the CAISO Tariff provisions relating to imposition of interest adequately address the Commission's concerns with respect to charges relating to LSE's in CAISO's control area given that WECC was directed to explain the disposition of interest collected.³⁷

CAISO's Answer

50. In its answer, CAISO states that any interest collected from a Scheduling Coordinator for payments not received in full by January 2 will be included in the amounts CAISO forwards to WECC.

Commission Determination

51. CAISO's proposal to charge Scheduling Coordinators interest when they do not make preliminary or final payments within the prescribed deadlines is premature for several reasons. First, NERC, the entity ultimately responsible for collecting late and non-payments, has not made a filing with this Commission requesting authorization to charge interest for payments not received in full by January 2. Second, this issue is still

³⁶ CAISO Tariff § 11.2.19.5 states: "Scheduling Coordinators shall make timely payments to the ISO pursuant to Preliminary NERC/WECC Charge Invoices and Final NERC/WECC Charge Invoices within thirty (30) Calendar Days of Issuance of such invoices. Scheduling Coordinators which do not make timely payment of the entire amount due under Preliminary NERC/WECC Charge Invoices and Final NERC/WECC Charge Invoices within thirty (30) Calendar Days of Issuance of such invoices shall pay interest charges on the outstanding amounts due under such invoices."

³⁷ *Delegation Agreement Order* at P 530.

outstanding in the Delegation Agreement proceeding. In that proceeding, WECC proposed to charge interest on late payments, including payment related to statutory and, if applicable, non-statutory costs.³⁸ The Commission stated:

With respect to WECC's proposal to modify the WECC Exhibit E to allow for the assessment of interest on late payments, we find that WECC has failed to identify the interest rate that will apply and explain what it will do with the interest collected. In addition, we note that the California ISO has raised legitimate concerns regarding this provision. First, WECC's collection agents should not be held liable for any interest resulting from the payment delays of individual load serving entities given the fact that the ERO does not hold Regional Entities liable when they act as the collection agent. We also agree that the WECC Delegation Agreement is not the appropriate vehicle for addressing the rights and obligations relating to late payments for non-statutory functions. Accordingly, we direct NERC and WECC to address these matters.

Therefore, we direct CAISO to revise its tariff sheets to remove the provisions that reflect this proposal to collect interest. In addition, if the issues discussed herein are resolved and CAISO refiles a proposal to collect interest, then CAISO must explain the reasons behind its proposal to collect interest, and CAISO must identify the interest rate that it will apply.

The Commission orders:

(A) As discussed in the body of this order, CAISO's proposed tariff sheets are accepted for filing effective June 27, 2007, 60 days after the filing of the tariff sheets, except for the modifications discussed herein.

(B) CAISO is hereby directed to submit a compliance filing within 60 days of the date of this order, incorporating modifications to its tariff as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁸ WECC Delegation Agreement, Exhibit E § 3.