

112 FERC ¶ 61,009  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

California Independent System Operator Corporation	Docket Nos. ER04-445-005 ER04-445-006 ER04-445-007 ER04-445-008 ER04-445-009
Pacific Gas and Electric Company	Docket Nos. ER04-443-004 ER04-443-005 ER04-443-006 ER04-443-007
San Diego Gas and Electric Company	Docket Nos. ER04-441-004 ER04-441-005 ER04-441-006 ER04-441-007
Southern California Edison Company	Docket Nos. ER04-435-007 ER04-435-008 ER04-435-009 ER04-435-011 (Not Consolidated)

ORDER ACCEPTING IN PART AND REJECTING IN PART ORDER NOS. 2003,  
2003-A, AND 2003-B COMPLIANCE FILINGS

(Issued July 1, 2005)

1. In this order, the Commission accepts in part, and rejects in part, the California Independent System Operator Corporation's (CAISO) proposed revisions to the *pro forma* Large Generator Interconnection Procedures (LGIP), and Interconnection Study

Agreements (study agreements) filed in response to the Commission's July 30, 2004 Order<sup>1</sup> rejecting CAISO's Order Nos. 2003 and 2003-A<sup>2</sup> compliance filings. Consistent with CAISO's request for an effective date which does not precede our acceptance of the interconnection filings, these interconnection compliance filings are effective upon issuance of this order. In addition, the Commission accepts in part and rejects in part the Large Generator Interconnection Agreement (LGIA) jointly filed by CAISO and three Participating Transmission Owners (PTOs)<sup>3</sup> - Southern California Edison Company (SoCal Edison), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) - to become effective upon issuance of this order. Lastly, the Commission accepts the conforming Transmission Owner (TO) Tariff filings submitted by the PTOs, to become effective on the same date. The Commission finds that CAISO and the three PTOs (collectively, the Filing Parties) generally have complied with the requirements of the July 30, 2004 Order and met their obligations under Order No. 2003 and its progeny with certain modifications, as discussed below. This action benefits CAISO customers because it ensures that the rates, terms, and conditions for interconnection service are just and reasonable and thus will serve as a basis for more competitive markets.

## **I. Background**

### **A. Order Nos. 2003 / 2003-A / 2003-B**

2. In Order No. 2003, pursuant to our responsibility under sections 205 and 206 of the Federal Power Act (FPA)<sup>4</sup> to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in

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<sup>1</sup> *California Independent System Operator Corporation*, 108 FERC ¶ 61,104 (2004) (July 30, 2004 Order).

<sup>2</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005); *see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

<sup>3</sup> A Participating Transmission Owner is a FERC-jurisdictional California entity which has placed its transmission assets and Entitlements under the ISO's Operational Control. *See* Master Definitions Supplement of the CAISO OATT. PG&E, SoCal Edison, and SDG&E are the PTOs that have been active in this LGIP/LGIA process.

<sup>4</sup> 16 U.S.C. §§ 824d, 824e (2000).

interstate commerce to append the *pro forma* LGIP and *pro forma* LGIA to their open access transmission tariffs (OATTs). In order to achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the *pro forma* LGIP and LGIA by January 20, 2004.<sup>5</sup>

3. The Commission subsequently issued Order Nos. 2003-A, 2003-B, and 2003-C that reaffirmed the legal and policy conclusions that formed the basis of Order No. 2003, and modified a number of the provisions of Order No. 2003's *pro forma* LGIP and LGIA.

#### **B. 2004 Interconnection Compliance Filings and July 30, 2004 Order**

4. CAISO is the Transmission Provider that exercises operational control over the facilities owned by, among others, SoCal Edison, PG&E, and SDG&E. On January 20, 2004, CAISO filed its proposed LGIP, *pro forma* Interconnection Study agreements, and related CAISO OATT amendments pursuant to Order No. 2003. On the same date, SoCal Edison, PG&E, and SDG&E each filed to conform its TO Tariff to CAISO's LGIP filing. On February 9, 2004, the Filing Parties jointly filed proposed revisions to the *pro forma* LGIA. On April 26, 2004, CAISO submitted for Commission approval its LGIP compliance filing, revised in accordance with Order No. 2003-A. Concurrently, the Filing Parties jointly filed a revised LGIA.

5. On July 30, 2004, the Commission issued an Order rejecting the Filing Parties' Order Nos. 2003 and 2003-A filings, stating that CAISO did not meet the independence requirement for ISO status and therefore could not file under the "independent entity variation" standard of review.<sup>6</sup> The Commission directed CAISO and the Filing Parties to resubmit the compliance filings under the "consistent with or superior to" standard applicable to non-independent transmission providers within 60 days and dismissed the PTOs' TO Tariff filings.

#### **C. Requests for Rehearing and Extension of Time**

6. On August 30, 2004, the Filing Parties requested rehearing of the Commission's finding in the July 30, 2004 Order that CAISO could not file as an independent entity, asserting that the Commission inappropriately relied on a vacated order to declare that CAISO is not an independent entity.<sup>7</sup> The Commission later granted a request for

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<sup>5</sup> See Notice Clarifying Compliance Procedures, *supra* note 2.

<sup>6</sup> See July 30, 2004 Order at P 24 (citing *Order Concerning Governance of the California Independent System Operator Corp.*, 100 FERC ¶ 61,059 at P 1-2 (2002)).

<sup>7</sup> See also *California Independent System Operator Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004).

extension of time to file until January 5, 2005,<sup>8</sup> and an extension of the effective date of the compliance filings until after the Commission's review and approval.<sup>9</sup>

**D. The 2005 Compliance Filings**

7. On January 5, 2005, CAISO filed its Order Nos. 2003 and 2003-A proposed LGIP, Interconnection Study agreements, and related CAISO OATT amendments pursuant to a directive in the July 30, 2004 Order that the filings must justify any changes to the *pro forma* LGIP and LGIA under the "consistent with or superior to" standard of review.<sup>10</sup> In addition, on the same date, the Filing Parties jointly filed a revised *pro forma* LGIA.<sup>11</sup> CAISO's 2005 LGIP and LGIA transmittal letters request, however, that the Commission review these filings under the "independent entity variation" standard instead.<sup>12</sup>

8. CAISO asks the Commission to accept the proposed LGIP as part of CAISO's OATT. In addition, CAISO proposes to post the revised study agreements on its homepage and requests acceptance of them as stand-alone documents, separate from the CAISO OATT. CAISO proposes to standardize the proposed study agreements across the CAISO Control Area.

9. Currently, no *pro forma* interconnection agreement exists in the California market. Interconnection Agreements are non-standard, two-party agreements between the interconnecting PTO and the Interconnection Customer. The revised LGIA is a three-party agreement among the Interconnection Customer, PTO, and CAISO. The Filing Parties ask the Commission to accept the LGIA as a stand-alone document, separate from the CAISO OATT and TO Tariffs, so that neither the Transmission Provider nor the Transmission Owner has the unilateral right to revise it. The Filing Parties also propose to designate customer-specific LGIAs as service agreements under both the CAISO OATT and respective TO Tariff.

