

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

**California Independent System) Docket No. ER07-1373-000
Operator Corporation)**

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTIONS TO INTERVENE, MOTION TO REJECT
FILING, REQUEST FOR CLARIFICATION, REQUEST FOR HEARING,
COMMENTS, AND PROTESTS**

On September 14, 2007, the California Independent System Operator Corporation (“CAISO”)¹ submitted for Commission filing and acceptance an unexecuted Operating Agreement (“OA”) between the CAISO and PacifiCorp in the captioned proceeding, and requested an effective date for the OA of January 1, 2008. The CAISO also requested that its filing be consolidated with the ongoing proceedings in Docket Nos. ER07-882 and ER07-967. The Commission established an October 5, 2007 comment date regarding the CAISO’s filing of the OA. In response, a number of parties submitted motions to intervene.² Also, BPA and Western filed comments, TANC filed comments and a request for clarification, PG&E and Powerex filed protests, SMUD filed a protest and a

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the CAISO’s current effective tariff, the tariff provisions that the Commission has approved to implement the CAISO’s Market Redesign and Technology Upgrade (“MRTU”) initiative, or the Owners’ Coordinated Operations Agreement, as dictated by the context.

² Motions to intervene were submitted by the following parties: Arizona Public Service Company; Bonneville Power Administration (“BPA”); California Electricity Oversight Board; Modesto Irrigation District; M-S-R- Public Power Agency and the Cities of Redding and Santa Clara, California; Pacific Gas and Electric Company (“PG&E”); PacifiCorp; Powerex Corp. (“Powerex”); Sacramento Municipal Utility District (“SMUD”); San Diego Gas & Electric Company (“SDG&E”); Southern California Edison Company (“SCE”); Transmission Agency of Northern California (“TANC”); and Western Area Power Administration (“Western”). Also, the California Public Utilities Commission filed a notice of intervention.

request for hearing, and PacifiCorp filed a motion to reject the CAISO's filing ("PacifiCorp Motion to Reject") and separately filed a conditional protest ("PacifiCorp Protest").

The CAISO does not object to any party's motion to intervene. However, pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the CAISO files its answer to the comments, TANC's request for clarification, SMUD's request for hearing, and PacifiCorp's motion to reject the CAISO's filing. Further, pursuant to Rules 212 and 213 of the Commission's Rules, 18 C.F.R. §§ 385.212, 385.213, the CAISO respectfully requests leave to file an answer, and files its answer, to the protests submitted in this proceeding.³ For the reasons explained below, the Commission should accept the OA without modification.

I. RELATIONSHIP OF THIS PROCEEDING WITH ONGOING SETTLEMENT NEGOTIATIONS

Before addressing the substance of the motions, comments, and protests submitted in this proceeding, the CAISO believes it is appropriate to inform the Commission of settlement discussions which may allow the parties in this proceeding to resolve any open issues. Issues concerning the need for an Operating Agreement between the CAISO and PacifiCorp, as well as the terms and conditions of such an Operating Agreement, are being discussed as part of

³ The CAISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protest. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

the ongoing settlement negotiations in Docket Nos. ER07-882 *et al.* The CAISO, PacifiCorp, and other interested parties participated in a settlement conference on October 19, 2007. Although the CAISO cannot discuss the details of these settlement negotiations, the CAISO is authorized by the parties participating in these negotiations to report that the parties believe significant progress is being made in resolving not only the issues in Docket Nos. ER07-882 *et al.* but also the related issues in this proceeding. Based on this significant progress, the CAISO has agreed to request that the Commission defer issuance of an order in this proceeding until at least December 1 in order to allow the parties to continue or finalize their settlement negotiations. The CAISO understands that the Honorable Judge Cintron, the settlement judge appointed in Docket Nos. ER07-882 *et al.*, will be providing a settlement status report to the Commission in the near future.

Although the CAISO is quite hopeful that these settlement negotiations will successfully resolve all open issues in this proceeding, the CAISO submits the instant Answer out of an excess of caution to ensure that the Commission has the benefit of the CAISO's substantive response to the motions, comments, and protests in this proceeding.

II. BACKGROUND

As the CAISO explained in greater detail in the transmittal letter for its filing of the OA, the OA is necessitated by changes in the agreements governing the rates, terms and condition of service over the 47-mile segment of the Pacific AC Intertie ("PACI") from Malin to Indian Spring ("PACI-PN"). The PACI

comprises two parallel 500 kV AC lines that run from the Malin substation in Oregon to the Tesla substation owned by PG&E in central California, including various associated facilities. The PACI-PN, which is a portion of the California-Oregon Intertie (“COI”),⁴ is owned by PacifiCorp but has been under lease to California utilities for forty years pursuant to the Agreement for Use of Transmission Capacity among Pacific Power & Light Company,⁵ PG&E, SCE, and SDG&E (“Capacity Agreement”). The PACI-PN has been under the operational control of the CAISO since 1998 pursuant to the Transmission Control Agreement.

The eastern segment of the PACI from Indian Spring to Round Mountain (the “PACI-PS”) is owned by PG&E. Together, the PACI-PN and PACI-PS comprise the PACI-P. The western segment of the PACI from Malin to Round Mountain (“PACI-W”) is owned by the Western Area Power Administration (“Western”). PG&E owns both segments of the PACI from Round Mountain to Tesla.

The CAISO coordinates operations of the COI – including operations of the PACI-PN – consistent with the Owners’ Coordinated Operations Agreement (“OCO”) and the California-Oregon Intertie Path Operating Agreement (“COI

⁴ The COI is comprised of the PACI and the California-Oregon Intertie Project (“COTP”). TANC (at 11-12) correctly points out that the CAISO erred in stating, in the transmittal letter for the filing that contains the OA, that the COTP is owned by a number of municipal utilities. In fact, TANC, a joint action agency, is the principal owner of the COTP and other owners include entities that are not municipal utilities (e.g., Western).

⁵ PacifiCorp is the successor to Pacific Power & Light Company.

⁶ The OCO is also referred to in Commission orders as the Coordinated Operation Agreement.

Path Operating Agreement”). Absent amendment, however, the OCOA terminates by its own terms upon termination of the Capacity Agreement (unless PG&E obtains rights to continue to use the PACI-PN),⁷ and the COI Path Operating Agreement terminates if the OCOA terminates.

In early 2007, PacifiCorp indicated its intention to terminate the Capacity Agreement and to withdraw the PACI-PN from the CAISO’s Operational Control. The CAISO subsequently discussed with PacifiCorp the reliability, operational, and economic issues that would be raised by such actions, particularly if amendments to or successor agreements to the OCOA and the COI Path Operating Agreement were not first put in place. Nevertheless, on May 10, 2007, PacifiCorp filed in Docket No. ER07-882 a notice proposing that the Capacity Agreement terminate on July 31, 2007.

On May 30, 2007, PG&E filed in Docket No. ER07-967 a unilateral amendment to the OCOA that would eliminate the provision of the OCOA that terminates the agreement upon termination of the Capacity Agreement, thus allowing the OCOA and the COI Path Operating Agreement to survive such termination. PG&E’s amended OCOA does not include PacifiCorp as a party.

In an order issued on July 30, 2007, the Commission concluded that neither the proposed termination of the Capacity Agreement nor the proposed amendment to the OCOA had been shown to be just and reasonable. It suspended each for five months (*i.e.*, until December 31, 2007), and initiated a paper hearing on operational, maintenance, and planning issues related to the

⁷ SMUD correctly provides this clarifying point at pages 4-5 of its Protest.

OCOIA.⁸ Several parties filed requests for clarification (or, in the alternative, rehearing) of the July 30 Order. On September 11, 2007, the Commission issued an order clarifying “that the paper hearing is not limited to the appropriate terms of a Coordinated Operation Agreement, and that the Commission intended for the parties to provide briefs only on operational, maintenance, and planning issues related directly to a Coordinated Operation Agreement.” The Commission also clarified that, “[t]o the extent additional agreements . . . are pertinent to the operation, maintenance, and planning of the COI and cannot be agreed-upon by the parties to such agreements, those agreements should be brought before the Commission, on their own merits, as they have not been presented in the instant proceedings.”⁹

On September 13, 2007, the CAISO filed an initial brief and accompanying declarations¹⁰ in the paper hearing in Docket Nos. ER07-882 and ER07-967. The CAISO explained, *inter alia*, that if the Capacity Agreement is permitted to terminate and if PacifiCorp becomes a party to the OCOIA and the COI Path Operating Agreement, the CAISO will need an operating agreement with PacifiCorp to establish the legal relationships and procedures by which the CAISO performs its obligations as Balancing Authority for the PACI and COI path operator. The CAISO stated that it was going to submit an unexecuted operating

⁸ *PacifiCorp et al.*, 120 FERC ¶ 61,113, at PP 23, 35 (2007) (“July 30 Order”).

⁹ *PacifiCorp et al.*, 120 FERC ¶ 61,231, at P 9 (2007) (“September 11 Clarification Order”).

¹⁰ The declarations were provided by Kyle T. Hoffman, Manager for Scheduling for the CAISO, and James McIntosh, Director of Grid Operations for the CAISO. The declarations of Mr. Hoffman and Mr. McIntosh were also attached to the filing that contained the OA.

agreement in order to accomplish this purpose. The CAISO submitted the OA the next day. The CAISO stated that the OA is intended to do the following:

- Fulfill requirements placed on PacifiCorp by the OCOA.¹¹
- Establish the special operational and settlement requirements under which PacifiCorp and the CAISO will coordinate and exchange information on schedules for PacifiCorp's transactions on the PACI, including the PACI-PN, once the PACI-PN is no longer part of the CAISO Controlled Grid.
- Establish that PacifiCorp's transactions on the PACI-PN will be scheduled by a CAISO-certified Scheduling Coordinator in the CAISO's scheduling system and settled with the CAISO.
- Establish that the CAISO will coordinate outages of PacifiCorp's facilities with appropriate parties, including both path operators and comply with the Reliability Management System of the Western Electricity Coordinating Council.
- Establish that PacifiCorp will coordinate with the CAISO, in accordance with the CAISO Tariff, on outages of PacifiCorp's facilities.