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<sup>8</sup> *California Independent System Operator Corp.*, 108 FERC ¶ 61,315 (2004).

<sup>9</sup> *California Independent System Operator Corp.*, 110 FERC ¶ 61,004 (2004).

<sup>10</sup> These interconnection documents were filed in Docket No. ER04-445-006.

<sup>11</sup> The Filing Parties filed their revised LGIA in Docket Nos. ER04-445-005 (CAISO), ER04-435-008 (SoCal Edison), ER04-441-004 (SDG&E), and ER04-443-004 (PG&E).

<sup>12</sup> CAISO's filing contains the substantive provisions governing interconnection of large generators to the CAISO-controlled grid, including interconnection to the jurisdictional facilities of SoCal Edison, PG&E, and SDG&E.

10. On February 18, the Filing Parties submitted their revised LGIA filing in compliance with Order No. 2003-B.<sup>13</sup> On the same day, CAISO filed its LGIP in compliance with Order No. 2003-B.<sup>14</sup>

11. On February 25, 2005, the Commission issued a deficiency letter under delegated authority in Docket Nos. ER04-445-005, ER04-445-006, ER04-435-007, ER04-435-008, ER04-441-004, ER04-441-005, ER04-443-005, and ER04-443-004, requesting that CAISO provide additional information in collaboration with the three PTOs, regarding the January 5, 2005 LGIA and LGIP filings. Specifically, the Commission asked CAISO to provide more information on its proposed LGIP section 3.3.3, Deliverability Assessment Test; LGIP section 3.4.2 and LGIA article 11.4.1, Economic Test; CAISO OATT section 5.7.5.1, Maintenance of Encumbrances; and LGIA article 11.6, Compensation for Service Pursuant to Reactive Power and during Emergency Conditions. CAISO responded on April 5, 2005.

#### **E. PTO Compliance Filings**

12. On January 5, 2005, SoCal Edison (in Docket No. ER04-435-007) and SDG&E (in Docket No. ER04-441-005), and on January 21, 2005<sup>15</sup> PG&E (in Docket No. ER04-443-005) filed to conform their TO Tariffs to CAISO's LGIP compliance filing. The PTOs request that the Commission review their TO Tariff filings concurrently with the other compliance filings, and assign the same effective date to all of the filings. In their respective transmittal letters, each PTO states that CAISO's compliance filings contain all of the substantive provisions governing the interconnection of Large Generators to the CAISO Controlled Grid, including each PTO's jurisdictional facilities, while each PTO's conforming TO Tariff compliance filing includes strictly ministerial changes.<sup>16</sup> Thus, the TO Tariffs will no longer include any interconnection procedures; rather TO Tariffs will reference CAISO's OATT on these matters.

13. Proposed modifications in each of the TO Tariff filings include revisions to article 3 -- Definitions, article 8 -- Interconnection Obligations, and article 10 -- Interconnection Process. The PTOs request that the Commission accept their TO Tariff revisions as

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<sup>13</sup> The Filing Parties filed the revised LGIA in Docket Nos. ER04-445-007 (CAISO), ER04-435-009 (SoCal Edison), ER04-441-006 (SDG&E), and ER04-443-006 (PG&E).

<sup>14</sup> CAISO filed its LGIP in Docket No. ER04-445-008.

<sup>15</sup> In its filing, PG&E requests leave to file its Order Nos. 2003 and 2003-A TO Tariff compliance out-of-time as it inadvertently missed the January 5 filing date.

<sup>16</sup> *See, e.g.,* SoCal Edison's January 5, 2005 Transmittal Letter at 2.

effective on the same date as the CAISO Order Nos. 2003, 2003-A and 2003-B compliance filings.

## **II. Notice of Filings, Interventions, Protests, and Answers**

14. The Commission published notice of the CAISO LGIP compliance filing in the *Federal Register*, with comments, interventions, and protests due on or before January 26, 2005.<sup>17</sup> Entities that filed motions to intervene in this docket (ER04-445-006) are listed in Appendix A to this order.

15. The Commission published notice of the LGIA compliance filing in the *Federal Register*, with comments, interventions, and protests due on or before January 26, 2005.<sup>18</sup> Entities that filed motions to intervene in these dockets (ER04-445-005, ER04-435-008, ER04-441-004, and ER04-443-004) are listed in Appendix B to this order.

16. The Commission published notice of each of the PTO's TO Tariff amendment filings in the *Federal Register*, with comments, interventions, and protests due on or before January 26, 2005 for SoCal Edison and SDG&E's filings<sup>19</sup> and February 11, 2005 for PG&E's filing.<sup>20</sup> Entities that filed motions to intervene in each of the dockets (ER04-441-005, and ER04-443-005, ER04-435-007) are listed in Appendices C, D, and E, respectively, to this order.

17. The Commission published notice of CAISO's LGIP Order No. 2003-B compliance filing in the *Federal Register*, with comments, interventions, and protests due on or before March 11, 2005.<sup>21</sup> Entities that filed motions to intervene in this docket (ER04-445-008), are listed in Appendix F to this order.

18. The Commission published notice of the Order No. 2003-B LGIA compliance filing in the *Federal Register*, with comments, interventions, and protests due on or before March 11, 2005.<sup>22</sup> Entities that filed motions to intervene in each of the dockets (ER04-445-007, ER04-441-006, and ER04-443-006, ER04-435-009) are listed in Appendix G to this order.

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<sup>17</sup> 70 Fed. Reg. 3694 (2005).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 70 Fed. Reg. 5990 (2005).

<sup>21</sup> 70 Fed. Reg. 10,391 (2005).

<sup>22</sup> *Id.*

19. The Commission published notice of CAISO's April 5, 2005 letter responding to the Commission's deficiency letter in the *Federal Register*, with comments, interventions, and protests due on or before April 26, 2005.<sup>23</sup> No comments, interventions or protests were filed.

20. Calpine Corporation (Calpine) requested in its January 26, 2005 protest that the Commission address concerns raised by Calpine in its February 23, 2004, March 1, 2004, and May 17, 2004 protests regarding CAISO's Order Nos. 2003 and 2003-A filings. Given the similarity between CAISO's 2004 and 2005 compliance filings, the Transmission Agency of Northern California (TANC) also requested in its January 26, 2005 protest that the Commission consider the concerns expressed by TANC in its February 23, 2004 intervention, filed under Docket No. ER04-445-000, and its March 2, 2004 intervention, filed under Docket No. ER04-445-001. The Commission will consider the concerns raised by Calpine and TANC in their 2004 comments regarding CAISO's Order Nos. 2003 and 2003-A compliance filings.

### **III. Discussion**

#### **A. Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure<sup>24</sup>, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also grant the motions to intervene filed out of time because they will neither disrupt the proceeding nor prejudice the existing parties as required under Rule 214.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer or an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed in these proceedings because they have provided information that assisted us in our decision-making process.

#### **B. Applicable Standard of Review**

23. As directed by the Commission's July 30, 2004 Order and as previously stated in this order, CAISO filed its proposed variations from the *pro forma* LGIP and LGIA under the "consistent with or superior to" standard, but requests that the Commission evaluate the filing under the "independent entity variation" standard of review.

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<sup>23</sup> 70 Fed. Reg. 20,368 (2005).

<sup>24</sup> 18 C.F.R. § 385.213(a)(2)(2004).

24. In Order Nos. 2003, 2003-A, and 2003-B, the Commission held that we would allow flexibility for variations from the *pro forma* LGIP and LGIA in those regions where an independent transmission provider, *e.g.*, Regional Transmission Organization (RTO) or Independent System Operator (ISO), needs the flexibility to deviate from the standard LGIP and LGIA requirements to meet their regional needs.<sup>25</sup> The Commission stated that this treatment would be appropriate because RTOs and ISOs have different operating characteristics than non-independent entities and are less likely to discriminate than a transmission provider with affiliated generation.<sup>26</sup>

25. Under Order Nos. 2003, non-independent Transmission Providers are permitted to propose variations to the *pro forma* LGIP and LGIA if the variations are based on existing regional reliability requirements that are justified through established regional reliability standards.<sup>27</sup> Non-independent Transmission Providers are also permitted to seek variations from the *pro forma* LGIP and LGIA not made in response to recognized regional reliability requirements. Such requests for variation are FPA section 205 filings (rather than compliance filings) and will be approved only if the Transmission Provider demonstrates that its proposed variations are "consistent with or superior to" the terms of the *pro forma* LGIP and LGIA.<sup>28</sup>

26. The Commission previously determined that CAISO's governing board failed to meet the independence requirement of Order No. 888, and ordered CAISO to replace its governing board with a new board chosen through a method determined by the Commission.<sup>29</sup> On June 22, 2004, the Court of Appeals vacated and remanded the Commission's order, agreeing with CAISO that the Commission has no authority to force an ISO to change the makeup of its board.<sup>30</sup> However, the court found that the Commission has the authority to declare that an entity is not an ISO. The court added that if the Commission concludes that CAISO lacks the independence or other necessary attributes to constitute an ISO for purposes of Order No. 888, then the Commission need not approve CAISO as an ISO. The Commission is contemporaneously issuing an order in Docket No. EL05-114-000, CAISO's petition for declaratory order regarding its

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<sup>25</sup> See Order No. 2003 at P 26, 28, 32, 34, 92, 698-703, 822-24.

<sup>26</sup> Order No. 2003-A at P 41, 48-51.

<sup>27</sup> See Order No. 2003 at P 822-824.

<sup>28</sup> See *id.* at P 825; see also Order No. 2003-B at P 108.

<sup>29</sup> See *Order Concerning Governance of the California Independent System Operator*, 100 FERC ¶ 61,059 at P 1-2 (2002).

<sup>30</sup> *California Independent System Operator Corp. v. FERC and Duke Energy North America, LLC, et al.*, 372 F.3d 395, 396 (D.C. Cir. 2004).

governance. In that order, the Commission finds CAISO's Board to be independent. Accordingly, we will review CAISO's filings under the "independent entity variation" standard.

**C. Existing Interconnection Procedures**

27. Currently, Interconnection Customers submit applications for interconnection to CAISO, but the Interconnection Customer's interconnection is provided pursuant to both the CAISO OATT and TO Tariff. CAISO and the interconnecting PTO determine what studies, if any, are necessary. If the Interconnection Customer chooses neither to perform its own System Impact or Facilities Study nor to contract with a third party for same, these two studies and any additional needed studies, as determined by CAISO, are conducted by the interconnecting PTO. Upon completion of the Facilities Study, the Interconnection Customer may request an interconnection agreement from the interconnecting PTO. If the customer and interconnecting PTO are unable to agree on rates, terms, and conditions of the agreement, the interconnecting customer may request that the PTO file the unexecuted agreement with the Commission. However, neither CAISO nor the interconnecting PTO is obligated to energize the interconnection until the agreement is either executed or filed and becomes effective, and the Interconnection Customer has demonstrated compliance with CAISO OATT and TO Tariff interconnection requirements.

**D. Revised Interconnection Procedures**

28. When the Order Nos. 2003, 2003-A, and 2003-B compliance filings become effective, CAISO will continue to manage one study queue for the entire CAISO Controlled Grid, the PTOs will perform the System Impact or Facilities Studies if the Interconnection Customer does not perform or contract to perform the studies.

29. CAISO will also continue to coordinate the review of interconnection requests using standardized interconnection studies and agreements that will replace existing PTO-specific studies and agreements. CAISO will centralize PTO and Affected System study results, as further directed in this Order to provide a basis for the development of system-wide forward looking findings in support of current transmission system maintenance, as well as to augment planned investment in energy infrastructure development.

30. Below we address CAISO's proposed revisions to the LGIP and LGIA.

1. **LGIP section 4.1, Queue Position: Allocation of Cost Responsibility for Network Upgrades**

31. The Commission's *pro forma* LGIP section 4.1 provides that the Queue Position of each Interconnection Request will be used to determine the order of performing Interconnection Studies and cost responsibility for facilities necessary to accommodate an Interconnection Request. Section 4.1 also provides that the Transmission Provider may allocate the cost of common upgrades for clustered Interconnection Requests without regard to Queue Position.

**CAISO Proposal**

32. In its Order Nos. 2003/2003-A LGIP compliance filing, CAISO is proposing to revise section 4.1 to include factors other than Queue Position when determining an Interconnection Customer's cost responsibility. According to CAISO, this revision reinforces Order No. 2003's conclusions that system studies should consider factors other than those discussed in the LGIP, to determine cost responsibilities.

**Intervenor Comment**

33. In its protest, Constellation Generation Group, LLC (Constellation) opposes the CAISO section 4.1 modification, arguing that the Commission's determinations were made in the context of concerns about including, in the allocation of cost responsibilities, higher-queued projects that are unlikely to proceed to completion. Constellation believes this qualifying context is lost by CAISO's proposal to give itself blanket authority to consider factors other than Queue Position. Therefore, Constellation requests that the Commission reject CAISO's proposal.

**CAISO Answer**

34. In its Answer, CAISO responds that while Queue Position is the key factor when determining cost responsibility for Network Upgrades, there are other factors, such as unusual circumstances, that may affect the determination. As an example, CAISO states that the Commercial Operation Date of a higher queued project could be further out than that of a lower queued project; in addition, delays in the Commercial Operation Date of a project may potentially affect the determination of cost responsibility. CAISO states that its proposed revision appropriately allows for these unusual circumstances in the determination of cost responsibility.