III. ANSWER

A. The CAISO Has the Authority to File the Operating Agreement for Commission Approval

If the issues in this case are not resolved through a successful settlement, the Commission must deny PacifiCorp's motion to reject the CAISO's filing of the unexecuted Operating Agreement. As explained below, the CAISO has the right to file the OA for Commission approval under Section 205 of the Federal Power Act ("FPA") because the OA is an agreement under which the CAISO would provide Balancing Authority, operational, and coordination services to PacifiCorp

¹¹ In the transmittal letter for the OA, the CAISO stated that the OA is intended to fulfill *the* requirements placed on PacifiCorp by the OCOA. SMUD (at 5) correctly points out that the OA, by its terms, addresses only a portion of the responsibilities that PacifiCorp will assume as a signatory to the OCOA, rather than all of those responsibilities.

in accordance with the CAISO Tariff. PacifiCorp's arguments in its motion to reject are incorrect in several respects. First, the OA does not violate either the FPA or applicable precedent because the OA does not require PacifiCorp to forego its Section 205 rights to file the rates, terms and conditions for service over PacifiCorp's transmission facilities. In addition, the CAISO does not contend that it has the authority to require PacifiCorp to enter into the OA. Where PacifiCorp, however, has taken the position that critical reliability and operational issues associated with the termination of the Capacity Agreement will be resolved by an agreement under which the CAISO will provide services to PacifiCorp, the CAISO is entitled to establish the terms and conditions under which the CAISO will provide those services. PacifiCorp's motion to reject is also inconsistent with the Commission's directive that parties file with the Commission any agreements pertinent to the operation, maintenance, and planning of the COI.

1. The CAISO Has Rights Under Section 205 of the Federal Power Act to Propose the Terms Under Which the CAISO Will Provide Jurisdictional Services to PacifiCorp

The Commission has long recognized that Independent System Operators ("ISOs") that operate transmission systems and provide services within their respective Control Areas are public utilities under the Federal Power Act. On remand from the decision of the D.C. Circuit Court of Appeals in *Atlantic City Electric Co., et al. v. FERC*, 295 F.3d 1 (2002) ("*Atlantic City*"), the Commission explained:

the PJM ISO, as the operator of the transmission facilities that make up the PJM grid and the provider of transmission services

within the PJM control area, is just as much a public utility as the owners of those facilities. The ISO has the same right under section 205 of the FPA to make filings to change the rates, terms and conditions of service, as well as the same obligation to ensure that those rates, terms and conditions are not unduly discriminatory or preferential. In reaching this conclusion, the Commission is relying upon the status of the ISO as a public utility within the meaning of section 201(e) of the FPA, and is not, as the court expressed concern, "rely[ing] on one of its own regulations to trump the plain meaning of a statute."

PJM Interconnection, LLC, et al., 101 FERC ¶ 61,318 at P 25 (2002), *order on reh'g*, 103 FERC ¶ 61,170 at P 16 (2003) ("PJM as a public utility in its own right would, of course, have the right to make its own Section 205 filings, thus ensuring continued independent operation of the PJM grid and avoiding undue discrimination or preference.").

Under Section 205(d) of the FPA, the CAISO has the authority to file for Commission review changes to rates, charges, classification, or services for use of the CAISO Controlled Grid and services with the CAISO Control Area at any time upon 60 days notice. A review of the unexecuted Operating Agreement with PacifiCorp shows that it is an agreement under which the CAISO provides PacifiCorp operational, and coordination services to PacifiCorp in the CAISO's capacity as Control Area operator (*i.e.*, as Balancing Authority). The following is an illustrative list of relevant provisions of the OA which demonstrate that this is an agreement under which the CAISO provides Balancing Authority and related services in accordance with the CAISO Tariff:

- Section 2 of the OA provides that "PacifiCorp requires the CAISO to perform certain functions as the Balancing Authority for the PACI-PN."

- Section 4.1 of the OA provides that the CAISO shall comply with operating requests “in accordance with the CPOA and the CAISO Tariff.”
- Section 4.3 provides that outages that affect ATSC will be approved by the CAISO in accordance with the CAISO Tariff.
- Section 4.9 of the OA provides that PacifiCorp may remove from service its portion of the PACI-P in accordance with Section 9 of the CAISO Tariff.
- Section 6.3 of the OA provides that certain charges under the CAISO Tariff will apply to schedules within the CAISO Balancing Authority Area (*i.e.*, schedules using the PACI-PN within the CAISO Balancing Authority Area).
- Section 6.4 of the OA provides that all payments to the CAISO pursuant to the OA will be made in accordance with the CAISO Tariff.
- Section 8.1 of the OA provides that the CAISO ADR Procedures set forth in Section 13 of the CAISO Tariff will apply to disputes under the OA.
- Section 9.1 of the OA provides that Section 14 of the CAISO Tariff will apply to liability arising under the OA.
- Section 10.1 of the OA incorporates by reference Section 14 of the CAISO Tariff governing Uncontrollable Forces.
- Sections 13.1 and 13.2 of the OA require that certain notices under the OA be provided in accordance with the CAISO Tariff.

With the exception of some of the charges listed in Section 6.3, these provisions were not opposed by PacifiCorp in the negotiations between the CAISO and PacifiCorp that preceded the filing of the OA. By PacifiCorp’s own admission, “The sole issue that the CAISO and PacifiCorp were not able to resolve prior to the CAISO’s unilateral filing of the proposed OA related to

whether the Transmission Ownership Right (“TOR”) provided to PacifiCorp would be subject to CAISO congestion charges.”¹²

Indeed, PacifiCorp’s objection to the CAISO’s Section 205 filing of the OA is difficult to reconcile with PacifiCorp’s lack of opposition (both in negotiations prior to the OA filing and in PacifiCorp’s Protest) to Section 12.4 of the OA, which expressly reserves to the CAISO certain rights unilaterally to submit Section 205 filings to the Commission changing the terms and conditions of the OA:

Nothing contained herein shall be construed as affecting in any way the right of the CAISO unilaterally to make application to FERC for a change in the terms and conditions of this Agreement under Section 205 of the Federal Power Act and pursuant to the FERC’s Rules and Regulations promulgated thereunder in the event that PacifiCorp terminates its obligations under the OCOA or the CPOA but the OCOA and the CPOA otherwise remain in full force and effect.

The Commission has consistently treated similar operating agreements governing the CAISO’s provision of Control Area services for transmission facilities not under the CAISO’s operational control as agreements for which the CAISO has Section 205 filing rights. For example, in *California Independent System Operator Corp.*, 110 FERC ¶ 61,196 (2005), the Commission accepted two operating agreements filed by the CAISO in similar circumstances to the present case:

In this order, the Commission acts on two filings submitted pursuant to section 205 of the Federal Power Act (FPA) by the California Independent System Operator Corporation (CAISO) on December 30, 2004. Docket No. ER05-405-000 is an Interim Operations Agreement (Turlock Interim Operations Agreement) between the CAISO and Turlock Irrigation District (Turlock) that governs the operational relationship between CAISO and Turlock with respect to Turlock’s transmission of power over Turlock’s transmission

¹² PacifiCorp Protest at p. 4 n.3.

facilities that are in the CAISO Control Area but are not part of the CAISO-Controlled Grid. Docket No. ER05-407-000 is a nearly identical Operations Agreement (Modesto Operations Agreement) between the CAISO and Modesto Irrigation District (Modesto) that governs the operational relationship between CAISO and Modesto with respect to Modesto's transmission of power over Modesto's transmission facilities that are in the CAISO Control Area but are not part of the CAISO-Controlled Grid. . . . The Commission accepts these agreements effective January 1, 2005, subject to modifications and clarifications described below. This order benefits customers by establishing clear operational protocols and relationships between the CAISO and non-members of the CAISO, thereby ensuring reliable service for all customers.¹³

These orders make it clear that such operating agreements relate to services provided by the CAISO and the CAISO is entitled to submit Section 205 filings to establish the terms of such operating agreements.

The Commission has also required the CAISO to file for Commission approval under Section 205 of the FPA operating agreements between the CAISO and neighboring Control Areas:

In our October 30 Order, we noted that the ISO committed to timely file interconnection agreements with all neighboring control areas. The Commission's conditional Section 203 authorization was based, in part, on the ISO's commitment to negotiate and file the necessary agreements with all adjacent control area operators. We emphasize that all interconnected control area agreements entered into by the ISO must be filed with the Commission for approval under Section 205 of the FPA.

Pacific Gas & Electric Co., et al, 81 FERC ¶ 61,320 at 62,472 (1997). Although these Interconnected Control Area Operating Agreements (“ICAOAs”) are not

¹³ 110 FERC ¶ 61,196 at PP 1-3 (footnotes omitted). See also *California Independent System Operator Corp.*, 114 FERC ¶ 61,024 (2006). In November 2005, the CAISO filed in Docket No. ER06-227 an “Interim Operating Agreement” between the CAISO and the City and County of San Francisco (“CCSF”). Although the Commission set the terms and conditions of this agreement for hearing, the Commission treated it as a valid 205 filing by the CAISO, allowing the CCSF interim agreement to become effective subject to refund and granting the CAISO’s request for waiver of the 60-day prior notice requirement. This interim agreement is the subject of ongoing settlement negotiations.

identical to the OA in the instant case, the Commission's rulings concerning the CAISO's Section 205 rights over these agreements are relevant because, like the OA in the instant case, these ICAOAs involve the CAISO providing services as a Control Area operator/Balancing Authority and govern the coordination of facilities under the CAISO's operational control with transmission facilities that are not part of the CAISO Controlled Grid.¹⁴

Consistent with this precedent, the Commission should find that the CAISO is entitled to submit the Operating Agreement for Commission approval under Section 205 of the FPA. Certainly the ample precedent supporting the CAISO's 205 filing rights over the OA demonstrates that PacifiCorp has not and cannot meet its burden of supporting its motion to reject.¹⁵

The CAISO recognizes that the Commission might conclude that both the CAISO and PacifiCorp have Section 205 filing rights with respect to the Operating Agreement. The Commission has recognized that two or more public utilities may have Section 205 rights over certain agreements, such as generator interconnection agreements where there are separate transmission owners and transmission providers.¹⁶ Such a finding however, does not support the rejection of the CAISO's OA filing. Even where more than one public utility has Section

¹⁴ The CAISO notes that, consistent with Commission directives, the CAISO unilaterally filed an executed ICAOA with PacifiCorp for Commission approval pursuant to Section 205 of the FPA in Docket No. ER98-1032 in December 1997.

¹⁵ PacifiCorp concedes that a motion to reject should only be granted if the CAISO's filing "is so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket." PacifiCorp Motion to Reject at p. 3, *citing Mun. Lights Bds. V. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971).