### **Commission Determination**

35. We find that CAISO section 4.1 modification is ill-defined and lacks specificity as to what factors CAISO will consider and how it will weigh these factors when determining an Interconnection Customer's cost responsibility for Network Upgrades. We reject CAISO's proposed modification with leave for CAISO to refile this provision with greater specificity regarding what factors it will consider and how these additional factors will impact its decisions regarding cost allocation.

#### **2. LGIP section 5.2: New Participating TO**

36. The Commission's *pro forma* LGIP section 5.2 includes procedures for Interconnection Requests that are pending during any transfer of control of a transmission system from one Transmission Provider to a successor Transmission Provider. In relevant part, the first sentence of section 5.2 discusses deposits or payments that exceed the cost incurred to evaluate the request for interconnection. The second sentence provides for the disbursement of the difference between the Interconnection Customer's deposit or payment and the actual cost incurred by the Transmission Provider. The second sentence was written as follows, "Any difference between such net amount and the deposit or payment required by this LGIP shall be paid by or refunded *to the Interconnection, as appropriate.*" The Commission, in Order No. 2003-B LGIP added a word to the text which now states: "...to the Interconnection *Customer*, as appropriate", in order to correct the error and clarify which party would either pay or receive a refund

37. In its Order Nos. 2003/2003-A LGIP compliance filing, CAISO, proposing to delete the entire second sentence as ambiguous, states that the Commission's *pro forma* study agreements contain assignment provisions that address the issue. In its Order No. 2003-B compliance filing, CAISO did not incorporate the Commission's revision to the second sentence, because as CAISO explains, CAISO had proposed to eliminate the same sentence in its Order Nos. 2003/2003-A LGIP compliance filing.

### **Commission Determination**

38. We find, and agree with CAISO, that the second sentence in the Order No. 2003-A *pro forma* LGIP section 5.2 is ambiguous. However, the Order No. 2003-B revision corrects the ambiguity. In addition, the revision clarifies that it is the Interconnection Customer -- the party that made the payment -- that should pay or be reimbursed the difference between the payment and the actual cost incurred, and not the retired or successor Transmission Provider and we direct CAISO to revise its LGIP to be consistent with the Order No. 2003-B clarification.

3. **LGIP section 3.3, LGIA article 4 – Scope of Interconnection Service**

**Background: California Market vs. Order No. 888**

39. Service under an Order No. 888 *pro forma* OATT allows reservations of available transmission capacity to be made on a first-come, first-served basis. It allows for transmission users to schedule point-to-point transmission service, between specific points of receipt and delivery on the transmission provider's system, on a short or long-term basis, and on both a firm and non-firm basis. The Order No. 888 *pro forma* OATT service also allows network transmission users to acquire the transmission capacity necessary to fully integrate their load and generation resource requirements, thus enabling such users to procure transmission service in a manner comparable to a transmission provider's service to its native load. Service under these conditions does not provide for a market participant to schedule delivery of energy before purchasing the necessary transmission capacity.

40. In contrast, all energy transmitted under the CAISO OATT must be scheduled each day, and, on a day-to-day basis, is treated as a "new firm use" once the balanced schedule is accepted. That is, a generator is not required to procure transmission capacity in advance to support delivery of its power sales. CAISO explains that the California market has functioned under this paradigm since 1998, where without a clear capacity market or capacity obligation rules, market operations and service to native load have evolved somewhat differently than under the *pro forma* type of Order No. 888 services described above.

41. Order No. 2003 includes two forms of Interconnection Service: Energy Resource Interconnection Service (ERIS) and Network Resource Interconnection Service (NRIS).<sup>31</sup> Applying CAISO terminology from its current interconnection services to ERIS and NRIS Interconnection Services, an Interconnection Customer who requests ERIS would be required to fund Reliability Upgrades in order to connect to the CAISO Controlled Grid and use existing transmission system capacity, on an as-available basis. In contrast,

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<sup>31</sup> ERIS allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's System to be eligible to deliver the Generating Facility's output using the Transmission System's firm or non-firm available capacity. ERIS does not convey transmission service. NRIS allows the Interconnection Customer to integrate its Generating Facility with the Transmission Provider's System in a manner comparable to how the Transmission Provider integrates its Generating Facilities to serve native load customers, or in an RTO or ISO with market-based congestion management, in the same manner as all other Network Resources. NRIS does not convey transmission service.

applying the same CAISO terminology, an Interconnection Customer who requests NRIS would be required to fund Delivery Network Upgrades, in addition to Reliability Upgrades, and could then become a Network Resource and be fully integrated into the system. But, since Load Serving Entities (LSEs) in California do not acquire transmission capacity to fully integrate their load and generation resource requirements, there is no need in the current market to distinguish Energy Resource and Network Resource service requirements.

### **CAISO Proposal**

42. CAISO is proposing to define and establish a single Interconnection Service, wherein Interconnection Customers can elect varying levels of service, depending on the amount of transmission delivery Network Upgrades the Interconnection Customer is willing to sponsor. A base level of Interconnection Service would be offered to ensure reliable interconnection of the Large Generating Facility to the PTO's Transmission System<sup>32</sup> Interconnection Customers could also elect a higher quality of service by paying for certain Transmission Network Upgrades. Under this proposal, although Interconnection Service does not provide the Interconnection Customer with the ability to deliver the output of its facility to any particular customer without incurring congestion charges, deliverability of a plant's output to the CAISO-Controlled Grid could be assured for a specific set of system conditions by sponsoring additional Transmission Network Upgrades. CAISO proposes to offer this two-tiered Interconnection Service until broader Resource Adequacy Standards have been defined and implemented in California.

43. Consistent with CAISO's commitment to revisit and make necessary and conforming changes to its Market Redesign and Technology Upgrade when a formal Resource Adequacy policy is established, CAISO likewise commits to undertake a similar exercise to conform its Interconnection Service to the rules in place for the broader market.

### **Commission Determination**

44. We will accept the CAISO base-level Interconnection Service offered to ensure reliable interconnection, as well as the higher levels of service which would be available at the Interconnection Customer's option, depending on the amount of transmission delivery Network Upgrades the Interconnection Customer is willing to sponsor. We find that this approach will allow generators to mitigate congestion costs and supports a

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<sup>32</sup> This base level is delivery of power using transmission system capacity, on an as-available basis, up to the amount of megawatts identified in the applicable interconnection study that is feasible without Delivery Network Upgrades.

system network facilities expansion process in a reasonable manner. In addition, we agree with CAISO that when its resource adequacy policy is implemented, such that transmission capacity, generation resource requirements and load are fully integrated, the Interconnection Service requirements must be revised to comport with the rules in place for the broader market.

**4. CAISO Interconnection Studies: LGIP section 3.3.3 – Deliverability Assessment Test**

**CAISO Proposal**

45. To facilitate the identification of transmission facilities needed to ensure that the full output of a new Generating Facility may be transmitted to load under peak system conditions, CAISO proposes that a Deliverability Assessment be included in the system studies process. CAISO states that the Deliverability Assessment would be modeled after current PJM methodology (aggregate of generation that can be delivered to aggregate of load), and is similar to the Interconnection Study that is prescribed for Order Nos. 2003/2003-A Network Resources.<sup>33</sup> According to CAISO, the Deliverability Assessment Test would objectively identify the incremental impacts on the grid of a new Interconnection Customer's proposed Generating Facility. To initiate this new assessment, CAISO states that it would conduct a baseline study, to establish the deliverability of existing generation facilities.

**Intervenor Comments**

**Resource Adequacy Initiatives**

46. SoCal Edison explains that California is in the process of developing a Resource Adequacy policy, including capacity rules and obligations as part of the currently pending long-term CPUC Procurement Proceeding.<sup>34</sup> Accordingly, SoCal Edison argues for coordination of the development and implementation of a deliverability component with the Resource Adequacy Standards.<sup>35</sup>

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<sup>33</sup> See Order No. 2003 *pro forma* LGIP section 3.2.2.2, The Network Resource Interconnection Service Study.

<sup>34</sup> See California Public Utilities Commission, January 22, 2004 Interim Opinion (D.04-01-050) in its Generation Procurement Rulemaking (R.01-10-024). See also Public Utilities Commission of the State of California, Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning, Docket No. R. 04-04-003 (2004).

<sup>35</sup> See Out-of-Time Motion to Renew Limited Protest of Southern California  
(continued...)

### **Assessment Methodology**

47. Calpine objects to the lack of transparency in the Deliverability Assessment methodology. Calpine states that it is imperative that market participants be permitted to evaluate and provide input on the: (1) Network Resource deliverability studies standards; (2) parameters and assumptions for a benchmark, or base case deliverability study; and (3) methodology underlying specific interconnection studies. Calpine adds that it is especially interested in a stakeholder-wide discussion on how a generator's must offer obligation intersects with deliverability. Calpine advocates further discussion on how the base case will model legacy generating units, especially in the context of heat rate dispatch and Reliability Must Run (Condition 1 and 2 units).

### **Commission's February 2005 Deficiency Letter**

48. In the Commission's request for additional information (February 2005 Deficiency Letter), we directed CAISO to provide a description of the steps, resources, and assumptions that CAISO would use in developing a baseline to determine deliverability. We also directed CAISO to explain whether it intended to undertake continuous updates or have a static approach in developing the baseline study.

### **CAISO Response to February 2005 Deficiency Letter**

49. In its response to the February 2005 Deficiency Letter, CAISO states that in anticipation of the Commission's approval of CAISO's interconnection compliance filings, and in response to the California Commission's Resource Adequacy Proceeding, CAISO is currently performing a baseline deliverability study.<sup>36</sup> CAISO states that it requested data from existing CAISO Control Area Generating Units at the end of 2004, and began the study at the beginning of 2005. CAISO further states that it expects preliminary results to be available for stakeholder review in May, 2005. Depending upon these preliminary results and resolution of policy issues, CAISO expects study completion by mid-2005.

50. In summary, CAISO explains that the complete deliverability proposal consists of three assessments: (1) deliverability of generation to the aggregate of load; (2) deliverability of imports; and (3) deliverability to load within transmission constrained

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Edison Company, Exhibit A at 12, Feb. 3, 2005.

<sup>36</sup> The baseline deliverability study is a comprehensive test to determine the deliverability of power from each existing Generating Unit in the CAISO Control Area in order to ensure that transmission capacity is available for delivery of power from each Generating Unit to the aggregate of load.

areas. CAISO states that a methodology for allocating limited deliverability capability among existing Generating Units in a Generation pocket has not yet been approved by the California Commission. Nonetheless, CAISO proposes, pursuant to its Resource Adequacy methodology, that once a Generating Unit is certified as deliverable, deliverability of power from that Generating Unit would be maintained by the annual baseline analysis to be performed by CAISO and the transmission expansion planning process.

### **Commission Determination**

51. We accept the CAISO's proposed Deliverability Assessment. The results of the Deliverability Assessment provide the Interconnection Customer with useful information as to the deliverability of its Large Generating Facility output without Network Upgrades. In addition, the Deliverability Assessment informs the Interconnection Customer as to the Network Upgrades required to support 100 percent deliverability to the grid under peak load conditions. Although under the current California market, new generation may interconnect to the CAISO Controlled Grid after satisfying any Reliability Network Upgrade requirements and is not required to procure transmission capacity to schedule and deliver energy over the CAISO Controlled Grid, the Deliverability Assessment provides useful information as to the options available to the generator to improve its deliverability, and thus to mitigate congestion costs.

52. Calpine objects to the lack of transparency in the Deliverability Assessment methodology and requests that Market Participants be permitted to evaluate and provide input into the study standards, parameters and assumptions. We note that CAISO, in response to the Commission's deficiency letter, stated that the preliminary results of the baseline deliverability study were to be made available for stakeholder review in May of 2005. We expect that CAISO, as an independent entity, will provide ample opportunity for all stakeholders to provide input into the development of the baseline study as well as any future deliverability studies. We further expect CAISO, as an independent entity, to conduct the Deliverability Assessment in a transparent and non-discriminatory manner. Therefore we find that no modifications to the proposed tariff language are necessary.

### **5. LGIP sections 3 - 8: Scope of Interconnection Studies, System-Wide or by PTO Service Territory**

#### **CAISO Proposal: Procedures and Assignments**

53. CAISO proposes that interconnection studies necessary to evaluate Interconnection Requests continue to be conducted by the PTOs, pursuant to CAISO's revised study procedures that would add a Scoping Meeting and Interconnection Feasibility Study, pursuant to Order Nos. 2003 and 2003-A, in addition to the system impact and facilities studies that are currently offered in the California market. CAISO

states that use of the PTOs to conduct the studies is reasonable because CAISO does not have the requisite staff resources to conduct in isolation Interconnection Studies for the entire CAISO Controlled Grid. CAISO adds that, because of their historical and technical knowledge of their respective systems, the PTOs are well suited for the task.<sup>37</sup>

54. Acknowledging the need for independent review and oversight, CAISO proposes to modify the Commission's prescribed study timeline by adding 76 days to the study process to allow for CAISO review and comment on studies which will be conducted primarily by the PTOs.<sup>38</sup>

### **Commission Determination**

55. CAISO has proposed, consistent with the Commission's interconnection policy, to standardize the system study process to provide a more uniform approach to studies for the CAISO Controlled Grid. We note, however, that although the proposed studies would be standardized, they would still be conducted by the individual PTO looking only at its own service territory. With each affected PTO conducting system studies, a generator could be required to coordinate and pay for studies conducted by all three PTOs instead of having one set of studies that would examine the effect of the interconnection and additional generation on the CAISO grid as a whole. A centralized study process ensures that the studies are coordinated to assess the impact of new generation beyond a single service territory, with the intent of maintaining or improving reliability levels and generally improving electric service. If, as proposed, the interconnecting PTO continues to conduct the studies, there is a risk that separate transmission investments will work at cross-purposes and possibly even hurt reliability. Furthermore, allowing the PTOs to conduct the studies undermines the very independence on which the Commission relies when it approves an ISO's deviations from Order No. 2003 under the more flexible independent entity variation standard.<sup>39</sup>

56. We are also concerned that from a broader transmission system planning and expansion perspective, a decentralized approach for conducting system studies may not be the most efficient or forward-looking method in the long run. We direct CAISO and the PTOs to adopt a centralized study process and conform their procedures so that an interconnecting generator would not be unduly burdened by coordinating multiple studies

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<sup>37</sup> See CAISO January 5, 2005 LGIP transmittal letter, section F, at 24.