¹⁶ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49846, 68 Fed. Reg. 69599, FERC Stats. & Regs., Regs. Preambles ¶ 31,146, at P 909 (2003). *See also Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027, at PP 3, 7-10 (2004).

205 filing rights for an agreement, the Commission has accepted unilateral filings of these agreements by one of the public utilities with 205 rights. For example, the Commission accepted an unexecuted large generator interconnection agreement filed by the Midwest ISO even where the Midwest ISO and the transmission owner, American Transmission Company, LLC, (“ATC”) did not agree on the terms of the interconnection agreement.¹⁷ The Commission considered comments filed by ATC concerning the terms of the interconnection agreement. Thus, even if the Commission concludes that both the CAISO and PacifiCorp have Section 205 filing rights with respect to the Operating Agreement, the Commission can accept the OA filed by the CAISO and consider the substantive comments on the terms of the OA submitted by PacifiCorp in this proceeding.

2. The CAISO’s Filing of the Operating Agreement Does Not Violate PacifiCorp’s 205 Rights

PacifiCorp’s motion to reject repeatedly claims that the CAISO’s filing of the OA will improperly alter the rates for service on the portion of the PACI-P owned by PacifiCorp. PacifiCorp claims that:

The CAISO’s proposed OA would impose additional charges and the CAISO’s preferred terms for services over transmission facilities owned by PacifiCorp. In particular, by forcing PacifiCorp to assume CAISO congestion charges, the CAISO’s proposed OA in effect would increase PacifiCorp’s rate for transmission service on the Malin-Indian Spring line.

PacifiCorp Motion at p. 6. This claim is incorrect. The CAISO’s OA filing does not affect rates on the portion of the PACI-P owned by PacifiCorp or on services provided by PacifiCorp. Nothing in the OA or the CAISO’s filing addresses the

¹⁷ *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,016 (2006).

rates for service under the PacifiCorp OATT. The OA does, however, establish charges for services provided by the CAISO. It also makes it clear that, when transactions over the PacifiCorp portion of the PACI-P also use the CAISO Controlled Grid (*i.e.*, the PG&E portion of the PACI-P), such use of the CAISO Controlled Grid will be subject to congestion charges under the CAISO Tariff. Any impact on PacifiCorp's customers is due to the reality that transmission service physically cannot terminate at Indian Spring, the point where ownership of the PACI-P changes.

Indeed, Section 12.2 of the OA expressly provides that "Nothing contained herein shall be construed as affecting in any way the right of PacifiCorp or the CAISO unilaterally to make application to FERC for a change in rates under Section 205 of the Federal Power Act and pursuant to the FERC's Rules and Regulations promulgated thereunder." As such, the OA filing does not violate the Court's finding in *Atlantic City* that FERC "exceed[s] its statutory authority [if it attempts to require] the owners of transmission assets to cede their statutory right to file rate changes under section 205 of the Act." 295 F.3d at 3-4.

More fundamentally, PacifiCorp's Motion is based on the inaccurate premise that the CAISO is seeking to compel PacifiCorp to subject its facilities to the OA. This is simply not the case. The Commission has recognized that the proposed termination of PacifiCorp's Capacity Agreement creates operational and reliability issues that must be addressed.¹⁸ As explained in the CAISO's

¹⁸ July 30 Order at P 22 ("Section 205 requires us to examine potentially harmful effects of a proposed termination of service. PacifiCorp has not demonstrated that appropriate coordination and operating arrangements are in place and therefore, that coordinated and reliable operation and planning of the COI would be preserved. As discussed below, the parties have relied on the

filings in Docket Nos. ER07-882 *et al*, the CAISO has identified several options to address these operational and reliability concerns. Only one of these options requires an Operating Agreement between the CAISO and PacifiCorp. Another option, which is the CAISO's preferred option, would have PacifiCorp become a Partial Participating Transmission Owner by executing the Transmission Control Agreement. This option would not require an Operating Agreement, but PacifiCorp has rejected this option. A third option would require establishment of a new Scheduling Point (specifically, for the PACI-P line) at Round Mountain and moving the Control Area boundary to that point. This option also would not require an Operating Agreement, but would require a delay of the termination of the Capacity Agreement until the end of 2008 in order to allow sufficient time for all the steps needed to move the Control Area boundary.¹⁹ PacifiCorp has also rejected this option.

Having rejected these other options, PacifiCorp discusses the terms of the proposed OA with the CAISO (originally called an "Interim Operating Agreement") as the basis for its claim "that all of the operational and reliability concerns the CAISO has raised, including all matters relating to the CAISO's operational authority over the PacifiCorp segment following the termination of the

Coordinated Operation Agreement to ensure that the COI is operated, maintained, and developed in a coordinated manner. The COI is infrastructure that is critical to ensuring that electricity can be transferred between the Pacific Northwest and the Pacific Southwest. We are concerned that changes to one element of the COI could have significant, adverse effects on other elements unless they are closely coordinated and operational responsibility is established. Failure to have appropriate procedures in place to ensure the coordinated operation of the COI could have a significant impact on the reliable operation, import/export capability, and coordinated planning of the COI.") (footnotes omitted).

¹⁹ See the CAISO's Initial Brief in Docket Nos. ER07-882 *et al*. at pp 30-33.

Capacity Agreement, have been fully addressed.”²⁰ It is therefore clear that PacifiCorp is relying upon the Operating Agreement to justify PacifiCorp’s proposed termination of the Capacity Agreement and to demonstrate “that appropriate coordination and operating arrangements are in place” as required by the July 30 Order. Specifically, PacifiCorp has informed the Commission that operational concerns will be addressed because the CAISO will provide critical Balancing Authority, coordination and operating services requested by PacifiCorp.²¹ Where PacifiCorp is relying upon services it is requesting from another public utility to justify its own filings, it is no infringement of PacifiCorp’s Section 205 rights for that public utility (the CAISO) to propose the terms under which it will provide those services.

3. The CAISO’s Filing of the Operating Agreement Complies With the Commission’s Directives That Parties File All Agreements Pertinent to the Operation, Maintenance, and Planning of the COI

PacifiCorp’s motion to reject is also inconsistent with the Commission’s directives in its September 11 Clarification Order. In that order, the Commission directed parties to file with the Commission any agreements pertinent to the operation, maintenance, and planning of the COI:

To the extent additional agreements, such as those raised by TANC, are pertinent to the operation, maintenance, and planning of the COI and cannot be agreed-upon by the parties to such agreements, those agreements should be brought before the

²⁰ PacifiCorp Initial Brief in Docket Nos. ER07-882 *et al* (“PacifiCorp Initial Brief”) at pp. 17-20.

²¹ Lest there be any doubt, the CAISO’s operational and reliability concerns in Docket Nos. ER07-882, *et al.*, have not been “fully addressed” until the Commission approves the Operating Agreement.

Commission, on their own merits, as they have not been presented in the instant proceedings.

September 11 Clarification Order at P 9. The CAISO's filing of the OA is consistent with this directive.²² Notwithstanding the fact that the OA is critical to address the operation, maintenance, and planning of the COI, however, PacifiCorp has filed two motions – its motion to reject and its motion to strike in Docket Nos. ER07-882, *et al.* – which would eliminate from the public record the Operating Agreement itself and the CAISO's explanation as to why the OA is needed. Taken together, PacifiCorp's motions would limit the record on OA issues to its own assertion “that all of the operational and reliability concerns the CAISO has raised, including all matters relating to the CAISO's operational authority over the PacifiCorp segment following the termination of the Capacity Agreement, have been fully addressed.” This effort to remove the OA itself and the CAISO's discussion of issues arising under the OA is inconsistent with the Commission's directive that all relevant agreements concerning the operation of the COI and the impact of the proposed termination of the Capacity Agreement should be brought before the Commission. For the reasons set forth above and in the CAISO's October 12, 2007, Answer in Docket Nos. ER07-882, *et al.*, PacifiCorp's motions should be rejected.²³

B. The Commission Must Act on the Proposed Operating Agreement on a Timely Basis In Order To Ensure That the

²² The CAISO had been intending to file the Operating Agreement even prior to the September 11 Clarification Order and has been discussing the need for the OA from its earliest filings in Docket No. ER07-882. See CAISO May 31 Protest at 14-15. The CAISO circulated a draft of the Operating Agreement at the initial settlement conference in Docket Nos. ER07-882 *et al.*

²³ A copy of the CAISO's October 12 Answer is provided as Attachment A to this filing.

CAISO Can Reliably Operate the COI After Termination of the Capacity Agreement

In the transmittal letter for the filing containing the OA, the CAISO requested that the Commission act on the OA and the issues raised in the CAISO's briefs in Docket Nos. ER07-882 and ER07-967 in an expeditious manner.²⁴ Subject to the request above that the Commission not act prior to December 1 in order to allow time for settlement negotiations to be completed, the CAISO reiterates that request. Specifically, if the parties to the settlement negotiations are unable to inform the Commission prior to December 1 that they have reached substantive agreement on a settlement, the CAISO requests that the Commission should act on the Operating Agreement by mid-December.

The Commission should not delay ruling on any terms and conditions of the OA, including the issue of what charges should be assessed for use of the PacifiCorp Transmission Ownership Right in this proceeding, as proposed by PacifiCorp, or establish an additional paper hearing, as proposed by SMUD.²⁵ It is imperative that the Commission act promptly. Today the CAISO is able to perform its functions as the Balancing Authority for the PACI (*e.g.*, approving and confirming interchange schedules, directing resources to ensure balance in real time, and implementing redispatch as needed for Congestion Management) because the entire PACI is subject to the CAISO's operational authority. Similarly, under the COI Path Operating Agreement, the CAISO is responsible as the path operator for determining Available Scheduling Capability ("ASC") and

²⁴ CAISO September 14 filing letter at p. 16.

²⁵ See PacifiCorp Protest at p. 24; SMUD at pp. 7-9.

coordinating curtailments, maintenance, planned outages, and restoration of facilities to service on the COI consistent with the terms of the OCOA, thus helping to ensure the reliability of transmission service in California and power transfers between California and the Pacific Northwest. However, once the PACI-PN is no longer under lease to PG&E – which is currently scheduled to occur when the Capacity Agreement terminates on December 31, 2007²⁶ – the CAISO will lack contractual authority to exercise the necessary Operational Control over the PACI-PN in order to fulfill these functions.