<sup>38</sup> CAISO proposes to add one additional day to process each request, 15 days for CAISO review of Feasibility Study, and 30 days each, for CAISO review of System Impact and Facilities Studies.

<sup>39</sup> See Order No. 2003 at P 827.

with multiple PTOs, and the study findings include the overall effect of the interconnection on the Grid as a whole, where appropriate.

57. Therefore, CAISO must adopt a centralized study process, in which CAISO itself conducts the studies, and submit the necessary tariff revisions in the compliance filing submitted in response to this order.

**6. Scope of Interconnection Studies (*continued*): LGIP sections 6, 7, and 8 – Proposed Informational Assessment.**

**CAISO Proposal**

58. CAISO proposes that, where reasonably practicable, the Interconnection Feasibility and System Impact Studies include an informational assessment. The informational assessment, to be completed by the interconnecting PTO, would include a power flow analysis of an Affected PTO's<sup>40</sup> transmission facilities as well as short circuit duty calculations at boundaries with Affected PTOs.

**Intervenor Comment: Affected PTOs**

59. SoCal Edison argues that the requirement of this kind of informational assessment is unjust and unreasonable, and an inefficient use of resources. In addition, SoCal Edison is concerned that the assessment would lengthen the duration of the interconnection process, introduce unwarranted liability on the PTO performing such analyses, and impose additional and uncompensated costs on such Affected PTOs.

60. SoCal Edison agrees with CAISO that, through long experience, each PTO is the technical expert with regard to its own system. However, SoCal Edison explains that in determining the potential impact of an Interconnection Request to the transmission system, a PTO develops a "worst-case" model of system conditions. If an Interconnection Customer connects to a transmission line that connects two PTOs, the worst-case condition for each of the PTOs is different and cannot be modeled at the same time. Understanding the impacts would require the development of two different cases to stress each PTO's system. However, one PTO cannot develop a case that accurately models and stresses another PTO's system without extensive support from the other PTO to be modeled.

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<sup>40</sup> An Affected PTO is a non-interconnecting PTO on whose system an interconnection might require upgrades.

61. Additionally, SoCal Edison states that the PTOs each have queued Interconnection Requests for the portions of their systems covered by their wholesale distribution tariffs, which are outside the purview of Western Electricity Coordinating Council (WECC), CAISO, or other PTOs. Thus, to implement the CAISO proposal, very close coordination that does not currently occur would be required among the PTOs to perform an accurate and effective study. Any such coordination would result in costs being incurred by the neighboring PTO, including costs associated with guiding the PTO actually performing the informational assessment so that the PTO is able to properly model and stress its neighbor's transmission facilities. However, while the PTO performing the studies can collect its costs under the Study Agreements, SoCal Edison is concerned that neither current practice nor CAISO's proposal contains any mechanism to compensate a neighboring PTO for such costs.

62. SoCal Edison recommends that where the Interconnection Request is at or near the boundary of another PTO service territory, the potentially impacted PTO be invited to the Scoping Meeting. Based on its historical and technical knowledge, and the location of the interconnection, each PTO could then make a determination of whether to proceed with studies in parallel to determine the impacts to the respective systems.

### **CAISO Answer**

63. CAISO explains that a significant responsibility it bears is to ensure that Interconnection Studies analyze the system-wide impact of the interconnection and are not limited to just one PTO's portion of it. CAISO believes that the LGIP manages this broader system-wide analysis when the interconnecting PTO performs an informational assessment of an Affected PTO's service territory. CAISO claims that these assessment results would enhance service provided to those Interconnection Customers whose projects are located near the boundaries between each PTO's area of the CAISO Controlled Grid.

64. CAISO disagrees with SoCal Edison's contention that the coordinated assessment is an unreasonable burden on PTOs. Where adverse impacts are unlikely to occur, CAISO believes the informational assessment would be an appropriate check on the potential grid impact to an Affected PTO, and could easily be performed as part of an impact study. Moreover, such an assessment would not substitute for a necessary Interconnection Feasibility or System Impact Study in cases where adverse impacts are expected on the Affected PTO's system. Rather, the assessment would be performed only to the extent necessary and reasonably practicable, to avoid the unnecessary time and cost to the Interconnecting Customer of sponsoring two separate studies.

65. CAISO states that, as it proposes in LGIP sections 6 and 7, it would determine the need for an informational assessment for specific projects, or direct the performance of separate studies by individual PTOs for other projects, thus ensuring the appropriate analysis of the entire CAISO Controlled Grid. If, for example, impacts on a neighboring PTO are unlikely but CAISO wanted to have additional assurance of this, CAISO could direct only one PTO to perform a study and request the neighboring PTO to provide input into that study. In most instances, CAISO states that its ability to direct the interconnecting PTO to perform the informational assessment should reduce the contractual burden on the Affected PTO and Interconnection Customer.

### **Commission Determination**

66. We agree with CAISO, particularly when a Generating Facility proposes to locate near the seam between PTOs, that Interconnection Studies should analyze the system-wide impact of the interconnection and not be limited to just one PTO's service area. However, because, as discussed above, we find that a centralized approach to interconnection studies is necessary, we also find here that the informational assessment component of the interconnection studies should be conducted on a comprehensive and centralized basis. A centralized approach, in tandem with a long-term plan for energy infrastructure development would be more efficient, ensure reliability in study determinations, and could yield more beneficial results to market participants. Therefore, we reject the proposal that would allow an interconnecting PTO to perform studies, even for informational purposes, of Affected Systems.

67. In the interim, until a centralized approach is developed, we find SoCal Edison's alternative to be acceptable. Where a third party could be affected by the Interconnection Request because it is at or near the boundary of an Affected PTO(s) service territory or other Affected System(s), or could otherwise impact a third party system, the potentially affected PTO(s) or other Affected System(s) must be invited to the Scoping Meeting. In this transition toward a centralized approach, the Affected entity(ies) could then make a determination of whether to proceed with studies in parallel, to determine the impacts to its respective system(s). We direct CAISO to revise its studies accordingly.