The Commission recognized in the July 30 Order that “changes to one element of the COI could have significant, adverse effects on other elements unless they are closely coordinated and operational responsibility is established,” and that “[f]ailure to have appropriate measures in place to ensure the coordinated operation of the COI could have a significant impact on the reliable operation, import/export capability, and coordinated planning of the COI.”²⁷ The CAISO’s loss of Operational Control will have such detrimental impacts. But the OA will prevent these impacts from happening by giving the CAISO the necessary contractual authority to continue to perform its Balancing Authority and COI path operator responsibilities, in the event that the Commission allows the termination of the Capacity Agreement to proceed with PacifiCorp as a party to the OCOA.

The Commission has a full record on all issues relating to the OA, in both the captioned proceeding and Docket Nos. ER07-882 and ER07-967, and

²⁶ See July 30 Order at P 23.

²⁷ July 30 Order at P 22.

therefore has no need to conduct a further paper hearing. Moreover, delaying resolution of all issues concerning the OA, including the questions of what charges apply to PacifiCorp's TORs, would be inefficient, because customers would still have significant uncertainty as to the terms and conditions of service that would apply to use of the PACI-PN. Therefore, the Commission can and should rule expeditiously on all issues relating to the OA.

C. The Commission Should Consolidate This Proceeding With the Ongoing Proceeding in Docket Nos. ER07-882 and ER07-967 Addressing Other Operational Issues Arising From the Termination of the Capacity Agreement

The CAISO has requested that the Commission consolidate this proceeding with the proceeding in Docket Nos. ER07-882 and ER07-967. With the sole exception of PacifiCorp, all parties that commented on the request for consolidation agree with the CAISO that the proceedings should be consolidated.²⁸

PacifiCorp's sole opposition to consolidation is without merit. PacifiCorp argues that consolidating the proceedings will serve to complicate what PacifiCorp incorrectly characterizes as the only two issues remaining to be resolved in the paper hearing and will thus delay resolution of the OCOA issues. The argument that there are only two remaining issues is inconsistent with the Commission's findings in the September 11 Clarification Order that the paper hearing "is not limited to the appropriate terms of a Coordinated Operation

²⁸ See BPA at p. 2; PacifiCorp Protest at pp. 23-24; PG&E at p. 4; TANC at pp. 10-11; Western at pp. 5-7.

Agreement” but instead concerns *all* “operational, maintenance, and planning issues related directly to a Coordinated Operation Agreement.”²⁹ These directives encompass all issues concerning the OA. As explained in detail in the CAISO’s initial brief in Docket Nos. ER07-882 and ER07-967 and its October 12, 2007 Answer to PacifiCorp’s motion to strike in those proceedings (provided as Attachment A to this filing), the need to enter into the OA follows directly from the provisions of the OCOA, and it would be impossible for the Commission to determine the “appropriate terms of a Coordinated Operation Agreement” without evaluating the need for and terms of the OA.

Further, there is no merit to PacifiCorp’s argument that consolidating the proceedings will delay resolution of the OCOA issues. As explained above, the Commission already has a full record on the issues involving the OA. For this reason, the CAISO urges the Commission to act on the OA and the issues in Docket Nos. ER07-882 and ER07-967 on an expedited basis. Consolidation will not affect the speed with which the Commission can resolve these issues.

The OA is necessitated by the prospect of the CAISO’s loss of Operational Control of the PACI-PN and by amendments to the OCOA under consideration in Docket Nos. ER07-882 and ER07-967. The outcome of the proceedings in Docket Nos. ER07-882 and ER07-967 will directly affect the terms and conditions of the OA. Thus, all of these proceedings address substantially overlapping issues of law and fact and should therefore be consolidated.³⁰ Moreover, under

²⁹ September 11 Clarification Order at P 9.

³⁰ See, e.g., *Entergy Arkansas, Inc.*, 119 FERC ¶ 61,334, at P 14 (2007) (“Given common issues of law and fact, we will grant the Arkansas Cities’ motion to consolidate, and consolidate this proceeding with the ongoing proceedings”); *Los Esteros Critical Energy Facility, LLC, et al.*,

the approach adopted by PacifiCorp, the OA is critical to providing the CAISO the authority to fulfill its role as the Path Operator for COI, as contemplated by the OCOA. Without an approved OA with PacifiCorp (or acceptable alternative arrangements, as discussed in the CAISO's pleadings in Docket Nos. ER07-882 and ER07-967), the CAISO has serious reservations about its ability to perform effectively the role of the Path Operator for COI and to ensure the reliable operation of the COI. Thus, the CAISO believes the Commission must rule on the terms on the OA at the same time that it addresses the issues raised in Docket Nos. ER07-882 and ER07-967. The most efficient way for the Commission to rule on these issues at the same time is by consolidating the relevant dockets and addressing them in the same order.

D. Congestion Charges and Grid Management Charges Are Properly Assessed Against Transactions Using the PacifiCorp TOR on the PACI-P Because Such Transactions Must Also Use the CAISO Controlled Grid

PacifiCorp argues that the CAISO's proposal to impose congestion charges on PacifiCorp's TOR is unjust, unreasonable, and unduly discriminatory. PacifiCorp's argument is based on a false premise. The CAISO does not propose to assess congestion charges to PacifiCorp for its use of its TOR.³¹ The

114 FERC ¶ 61,079, at P 23 (2006) ("We will grant the California Parties' motion to consolidate . . . since these proceedings raise common issues of law and fact and consolidation will result in procedural efficiencies").

³¹ Thus, PacifiCorp's argument that the CAISO seems to be conceding that congestion will not be charged over PacifiCorp's TOR once MRTU is implemented, but that the CAISO's position is not clearly articulated and that all schedules on PacifiCorp's TOR, like those under all other TORs, should be exempt from congestion charges both today and under MRTU (Mara Testimony at pp. 22-24) is misplaced. The CAISO does not propose to charge congestion to schedules on PacifiCorp's TOR. It proposes to assess such charges to schedules on the CAISO Controlled Grid.

CAISO does propose to assess congestion charges to Scheduling Coordinators scheduling on PacifiCorp's TOR for their *use of the CAISO Controlled Grid*.

1. PacifiCorp's TOR Is Different From Other Transmission Ownership Rights Because of the Unique Ownership Split of the PACI-P

PacifiCorp's error arises from its refusal to acknowledge that its TOR differs from other TORs in the CAISO Balancing Authority Area. SMUD makes similar errors.³² Others use of TOR scheduling rights typically involve "wheel through" schedules, an import into the CAISO Balancing Authority combined with a matching export out of the Balancing Authority, that *never* make use of the CAISO Controlled Grid along the path. In contrast, electrically, *every* transaction using the PACI-PN must also use the portion of the PACI-P owned by PG&E, which is part of the CAISO Controlled Grid. The CAISO has 2800 MW of capacity between points in NP-15 and Round Mountain. *Every* transaction using the PACI-PN will use that capacity and contribute to congestion on that capacity. "You can't get there from here" or "a bridge to nowhere" ring true in this situation; a PacifiCorp customer cannot get *anywhere* from Indian Spring without taking service from the CAISO. PacifiCorp's failure to acknowledge its use of the CAISO Controlled Grid vitiates each of its contentions.

PacifiCorp argues that the CAISO errs in stating that PacifiCorp uses the CAISO Controlled Grid in the same manner as any other user. It notes that PacifiCorp is not a Participating TO under the CAISO tariff and that PacifiCorp's Malin-to-Indian Spring line is not part of the CAISO Controlled Grid.³³ Both of

³² SMUD at pp. 8-9.
³³ PacifiCorp Protest at pp. 11-13.

these are true. PacifiCorp goes on to argue, however, that its Open Access Transmission Tariff (“OATT”) scheduling practices (preventing any scheduling of quantities in excess of the line’s available capacity) ensure that its service will cause no congestion (either phantom or real) on the CAISO grid and that its customers would have to pay charges arising from congestion on other COI lines, over which PacifiCorp has no control and which PacifiCorp’s customers do not use.³⁴ This is simply wrong. PacifiCorp customers will use other portions of the COI besides the PACI-PN. They will use PG&E’s portion of the PACI south of Indian Spring. Even if PacifiCorp only schedules 1600 MW to Indian Spring, those schedules will compete with all other CAISO schedules from Round Mountain south. PacifiCorp’s 47 mile TOR to Indian Spring does not grant it an exclusive right to 1600 MW of CAISO Grid capacity, hundreds of miles south of Indian Spring. PacifiCorp does not have an Existing Contract for use of the CAISO Controlled Grid.

The fact that PacifiCorp is not a Participating TO is irrelevant. Customers of Participating TOs are not the only customers that pay for use of the CAISO Controlled Grid. A PacifiCorp customer exporting Energy from NP15 or wheeling energy through the CAISO Controlled Grid is using the CAISO Controlled Grid in the same manner as any other wheeling customer. A PacifiCorp customer taking service over the CAISO Controlled Grid is taking energy from the CAISO Controlled Grid in the same manner as any other customer taking service over the CAISO Controlled Grid.

³⁴ *Id.*

2. The MRTU Tariff Does Not Exempt the PacifiCorp TOR from Congestion Charges When Concurrently Using the CAISO Controlled Grid

PacifiCorp also contends that the CAISO's current tariff and Section 17 of its future MRTU Tariff exempt TORs from congestion costs (in the absence of a contractual agreement to the contrary). PacifiCorp further asserts that the CAISO's proposal violates its tariff.³⁵ As an initial matter, the current CAISO Tariff does not include any provisions exempting TORs from Inter-zonal Congestion Charges. Inter-zonal Congestion Charges arise from use of the CAISO Controlled Grid. If a TOR schedule does not use the CAISO Controlled Grid, it will not be liable for such charges. If it does use the CAISO Controlled Grid, as in the case of a schedule on the PACI-PN, it will be subject to congestion charges, accordingly.

PacifiCorp's statement regarding Section 17 of the MRTU Tariff is imprecise and misleading. Section 17 provides that TORs will be settled in accordance with Sections 11.2.1.5 and 11.5.7 which provide exemptions *for transactions on the TOR systems*. The MRTU Tariff does *not* provide any exemption for charges in connection with use of the CAISO Controlled Grid. Thus, schedules on TORs that do not entail use of the CAISO Controlled Grid will not pay congestion charges. Schedules on TORs that do entail use of the CAISO Controlled Grid, such as schedules on the PACI-PN, will incur such charges.