## 7. Scope of Interconnection Studies (continued)

### Intervenor Comment: Affected Systems

68. Metropolitan Water District of Southern California (Metropolitan) states that although certain LGIP sections have provisions to include review, comment, and study results of other PTOs' portions of the CAISO Controlled Grid, they omit Affected Systems<sup>41</sup> from such assessments and reviews as part of the coordination efforts.<sup>42</sup> Metropolitan notes that CAISO is directly interconnected with many systems, not just PTOs, and those provisions should be modified to include Affected System owners when the PTO and CAISO determine the scope of studies, or request review and comments. As an example, Metropolitan notes that the California Oregon Transmission Project (COTP),<sup>43</sup> though not part of the CAISO Controlled Grid, combines with PG&E facilities to form the California Oregon Interconnection transmission path.

### Commission Determination

69. We recognize, especially with shared-use facilities, the significant input that should be provided by an Affected System Operator in the interconnection study process. We find that according to proposed LGIP section 3.7, CAISO would coordinate the conduct of required studies, to determine the impact of the Interconnection Request on Affected Systems, and the PTO would include results from the Affected System determinations, if possible, in the applicable study. Therefore, under the proposed interconnection study procedures, Affected System Operators would have the opportunity to provide information regarding the impact of an interconnection on their systems. In addition, in LGIP section 3.4.4, CAISO proposes that an Interconnection Customer sign and pay for separate study agreements with the Affected System owner. This could be an

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<sup>41</sup> Order No. 2003's *pro forma* LGIP and LGIA define an Affected System as an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection. Adapted to CAISO's proposed system studies, the Affected PTO would be another PTO within the CAISO-Controlled Grid, in addition to the Interconnecting PTO, that could be affected by the proposed interconnection.

<sup>42</sup> See LGIP sections 6.2, 6.3, 7.3, 7.4, 8.2, (discussing Scope & Procedures of Interconnection Feasibility Study, System Impact Study (SIS) and Facilities Study), 7.1 (SIS Agreement), and 8.4 (Meeting with PTO & CAISO).

<sup>43</sup> COTP is a 500 kV transmission project extending from the California-Oregon border to near Pacific Gas and Electric Company's Tesla Substation in central California.

additional opportunity for an Affected System to furnish necessary technical information about its affected system as it relates to the interconnection request. We find LGIP sections 3.4.4 and 3.7 to be acceptable terms for including Affected Systems in the study process.

70. However, we continue to emphasize that studies must be centralized where practicable to evaluate interconnection requests from a system-wide perspective. A single entity should coordinate these actions to ensure a least cost outcome that maintains or improves existing reliability levels and other study determinations.

## **8. LGIA Article 1: Definitions**

### **Proposed Revisions to Definitions**

71. CAISO proposes to delete the Order Nos. 2003 and 2003-A Distribution System definition since the CAISO OATT Master Definitions Supplement, as previously approved by the Commission, defines the Distribution System as the distribution assets of an IOU or Local Publicly Owned Electric Utility.<sup>44</sup>

72. CAISO also proposes to replace the Order Nos. 2003 and 2003-A definition for Distribution Upgrade,<sup>45</sup> with the following definition: “Distribution Upgrades are the additions, modifications, and upgrades to the Participating TO’s electric system that are not part of the ISO Controlled Grid. Distribution Upgrades do not include Interconnection Facilities.”

73. CAISO explains that the insertion of “Participating TO” in place of “Transmission Provider’s Distribution System” is intended to adapt the definition to the California market. CAISO further explains that the language deleted from its proposed definition beginning with “...at or beyond the Point of Interconnection...” preserves the substance of the Order Nos. 2003 and 2003-A definition while deferring issues that might be raised by the deleted language to the substantive LGIP provisions addressing responsibilities for Distribution Upgrades.<sup>46</sup>

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<sup>44</sup> See CAISO OATT, Appendix A, Master Definitions Supplement.

<sup>45</sup> Order No. 2003 states, “Distribution Upgrade - shall mean the additions, modifications, and upgrades to the Transmission Provider’s Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to affect Interconnection Customer’s wholesale sale of electricity in interstate commerce.”

<sup>46</sup> See CAISO’s Attachment A, Matrix of Changes at 7-8.

74. CAISO proposes to revise the Order Nos. 2003 and 2003-A definition of an Affected System by adding that the portion of the PTOs' electric systems that are not part of the CAISO Controlled Grid are Affected Systems. CAISO also refers to a non-interconnecting PTO affected by an interconnection as an Affected PTO.

75. Metropolitan states that further clarification of the definition of Affected System Operator is needed since the owner could contract with another entity to operate its system.<sup>47</sup> Metropolitan requests that CAISO and the PTO first coordinate system impact studies with the Affected System Owner. The Affected System Owner would then designate whether it or its facility operator would represent its interests in the LGIP.

76. In the Order Nos. 2003/2003-A LGIP compliance filing, CAISO proposes to remove the definition of Force Majeure from the *pro forma* LGIP, since the term is not used there. In the Order Nos. 2003/2003-A LGIA compliance filing, the Filing Parties' proposed the same revision to the definition for Force Majeure that was directed by the Commission, in Order No. 2003-B, i.e., change "caused" to "cause".

### **Commission Determination**

77. We find the currently effective CAISO OATT definition of Distribution System to be consistent with the Order No. 2003 definition. We further find that CAISO's definitions for Distribution Upgrades and Affected System are non-substantive revisions of the Order No. 2003 definitions, adapted to fit current CAISO OATT procedures and market practices, and are acceptable.

78. The Commission denies Metropolitan's request. We find that the Interconnection Customer, in the first instance, should coordinate with the Affected System Operator. The Affected System Operator would be expected to decide whether to involve the Affected System Owner, according to the terms of its agreement with that facility's owner. To require the clarification Metropolitan requests is to allow an agreement between the Interconnection Customer and Transmission Provider to supersede that of the Affected System Operator and the facilities' owner.

79. We will accept the Filing Parties' proposed change to the *pro forma* LGIA definition of Force Majeure as consistent with the intent of the definition. In addition, contrary to CAISO's reason for removing of the definition, the effect of a Force Majeure event, at the very least encompasses services provided under the Commission's *pro*

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<sup>47</sup> As an example, Metropolitan cites the COTP, owned by TANC and others, but operated by Western Area Power Administration of PG&E.

*forma* LGIP.<sup>48</sup> CAISO does not include any other reason for removing the definition from its revised *pro forma* LGIP. Since the term applies to the LGIP, we direct CAISO to restore the definition to the LGIP.

## 9. LGIA article 11.4: Transmission Credits

### CAISO Proposal: Description

#### Refund Credits and Financial Transmission Rights

80. CAISO proposes, consistent with Order Nos. 2003 and 2003-A, to continue its current policy which provides that an Interconnection Customer in the California market is currently required to pay for exclusive use Interconnection Facilities constructed to physically interconnect the generation facility to the Point of Interconnection with the Grid.