PacifiCorp argues that, if the CAISO can administer a congestion exemption for Western's 400-MW TOR on the PACI single branch group, it

³⁵ *Id.* at pp. 14-16, 27-29.

should be readily able to provide the same exemption for PacifiCorp's 1600 MW TOR on the same single branch group, using the same Scheduling Point.³⁶ The CAISO has never said it could not administer an exemption for PacifiCorp; rather, the CAISO's position is that the current CAISO Tariff and the MRTU Tariff do not permit such an exemption and there is no basis to avoid the requirements of the Tariff. PacifiCorp fails to recognize two important distinctions from Western's rights. First, Western's Transmission Exchange Agreement rights to 400 MW of capacity from Round Mountain, across the CAISO to Tesla/Tracy, allow it to avoid use of the CAISO Controlled Grid, unlike PacifiCorp's TOR, which only extends 47 miles into the CAISO, but not through the CAISO Controlled Grid. Second, although Western enjoys an exemption from congestion charges through the CAISO, as a result of its continuous path provided by the Transmission Exchange Agreement, that exemption was approved by the Commission as part of a bargain under which Western provided the CAISO with 1200 MW of capacity from Malin to Round Mountain in return for only 400 MW of capacity from Round Mountain to Tesla/Tracy. PacifiCorp offers no such benefit to CAISO customers; rather, it simply seeks to provide its customers with an exemption from applicable charges under the CAISO Tariff without any reasonable corresponding benefits to CAISO customers.

3. The CAISO's Proposed Approach to Implementing the PacifiCorp TOR Prior to MRTU Is Appropriate

PacifiCorp's argument that the CAISO's proposal that, prior to MRTU implementation, PacifiCorp and its customers will not have the ability to manage

³⁶ *Id.*

their exposure to congestion on terms similar to those available to users of the CAISO's transmission service is overtly discriminatory and contrary to Commission policy as stated in Order No. 2000³⁷ fares no better than its other arguments. Because the CAISO will establish a P-Node at Indian Spring after MRTU is implemented, the argument only applies prior to that time. Currently, other customers manage exposure to congestion by submitting revised schedules and adjustment bids. If congestion remains after the submission of revised schedules, the CAISO modifies schedules using adjustment bids. Under that process, the CAISO would need the ability to adjust schedules on the PACI-P. PacifiCorp, however, insists on scheduling up to the entire capacity of the PACI-PN, so the CAISO lacks the ability to adjust those schedules. PacifiCorp cannot have it both ways – an ability of its customers to manage congestion and an unqualified right to schedule up to the limits of the PACI-PN.

Nonetheless, PacifiCorp asserts that the CAISO fails to mention a feasible solution other than denying PacifiCorp and its customers the ability to manage congestion, *i.e.*, modeling each PACI line separately rather than as one branch group.³⁸ Powerex and SMUD make similar arguments.³⁹ Because only 1600 MW can be scheduled on the PACI-PN, however, that “solution” would ignore entirely the congestion to which PacifiCorp's schedules contribute south of Indian Spring. Contrary to arguments such as those advanced by SMUD,⁴⁰ it does not require a paper hearing to conclude that such a policy would discriminate far

³⁷ *Id.* at pp. 17-19.

³⁸ *Id.*

³⁹ Powerex at pp. 19-20, SMUD at pp. 7-8.

⁴⁰ SMUD at pp. 10-11.

more in favor of PacifiCorp's customers than the CAISO's proposal would burden them. In addition, the CAISO could not complete such modeling in the handful of months in 2008 before MRTU is scheduled to be implemented.

4. PacifiCorp's OATT Customers Are Not Entitled to Exemptions From Valid Charges For Use of the CAISO Controlled Grid and Control Areas Services

PacifiCorp contends that, if the CAISO charges PacifiCorp's customers for congestion on other COI lines, it will eliminate most, if not all, of the benefits of the TOR for PacifiCorp and there will be no justification for PacifiCorp to bear the costs of operating as a Scheduling Coordinator on behalf of its customers. The CAISO does not disagree that PacifiCorp customers will get little benefit from PacifiCorp's termination of the Capacity Agreement. Any benefits that PacifiCorp promised its customers, however, were illusory. As other parties have pointed out, the termination of the Capacity Agreement will simply mean that many of PacifiCorp's customers will need to pay an additional transmission charge in order to schedule transactions between the Northwest and California. The benefit of PacifiCorp acting as a Scheduling Coordinator is that its customers can schedule their use of the CAISO Controlled Grid through PacifiCorp. The simple fact is that PacifiCorp's ownership rights on the PACI are configured such that use of PacifiCorp's TOR does not avoid use of the CAISO Controlled Grid. PacifiCorp's desire for "benefits" cannot alter this topographical and operational reality.

Powerex asserts that, because the CAISO does not measure congestion based on Intra-Zonal paths under its current tariff, there should be no congestion

charges when customers receiving PacifiCorp's OATT service on the PACI-PN line deliver power across an interface onto the CAISO grid and pay the PacifiCorp OATT rate for this service. This assertion by Powerex misrepresents the current CAISO Tariff. The PACI-PS is not an Intra-zonal Path. Inter-zonal congestion charges apply to schedules that use Scheduling Points. Indian Spring meets the definition of a CAISO Scheduling Point as a point at which energy exits or enters the CAISO Controlled Grid, even if the CAISO uses Malin as the Schedule Point to facilitate Inter-Control Area transfers. Schedules between Indian Spring and NP-15 are *Inter-zonal* schedules because they use CAISO Controlled Grid capacity and consume the transmission *path* capacity defined by the PACI-W and PACI-P and the CAISO rights on the COTP, collectively defined as the COI (Path 66) and treated as an Inter-Zonal Interface under the existing CAISO Tariff.

Powerex also contends that charging for use of the CAISO Controlled Grid will increase demand on the PACI-W line, thereby exacerbating the potential for congestion raised as an issue by the CAISO and others.⁴¹ Any increased demand on the PACI-W would follow as the natural result of PacifiCorp's addition of an additional charge for transmission on the PACI-P between Indian Spring and Malin, not from the existing charges for use of the CAISO Controlled Grid. Congestion on the CAISO's 2800 MW of capacity on the PACI will remain the same regardless of whether entities schedule to Malin or to Indian Spring. If, however, demand for CAISO scheduling to Malin results in the capacity to Indian Spring being undersubscribed, there will be phantom congestion. The issue can

⁴¹ PacifiCorp Protest at p. 14.

only be addressed to the extent the CAISO is able to use unsubscribed PacifiCorp capacity in a manner and on a timeline consistent with the CAISO's Day-Ahead and Hour-Ahead Scheduling timelines.

SMUD contends that the CAISO's position is inequitable because PacifiCorp should be afforded the same access by the CAISO as PacifiCorp provides to the CAISO to access multiple parties and Control Areas, *i.e.*, without the imposition of a "one-sided panoply of charges and fees, congestion exposure," *etc.* According to SMUD, this is the type of access that the CAISO now is afforded by PacifiCorp at Malin (where the CAISO can access the Control Areas of BPA, Portland General Electric Company, and PacifiCorp *without* being subject to such fees and charges).⁴² In reality, SMUD's argument shows the fairness of charging PacifiCorp customers for use of the CAISO Controlled Grid. The only reason that the CAISO has such access today, however, is that CAISO Participating TOs lease the PACI-PN from PacifiCorp under the Capacity Agreement. Once the Capacity Agreement terminates, no such access will be available. CAISO customers that wish to use the PACI-PN to reach other Control Areas will have to pay all applicable PacifiCorp charges under its OATT. The CAISO is just treating PacifiCorp customers in the same manner.

SMUD also argues that the CAISO's proposal eliminates a potentially viable and beneficial option – moving the Balancing Authority Area boundary to the Round Mountain substation – on the basis that this option would take at least six to twelve months to implement. It contends that the time lag can be overcome because the Capacity Agreement remains in effect until at least

⁴² SMUD at pp. 9-10

January 1, 2008 and, if the Commission determines that its termination is unreasonable – as it is empowered to do – the Capacity Agreement arrangement would continue to operate past that date.⁴³ The CAISO does not expect that delay of the termination is desired by PacifiCorp. Moreover, the CAISO does not believe that imposing a change in Balancing Area Authority boundaries in the middle of a 500 kV line that operates electrically in parallel with another 500 kV line that remains in another Balancing Area is an advisable means to ensuring optimal coordination and the reliable operation of the entire path. The CAISO raised this option because it is one possibility; but it is not the CAISO's preferred outcome.

5. Users of the PacifiCorp TOR Should Pay the CAISO's Grid Management Charge

On a related issue, PacifiCorp witness Mara points to the Commission's June 25, 2007, order requiring the CAISO to remove from Section 17 of the MRTU Tariff a generic reference to the application of the CAISO's Grid Management Charge ("GMC") to TORs and argues that "the CAISO's claim that the GMC applies to PacifiCorp's TOR must, at least, be clearly conformed to the June 25 Order."⁴⁴ In that order, the Commission agreed with Modesto's contention that there may be individual cases where the GMC might not apply to TOR holders. The Modesto position adopted by the Commission makes it clear that the burden is on the party objecting to the application of TORs to explain why the facts of a given circumstance excuse the payment of GMC for a certain

⁴³ *Id.* at 6-7.

⁴⁴ Testimony of Susan Mara at pp. 23-24, *citing* 119 FERC ¶ 61,313 at P 325 (2006) ("June 25 Order").

TOR: “Modesto states that parties should be able to demonstrate on a case-by-case basis that the assessment of GMC to their facilities is unwarranted.” June 25 Order at P 318. PacifiCorp has made no such showing here.

Section 6.3 of the OA simply establishes that PacifiCorp’s Scheduling Coordinator for schedules within the CAISO Balancing Authority will be responsible for Grid Management Charges in accordance with the CAISO Tariff. In requiring the removal from Section 17 of the CAISO’s MRTU Tariff the provisions regarding application of the GMC to TOR holders, the Commission specifically directed the CAISO and stakeholders to address in the CAISO’s ongoing process for determining the GMC under MRTU the specific issues of the appropriate GMC charge for TOR holders. Currently the CAISO is engaged in the stakeholder process to consider the GMC under the MRTU Tariff, and any interested party is welcome to participate in this stakeholder process. The CAISO’s MRTU GMC filing will address the appropriate GMC charges applicable to TORs under MRTU.

The Commission has already concluded that transactions over non-CAISO Controlled Grid facilities within the CAISO Control Area *do* impose costs on the CAISO and therefore should pay a portion of GMC. See Opinion No. 463, *California Independent System Operator Corp., et al.*, 103 FERC ¶ 61,114 at P 25 (2003), *reh’g denied*, Opinion No. 463-A, 106 FERC ¶ 61,032 (2004), *reh’g denied*, Opinion No. 463-B, 113 FERC ¶ 61,135 (2005). The Grid Management Charge is the charge through which the CAISO recovers the costs of performing various Balancing Authority (*i.e.*, Control Area) services, including the

operational, scheduling, and coordination services which the CAISO will provide under the Operating Agreement. There is no separate mechanism under the OA through which the CAISO will recover the costs of the services provided to PacifiCorp and its customers. It would be unjust to require revisions to the OA which prevent the CAISO from recovering the costs of these services from PacifiCorp's Scheduling Coordinator in accordance with the CAISO Tariff.

Indeed, the unique nature of the PacifiCorp TOR makes it even more clear that the GMC is justified in this case. All transactions utilizing the PacifiCorp TOR (*i.e.*, using the PacifiCorp portion of the PACI-P) will also use the CAISO Controlled Grid (*i.e.*, the PG&E portion of the PACI-P). The GMC is the charge through which the CAISO recovers the costs of operating the CAISO Controlled Grid, including the costs of operating the PG&E portion of the PACI-P which will be used by all users of the PacifiCorp TOR. For this reason and the reasons noted above, the provision in Section 6.3 of the OA establishing that the GMC applies to schedules using the PacifiCorp TOR in accordance with the CAISO Tariff is justified.

E. PacifiCorp Should Be Required To Submit Schedules on the PACI-PN Consistent With CAISO Hour-Ahead Scheduling Timelines

Two parties, PacifiCorp and Powerex, argue that the Commission should require modifications to Section 7.4 of the OA in order to allow PacifiCorp's Scheduling Coordinator to submit schedules for the PACI-P up to 20 minutes before the operating hour. These arguments should be rejected because the scheduling provisions in Section 7.4 which allow the CAISO's customers to use

unused capacity on the PACI-PN after the Hour-Ahead timeframe will enable the CAISO to access such available capacity in real-time and dispatch resources at the intertie available to satisfy real-time system needs. This provision should be approved because the Commission, in approving the Transmission Exchange Agreement between Western and the CAISO, has already determined that terms comparable to Section 7.4 of the OA are just and reasonable as applied to the PACI.

PacifiCorp argues that the CAISO has allowed TOR schedule changes up to 20 minutes before the hour of service on the COTP for several years.⁴⁵ In support of this, PacifiCorp witness Mara points to CAISO Operating Procedure M-423.⁴⁶ The relevant portion of Operating Procedure M-423 states that, “The exact cutoff times for scheduling ETC/TOR rights in real time varies according to individual contracts, but is considered to be 20 minutes before the hour.”

PacifiCorp’s witness is confusing Existing Transmission Contract (“ETC”) scheduling rights with TOR scheduling rights. Operating Procedure M-423 notes that the timing requirements under ETCs and TORs vary but can be up to 20 minutes before the operating hour. As the CAISO’s Manager of Scheduling, Kyle T. Hoffman, has already explained, the only instances in which the CAISO has agreed to the continuation of 20 minute scheduling rights is when it has been

⁴⁵ PacifiCorp Protest at p. 20.

⁴⁶ Testimony of Susan Mara at p. 13.

required to do so by Existing Contracts or in interim arrangements that perpetuate Existing Contract rights for a short period.⁴⁷

While it is true that the CAISO has the ability to allow submission of schedules after the deadline for Hour-Ahead Market in the current market design (T-135 minutes) or the deadline for the Hour-Ahead Scheduling Process (“HASP”) under MRTU (T-75 minutes), allowing submission of schedules up to 20 minutes before the operating hour would reduce access to needed and cheaper resources bid into the CAISO’s markets to be imported at the COI. At worst, allowing 20 minute scheduling rights on the PacifiCorp TOR may prevent the CAISO from accessing needed supplies during times of supply deficiencies. At the very least, CAISO customers and California load may not have access to less expensive resources. This is the case because allowing 20 minute scheduling rights over a Control Area intertie prevents the CAISO from being able to pre-dispatch needed resources prior to the operating hour and ensuring that sufficient transmission capacity is available at the ties to import that power. Honoring Existing Contracts may require the CAISO and California customers to endure such adverse consequences where a pre-existing and binding contract requires such a 20 minute scheduling right. There is no justification for such adverse consequences here, where PacifiCorp and Powerex can point to no pre-existing contract granting such scheduling rights.

Both under the existing market and under MRTU, the CAISO will have to be able to pre-dispatch available resources using a Control Area intertie at least

⁴⁷ See Declaration of Kyle T. Hoffman at ¶ 10. This declaration was filed as an attachment in support of the CAISO’s September 14 OA filing. See also *California Independent System Operator Corp.*, 109 FERC ¶ 61,391 at P 42 (2004).

40 minutes prior to the start of the hour. The requirement to send pre-dispatch instructions to these resources 40 minutes prior to the hour is necessary so that these resources can finalize their interchange schedules (e-tags) at least 20 minutes prior to the operating hour (consistent with generally accepted practice in the Western Electricity Coordinating Council). The deadline for submitting bids into the CAISO's MRTU Hour-Ahead Scheduling Process is set at T-75 in part so that the CAISO can run and publish the schedules for its HASP and enable the pre-dispatch of needed resources provided over the ties.

Under the current market design, the provisions of Section 7.4 of the OA will allow the CAISO to pre-dispatch resources submitting real-time energy bids to the CAISO using capacity on the PACI-P that is not scheduled by PacifiCorp's OATT customers by the end of the Hour-Ahead Market. This provision will avoid the system reliability concerns and market inefficiencies of denying CAISO customers access to unused capacity to address real-time system needs. The CAISO notes that the provisions of Section 7.4 of the OA do not prevent phantom congestion associated with the PacifiCorp TOR because the CAISO will still have to reserve the entire capacity of the PacifiCorp TOR in the Day-Ahead time frame and will reserve the entire capacity of the TOR in the Hour-Ahead time frame under the current CAISO market design.⁴⁸ While the CAISO would much prefer that capacity on the PACI-PN be made available to CAISO customers in a manner and on a timeline consistent with the CAISO's Day-Ahead and Hour-Ahead scheduling processes (thus avoiding potential phantom congestion

⁴⁸ Under the current market design, the CAISO does not calculate congestion charges in real-time.

issues), such capacity should be released at a minimum at the end of the Hour-Ahead Market so that the CAISO can access available and needed supplies.

Powerex argues that the Commission should direct the CAISO to revise its Operating Agreement to allow PacifiCorp to continue to adjust its schedules 20 minutes prior to the operating hour post-MRTU, because once MRTU is implemented, this deadline will be consistent with the MRTU scheduling deadlines.⁴⁹ This is not correct. Under MRTU, the CAISO's scheduling timelines are closer to those in the rest of the West but not identical to the rest of the West.⁵⁰

Real-time dispatch of resources using intertie capacity will function differently under MRTU than it does today. Under MRTU, the Hour-Ahead Scheduling Process and Real-Time Market comprises a single set of market procedures. Binding intertie schedules to be used in real-time will be finalized through the Hour-Ahead Scheduling Process and published by 40 minutes prior to the operating hour. Under MRTU, the CAISO will also establish final Locational Marginal Prices ("LMPs") for the interties, which include a congestion charge component through the Hour-Ahead Scheduling Process. Under MRTU, Section 7.4 of the OA will require PacifiCorp's Scheduling Coordinator to submit final schedules for the PACI-PN to the CAISO by 75 minutes prior to the operating hour. The CAISO will then make any capacity on the PACI-P not used

⁴⁹ Powerex at pp. 21-23.

⁵⁰ To the extent any party suggests that the differences between the CAISO's scheduling timelines and the rest of the West under MRTU is itself unreasonable or inappropriate, the Commission has already concluded that these differences are acceptable in light of the benefits MRTU will provide generally: "we find that the economic and reliability gains associated with the implementation of the CAISO's MRTU proposal are necessary and will benefit the western grid as a whole, even though other western entities conduct operations in a different manner." *California Independent System Operator Corp.*, 116 FERC ¶ 61,274 at P 486 (2006).

by PacifiCorp OATT customers available for use and optimization through the HASP/RTM process. This will allow the CAISO to use this PACI-P capacity to pre-dispatch resources that have submitted bids to provide energy to be imported in real-time to the CAISO Balancing Authority Area over the COI.⁵¹ 20 minute scheduling rights on the PACI-P under MRTU would prevent the CAISO from pre-dispatching available resources to address real-time system needs even when there is capacity available on the PACI-P that is not used by PacifiCorp OATT customers. The CAISO does not believe such an inefficient use of available capacity can be justified as it is counter to the reliable operation of the COI.

Section 7.4 of the OA is modeled on the provisions of an agreement the Commission has already found to be just and reasonable. In order to ensure continued access to available resources and to ensure that capacity is available for use in real-time system emergencies, the CAISO's Transmission Exchange Agreement ("TEA") with Western governing the western line of the PACI expressly requires Western to make available to the CAISO "that amount of Western Malin-Round Mountain Capacity not scheduled by Western or its transmission users by the close of the CAISO Hour-Ahead Market, or other comparable time if there is not an Hour-Ahead Market." *Pacific Gas & Electric Co.*, 109 FERC ¶ 61,255 at P 20 (2004), *reh'g denied*, 111 FERC ¶ 61,175 at P 24 ("the Transmission Exchange Agreement has been found just and reasonable").

⁵¹ This process will also eliminate phantom congestion over the PACI-P in the Hour-Ahead Scheduling Process timeframe under MRTU, although phantom congestion over the PACI-P could still occur in the MRTU Day-Ahead Market.

In its initial brief in Docket Nos. ER07-882-000 and ER07-967-000, PacifiCorp agreed that it would be willing to have the CAISO's scheduling deadline apply to schedules on the PACI-PN "and to provide the CAISO with control of any unused Malin-Indian Spring capacity" after that deadline.⁵² In fact, PacifiCorp attached to its Initial Brief, as Exhibit PAC-8, the provisions of the Western TEA on which Section 7.4 of the OA is modeled. In its Initial Brief, PacifiCorp states that arguments concerning phantom congestion in Docket Nos. ER07-882 *et al.* should be rejected because PacifiCorp is willing to allow unused capacity to be made available under the CAISO Tariff under terms comparable to the Transmission Exchange Agreement. PacifiCorp repeats that commitment in the instant proceeding.⁵³

PacifiCorp now suggests for the first time in this proceeding that the CAISO should "compensate PacifiCorp at PacifiCorp's hourly non-firm OATT rate for any use by the CAISO of PacifiCorp's available, unused capacity."⁵⁴ The Commission should reject this proposal. Section 7.4 of the OA is needed to address real-time reliability concerns and market inefficiencies resulting from PacifiCorp's proposal to place the PACI-PN under the PacifiCorp OATT while retaining the current Control Area boundary. The comparable provision in the Western TEA does not require the CAISO or its customers to pay Western's hourly non-firm OATT rate for any use by the CAISO of Western's unused

⁵² Initial Brief of PacifiCorp in Docket Nos. ER07-882-000 and ER07-967-000 at p. 16 (September 13, 2007).

⁵³ See Testimony of Kenneth Houston at p. 3.

⁵⁴ PacifiCorp Protest at p. 22. To the CAISO's knowledge, PacifiCorp has not attempted to revise its briefs in Docket Nos. ER07-882 *et al.* to reflect this change in position. This example illustrates why consolidation of the instant proceeding with Docket Nos. ER07-882 *et al.* is appropriate.

capacity. PacifiCorp's proposal would create an unjustified disparate treatment between the costs for using unused capacity on the Western TOR for the PACI-W and the costs for using the PacifiCorp TOR on the parallel PacifiCorp TOR for the PACI-PN.

F. The CAISO Agrees That Termination of the Capacity Agreement Creates Inefficiencies and Seams Issues But Believes the Operating Agreement is Critical If the Capacity Agreement Is Allowed to Terminate

PG&E raises a number of concerns about the potential adverse consequences of the new procedures for transmission service over the PacifiCorp portion of the PACI-P that serve as the basis for certain assumptions and requirements in the Operating Agreement. Specifically, PG&E is concerned about the negative effects of phantom congestion, including the potential for inefficient dispatch and high energy prices.⁵⁵ The CAISO agrees that placing a portion of the PACI-P under the PacifiCorp OATT will create phantom congestion in the CAISO's forward markets. For example, assuming the Commission accepts Section 7.4 of the OA as filed by the CAISO, the CAISO will still be required to reserve capacity over the PACI-P for PacifiCorp OATT customers in the Day-Ahead timeframe even if PacifiCorp OATT customers do not intend to actually use that PACI-P capacity in real-time. This phantom congestion can be expected to increase congestion prices in the CAISO's forward markets. This phantom congestion will also lead to a less efficient optimization of the COI in the forward markets.

⁵⁵ PG&E at pp. 12-14.

Powerex and SMUD suggest that these phantom congestion and market inefficiency concerns are seams issues of the nature that occur at every interface between the CAISO Controlled Grid and a neighboring transmission system offering physical transmission rights under the *pro forma* OATT. The CAISO notes that the issues associated with the PACI-P are not typical seams issues. Unlike other borders between the CAISO and *pro forma* OATT transmission providers, PacifiCorp's proposed mechanism for offering service over its portion of the PACI-P essentially creates phantom congestion on a portion of the CAISO Controlled Grid, *i.e.*, the portion of the PACI-P owned by PG&E. In other words, the unique ownership structure of the PACI-P, where the change in ownership occurs in the middle of a transmission line where there is no substation or delivery point, creates unique seams issues.

The CAISO's preferred option for addressing the termination of the Capacity Agreement would address PG&E's phantom congestion concerns and would eliminate these unique seams issues. As explained above and in its May 31, 2007, Protest in Docket No. ER07-882, the CAISO's preferred option would be for PacifiCorp to become a Partial Participating Transmission Owner with respect to its portion of the PACI-P. This option would allow service over the PACI-PN to remain under the CAISO Tariff while providing PacifiCorp the opportunity to recover the costs of its portion of the PACI-P through the CAISO's transmission Access Charge. The CAISO, however, does not have the authority to require PacifiCorp to become a Partial PTO, and PacifiCorp has made it clear that it is unwilling to become a PTO voluntarily.

It is important to recall that the phantom congestion and related concerns raised by PG&E are the result of the proposed termination of the Capacity Agreement and the related proposal of PacifiCorp to offer service on the PACI-PN under the terms of the PacifiCorp OATT. For all the reasons set forth in the September 14 OA filing and above, CAISO believes it is critical to have the Operating Agreement in place if the Commission does approve the termination of the Capacity Agreement under the terms proposed by PacifiCorp. The fact that this arrangement creates phantom congestion and inefficiencies does not render the Operating Agreement unjust and unreasonable. The situation here is comparable to the circumstances addressed in the Commission's order approving the Western Transmission Exchange Agreement. In that case, the Commission accepted the Transmission Exchange Agreement as a "second best" alternative where Western similarly declined to become a Participating Transmission Owner:

We agree with the settling parties that the only alternative to the Transmission Exchange Agreement that could offer comparable benefits would be for Western to become a Participating Transmission Owner under the CAISO's Transmission Control Agreement. This would likely be the best option. However, as previously stated herein, Western has considered that alternative and rejected it in favor of forming a sub-control area in the SMUD control area. Since this alternative is not available, the proposed Transmission Exchange Agreement allows the CAISO continued access to this important capacity and vital link to the Pacific Northwest.

109 FERC ¶ 61,255 at P 55. Like the Transmission Exchange Agreement, the Operating Agreement with PacifiCorp allows the CAISO continued access to this

important capacity and vital link to the Pacific Northwest (provided that the scheduling provisions of the OA modeled on the TEA are accepted).

G. The Proposed Termination Provisions of the Operating Agreement Are Justified

TANC argues that the CAISO should eliminate or further justify Section 3.2(c) of the OA, which TANC states “would cause the Operating Agreement to terminate with ‘the termination of the Transmission Exchange Agreement between the CAISO, PG&E, and the Western Area Power Administration.’”⁵⁶ TANC’s statement that Section 3.2(c) “would cause” the OA to terminate with the termination of the Transmission Exchange Agreement is not accurate. More is required in order to terminate the OA. First, Section 3.2 provides that the OA “may be terminated” once any of the listed events occur. The language of Section 3.2 following Section 3.2(c) provides that, in order for termination of the OA to become effective, the CAISO or PacifiCorp must file a timely notice of termination with the Commission or must otherwise comply with the requirements of Order No. 2001⁵⁷ and related orders, and then the OA will terminate upon Commission acceptance of the notice of termination, if filed with the Commission, or thirty days after the date of the notice of termination, if terminated in accordance with the requirements of Order No. 2001 and related orders. Thus, termination of the OA would not be automatic but instead is something that the CAISO and PacifiCorp could choose to initiate. Moreover, termination of the OA

⁵⁶ TANC at pp. 13-14 (quoting Section 3.2(c) of the OA).

⁵⁷ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31043 (May 8, 2002), FERC Stats. & Regs., Regs. Preambles ¶ 31,127 (2002).

could only become effective pursuant to a Commission order accepting a notice of termination or after thirty days if initiated in accordance with the Commission requirements set forth in Order No. 2001 and related orders.

The reason the CAISO proposes to link the potential termination of the OA (as described in Section 3.2) with the termination of the Transmission Exchange Agreement (as described in Section 3.2(c)) is that the OA and the Transmission Exchange Agreement both concern PACI facilities for which the CAISO has (or will have) certain operational responsibilities and as to which the CAISO is the Balancing Authority and COI path operator. In the event that the Transmission Exchange Agreement expires, the CAISO may no longer be able to fulfill all of its obligations under the CPOA and the OA because the CAISO may no longer have sufficient authority with respect to the PACI-W to serve as Balancing Authority for the PACI or as COI path operator in the absence of the Transmission Exchange Agreement. Linking the termination of the OA with the termination of the Transmission Exchange Agreement will permit all issues concerning the PACI that result from the termination of the Transmission Exchange Agreement to be presented at the same time and resolved consistently. Therefore, the Commission should accept Section 3.2 (including Section 3.2(c)) as filed.

IV. CONCLUSION

For the reasons explained above, if the parties to the settlement negotiations in Docket Nos. ER07-882 *et al.* are unable to inform the Commission prior to December 1 that they have reached substantive agreement

on a settlement, the Commission should issue an order by mid-December accepting the Operating Agreement without modification or further procedures.

Respectfully submitted,

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Dated: October 22, 2007

Attachment A

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

PacifiCorp)	Docket No. ER07-882-000
)	
Pacific Gas and Electric Company)	Docket No. ER07-967-000

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTION OF PACIFICORP TO STRIKE PORTIONS OF
INITIAL BRIEF**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, the California Independent System Operator Corporation (“CAISO”) files its answer to the Motion of PacifiCorp to Strike Portions of the Initial Brief of the California Independent System Operator Corporation, filed by PacifiCorp in the captioned proceeding on September 28, 2007 (“Motion to Strike”).¹ As explained below, PacifiCorp’s Motion to Strike fails to meet the Commission’s requirements for granting motions to strike, in that the material that PacifiCorp seeks to strike was provided by the CAISO in conformance with the Commission order issued in this proceeding on September 11, 2007.² Also, the CAISO strongly believes that the Commission must address the issues discussed in the portions of the CAISO’s initial brief that are the subject of the Motion to Strike in order to resolve the reliability and operational

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the CAISO’s current effective tariff, the tariff provisions that the Commission has approved to implement the CAISO’s Market Redesign and Technology Upgrade (“MRTU”) initiative, or the Owners’ Coordinated Operations Agreement, as dictated by the context.

² *PacifiCorp*, 120 FERC ¶ 61,231 (2007) (“September 11 Order”).

issues in this proceeding. Therefore, the Commission should deny the Motion to Strike.

I. Answer

The Commission has explained that “a motion to strike is not favored and carries a heavy burden to be granted . . . material will not be struck ‘unless the matters sought to be omitted from the record have no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party.’”³

PacifiCorp falls far short of meeting its heavy burden to show that its Motion to Strike should be granted.

PacifiCorp argues that the Commission should strike (or at least should disregard, which amounts to the same thing) the material the CAISO included in its initial brief in this proceeding (“CAISO Initial Brief”) concerning the need for and the appropriate terms of a proposed operating agreement between the CAISO and PacifiCorp (“Operating Agreement”).⁴ PacifiCorp contends that the material concerning the Operating Agreement falls outside the scope of the paper hearing in this proceeding as clarified by the Commission in the September 11 Order. However, in the September 11 Order, the Commission stated “that the paper hearing is not limited to the appropriate terms of a Coordinated Operation Agreement, and that the Commission intended for the

³ *Central Hudson Gas & Electric Corp.*, 92 FERC ¶ 63,004, at 65,008 (2000) (quoting *Power Mining Inc.*, 45 FERC ¶ 61,311, at 61,972 n.1 (1988)). *Accord San Diego Gas & Electric Co.*, 114 FERC ¶ 61,070, at P 20 n.47 (2006); *Boston Edison Co.*, 61 FERC ¶ 61,026, at 61,147 n.114 (1992).

⁴ As discussed further below, the CAISO unilaterally filed the unexecuted, proposed Operating Agreement on September 14, 2007, in Docket No. ER07-1373-000. In its Initial Brief, the CAISO explained that it was going to submit this Operating Agreement.

parties to provide briefs only on operational, maintenance, and planning issues related directly to a Coordinated Operation Agreement.”⁵ The material provided in the CAISO Initial Brief relates directly to the operational, maintenance, and planning issues implicated by the proposed Owners’ Coordinated Operations Agreement is therefore in conformance with these Commission directives.

As explained in further detail in the CAISO Initial Brief (including the portions of the CAISO Initial Brief that PacifiCorp seeks to strike), if the Agreement for Use of Transmission Capacity among Pacific Power & Light Company, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (“Capacity Agreement”) is permitted to terminate and if PacifiCorp becomes a party to the OCOA and the California-Oregon Intertie (“COI”) Path Operating Agreement, the CAISO will need an operating agreement with PacifiCorp to establish the legal relationships and procedures by which the CAISO will perform its obligations as Balancing Authority and COI path operator. Indeed, Section 8.2 of the OCOA requires each party to make arrangements with its Control Area Operator to ensure compliance with the OCOA and the COI Path Operating Agreement. Specifically, Section 8.2 of the OCOA requires the following:

Each party must make arrangements . . . for its facilities that are a part of the System to be operated within a NERC [North American Electric Reliability Corporation] certified Control Area and make reasonable efforts to require the Control Area Operator to operate such facilities in conformance with this Agreement. Such arrangements shall obligate the Party to provide compensation to the COI Control Area Operator for any sanctions incurred by the

⁵ September 11 Order at P 9. The full name of the Coordinated Operation Agreement is the Owners’ Coordinated Operations Agreement (“OCOA”).

latter arising from the WECC [Western Electricity Coordinating Council] Reliability Management System Agreement in relation to duties of the Path Operator for COI . . . due to the action or inaction of the Party for whom or on whose behalf the Control Area Operator acts in relation to the Path Operator for COI.

Section 8.2 also sets forth minimum obligations that must be included in the arrangements, covering such matters as responses to emergencies, outage coordination, and scheduling.⁶ Therefore, the need to enter into the Operating Agreement follows directly from the provisions of the OCOA. As a result, the material in the CAISO Initial Brief that addresses the need for and the appropriate terms of the Operating Agreement concerns “operational, maintenance, and planning issues related directly to a Coordinated Operation Agreement,” as required by the September 11 Order. Moreover, it would be impossible for the Commission to determine the “appropriate terms of a Coordinated Operation Agreement” without evaluating the need for and terms of the Operating Agreement that must be entered into pursuant to Section 8.2 of the Coordinated Operation Agreement. Because the material in the CAISO Initial Brief that PacifiCorp seeks to strike falls squarely within the directives of the September 11 Order, PacifiCorp comes nowhere near meeting its heavy burden of showing that the material concerning the Operating Agreement “ha[s] no possible relationship to the controversy, may confuse the issues, or otherwise prejudice[s] a party.”⁷

⁶ CAISO Initial Br. at 1-2, 14.

⁷ See *supra* note 3 and accompanying text. Even if the material in the CAISO Initial Brief did not fall squarely within the directives in the September 11 Order, it would still assist the Commission in developing a complete record in this proceeding, which in itself would be a sufficient basis for the Commission to deny PacifiCorp’s Motion to Strike. See *Ameren Energy Generating Company and Union Electric Co. d/b/a AmerenUE*, 106 FERC ¶ 63,011, at P 9 n.4,

In fact, PacifiCorp seeks to omit from the record material that *does* relate to the controversy, thereby confusing the issues and prejudicing all of the other parties. In the September 11 Order, the Commission specifically directed the parties to file any agreements, in addition to the Coordinated Operation Agreement, that are “pertinent to the operation, maintenance, and planning of the COI and cannot be agreed-upon by the parties to such agreements.”⁸ The Operating Agreement is pertinent to the operation, maintenance, and planning of the COI, and the CAISO and PacifiCorp have not agreed on its terms, so the CAISO unilaterally filed the unexecuted, proposed Operating Agreement in a new docket.⁹

aff'd in relevant part, 108 FERC ¶ 61,081 (2004) (“In order to develop a complete record in this proceeding, Ameren's motion to strike is denied in its entirety.”). This is especially true given that the CAISO provided this material in its *Initial* Brief, which meant that all parties – including PacifiCorp – had an opportunity to respond to the material in their reply briefs. See *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 63,074, at P 3 (2006) (“Good cause has not been established for granting Dayton's motion. In the interest of developing a complete record, Section V of Green Mountain's initial brief shall not be stricken. Accordingly, Dayton's motion to strike is hereby denied. The parties will have an opportunity to respond to these issues in their reply briefs.”). PacifiCorp chose not to address the material concerning the Operating Agreement in its own reply brief, but several other parties did address it in theirs. See PacifiCorp Reply Br. at 4; Joint Reply Br. of Pacific Gas and Electric Company and San Diego Gas & Electric Company at 2-4; Reply Br. of Powerex Corp. at 7-12; Reply Br. of Sacramento Municipal Utility District at 9-10; Reply Br. of Transmission Agency of Northern California at 35-36. PacifiCorp instead addressed the material at length in the Motion to Intervene and Conditional Protest that it filed in Docket No. ER07-1373 on October 5, 2007.

⁸ September 11 Order at P 9.

⁹ See Operating Agreement Between California Independent System Operator Corporation and PacifiCorp, Docket No. ER07-1373-000, Transmittal Letter at 2 n.3 (Sept. 14, 2007). In the September 11 Order, the Commission drew an explicit distinction between the *briefing* of operational, maintenance, and planning issues related directly to the Coordinated Operation Agreement, and the *filing of additional agreements* that are pertinent to the operation, maintenance, and planning of the COI. See September 11 Order at P 9. The CAISO has acknowledged this distinction by addressing the need for and the appropriate terms of the Operating Agreement in its Initial Brief and by filing the proposed Operating Agreement in Docket No. ER07-1373. Throughout its Motion to Strike, PacifiCorp fails to properly recognize this distinction.

PacifiCorp argues that the terms of the Operating Agreement cannot be addressed in the paper hearing because the full Operating Agreement was not filed for Commission approval until September 14.¹⁰ This argument ignores the fact that the CAISO has raised the issue of the need for an operating agreement between PacifiCorp and the CAISO from the earliest stages of this proceeding. In the CAISO's May 31, 2007 protest in Docket No. ER07-882 ("CAISO Protest"), the CAISO explained that, "In order to ensure that the proposed termination of the Capacity Agreement can be accomplished in a reliable manner that will not result in operational concerns or financial harm to customers, the CAISO has identified certain issues that must be resolved."¹¹ One of the issues identified in the CAISO Protest is the need to define "the scope of the CAISO's operating authority over the PACI after the proposed termination."¹² The CAISO explained that it was engaged in negotiations with PacifiCorp on the terms of an operating agreement to resolve the scope of the CAISO's authority over the PacifiCorp facilities in the CAISO Balancing Authority Area. The CAISO included in its list of "Issues That Must Be Resolved Before the Termination Can Become Effective" the need to finalize the terms of this operating agreement.¹³ The Commission noted the CAISO's concerns in its July 30, 2007 order in this proceeding when the Commission directed that "all of the disputed issues on coordinated

¹⁰ Motion to Strike at 3.

¹¹ CAISO Protest at 2.

¹² *Id.* at 9.

¹³ *Id.* at 14.

operation, maintenance, and planning related to a Coordinated Operation Agreement are to be briefed with evidence in the paper hearing.”¹⁴

PacifiCorp’s Motion to Strike is particularly inappropriate in light of PacifiCorp’s efforts seeking to preclude the Commission from considering the Operating Agreement at all: PacifiCorp filed its Motion to Strike in the instant proceeding and also filed a motion to reject the proposed Operating Agreement filed by the CAISO in Docket No. ER07-1373. If the Commission were to grant both of these motions, as PacifiCorp requests, the Commission would be unable to consider the need for and the appropriate terms of the Operating Agreement, either in the captioned proceeding or in Docket No. ER07-1373. This would not only undermine the directive in the September 11 Order to file any additional agreements, but would also leave an enormous gap in the Commission’s consideration of the issues in these proceedings and thus would result in confusion and prejudice to the parties.

PacifiCorp suggests that the Commission need not consider the Operating Agreement in the same time frame as the issues in this proceeding because the main area of disagreement between the CAISO and PacifiCorp on the operating Agreement concerns congestion charges.¹⁵ The Operating Agreement is critical, however, to providing the CAISO the authority to fulfill its role as the Path Operator for COI, as contemplated by the Coordinated Operation Agreement. Without an approved Operating Agreement with PacifiCorp, the CAISO has

¹⁴ *PacifiCorp*, 120 FERC ¶ 61,113, at PP 33, 35 (2007).

¹⁵ Motion to Strike at 3.

serious reservations about its ability to perform effectively the role of the Path Operator for COI and to ensure the reliable operation of the COI. Thus, the CAISO believes the Commission must rule on the terms on the Operating Agreement at the same time that it addresses the other issues raised in this proceeding.

The CAISO has requested that the captioned proceeding and Docket No. ER07-1373 be consolidated.¹⁶ However, even if the Commission declines to consolidate the proceedings, the Commission should not preclude consideration of the Operating Agreement entirely by granting PacifiCorp's motions.¹⁷

¹⁶ See *id.* at 16.

¹⁷ The CAISO will separately file, in Docket No. ER07-1373, an answer to PacifiCorp's motion to reject the proposed Operating Agreement filed by the CAISO.

II. Conclusion

For the reasons explained above, the Commission should deny PacifiCorp's Motion to Strike.

Respectfully submitted,

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Dated: October 12, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the 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 Folsom, California this 22nd day of October, 2007.

/s/ John Anders
John Anders