81. With respect to upgrades beyond the Point of Interconnection to the Grid, CAISO proposes that Interconnection Customers who request the basic Interconnection Service<sup>49</sup> would initially fund Network Upgrades for reliability purposes, and as reimbursement, would have a choice to receive either cash refunds over a five-year period (dollar-for-dollar reimbursement for the costs of the upgrades plus interest), or alternatively to receive applicable financial rights (Firm Transmission Rights (FTRs) at present, or Congestion Revenue Rights (CRRs), if adopted in the future), as compensation. CAISO adds that the election of FTRs would be as defined in and available under the CAISO OATT at the time of the Interconnection Customer's election.

82. Similarly, CAISO proposes that the Interconnection Customer, where seeking a higher level of interconnection, would initially fund required Network Upgrade(s) for reliability, but would also fund Network Upgrades beyond those needed to meet reliability requirements, up to the requested level of generation output, and elect either to be refunded or to receive the applicable financial rights.

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<sup>48</sup> That is, the Commission's *pro forma* LGIA article 16 sets forth the conditions and procedures for declaring a Force Majeure event that excuses the Party declaring the Force Majeure event from performing its obligation under the LGIP and LGIA during the event.

<sup>49</sup> As previously discussed, CAISO's proposed basic interconnection service would provide for delivery of power using transmission system capacity, on an as-available basis, up to the amount of megawatts identified in the applicable interconnection study that is feasible without Network Upgrades.

### **Transition to Financial Rights Only**

83. CAISO believes that by linking the crediting for Network Upgrades solely to the value of transmission rights that are created, Interconnection Customers will be more sensitive to Network Upgrade costs, to the impact on the grid and on ratepayers, to the benefits of associated rights, and thus more sensitive about where to locate Generation Facilities on the system. CAISO adds that, as a result, compensating Interconnection Customers with FTRs or CRRs for Network Upgrades provides a much better price signal of the potential impact on the system of their interconnections. In the interim, until the redesign of its markets, CAISO states that it is not able to offer FTRs with measurable value within Congestion Zones. CAISO believes that its proposal to offer a choice over a five-year period between cash refunds or applicable financial rights is consistent with the Commission's crediting policy, and may reduce barriers to building new Generation Facilities. CAISO adds that it will revisit this policy once its market redesign is implemented and viable financial rights are available.

### **Parties Request Guidance on Reimbursement Options**

84. CAISO and the PTOs failed to reach consensus on reimbursement options and seek guidance from the Commission to resolve the dispute between their alternative LGIA article 11.4 proposals.

85. In addition to generally offering a choice between FTRs and cash refunds, CAISO, PG&E, and SDG&E propose that where a Network Upgrade is ineligible for cash refunds, pursuant to the Economic Test<sup>50</sup> as described below, the CAISO Transmission Crediting Policy would offer FTRs, if they are available, to Interconnection Customers. If accepted, this provision would be revised if and when CAISO implements its new congestion management model. CAISO, PG&E, and SDG&E also propose to offer the Interconnection Customer an opportunity, no later than 30 days prior to commercial operation, to make a one-time election to receive FTRs in lieu of refund compensation.

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<sup>50</sup> Economic Test: Under its proposed LGIP section 3.4.2, CAISO would review the economic viability of any Network Upgrade project that exceeds the lesser of \$20 million or \$200,000 per MW of installed capacity, to determine whether the overall benefits of the Network Upgrade meet or exceed their costs. The Interconnection Customer would receive cash refunding up to the level of benefits identified and would be required to accept only FTRs, if and where available, as reimbursement for any costs that exceed the benefits that were identified for the Network Upgrades.

86. In contrast, SoCal Edison proposes that the CAISO Transmission Crediting Policy would offer only financial transmission rights, subject to CAISO's Economic Test. SoCal Edison opposes mixing FTRs with cash refunds, which it argues will result in an environment where Interconnection Customers elect FTRs, when favorable to their financial interests for the most valuable projects, and cash refunds for other projects. SoCal Edison maintains that this will result in the PTOs and their customers paying cash refunds for projects with little congestion value while being unable to share in the benefits of valuable projects. SoCal Edison also argues that CAISO's FTRs do not currently provide locational price signals because of their zonal nature, are not long-term, and are expected to be eliminated in the fall of 2005, when the new CAISO market design is scheduled for implementation. SoCal Edison concludes that the Commission has not approved such a hybrid approach in the past and should not do so now.

### **Intervenor Comments**

87. TANC objects to CAISO's proposal to transition to reimbursement through FTRs, arguing that it is unclear as to whether there will be a sufficient number of FTRs available for the relevant portion of the transmission system. TANC further objects that the proposal does not specify any standards or guidelines to implement the alternative approach.

88. Calpine requests that Interconnection Customers be given a grace period during which they may convert all or a portion of remaining refunds into CRRs or the equivalent, upon implementation of the comprehensive market redesign.

### **CAISO Answer**

89. CAISO reiterates its expectation that its pricing policy will mature so that, under a locational marginal pricing (LMP) model, nodal prices will provide the best available locational signal for new interconnections, and financial congestion rights will provide the appropriate value for reimbursement of Network Upgrades.

### **Commission Determination**

90. We conditionally accept CAISO's proposal. With respect to upgrades beyond the Point of Interconnection to the Grid, we accept the CAISO proposal to provide the Interconnection Customer with a choice to receive either cash refunds or applicable financial rights as consistent with the Commission's refund crediting policy for network upgrades. However, in the compliance filing, CAISO must address the above protests concerning the process for determining the availability of FTRs and how they will be

distributed. Also, because this order rejects CAISO's proposed Economic Test,<sup>51</sup> we reject without prejudice the proposal to provide only FTRs for Network Upgrades that exceed \$20 million or \$200,000 per MW of installed capacity.

**10. LGIA article 11.4.1: Refund of Amounts Advanced for Network Upgrades  
LGIA article 11.4.2: Special Provisions for Affected Systems  
Order Nos. 2003-A and 2003-B LGIA articles 11.4.1 and 11.4.2**

91. The Commission's *pro forma* LGIA article 11.4.1, Repayment of Amounts Advanced for Network Upgrades, provides the terms under which Network Upgrades which are financed by an Interconnection Customer will be reimbursed by the Transmission Provider and Affected System Operator. The Commission's *pro forma* LGIA article 11.4.2, Special Provisions for Affected Systems, provides that if the Transmission Provider's LGIA does not include repayment arrangements for the Interconnection Customer and an Affected System, the Interconnection Customer and Affected System Operator will enter into an agreement that provides such repayment arrangements.

**The Filing Parties Proposal for LGIA articles 11.4.1 and 11.4.2**

92. The Filing Parties, in the revised LGIA, propose to keep payment arrangements between the Interconnection Customer and any Affected Systems separate from payment arrangements between the Interconnection Customer and the Transmission Provider. The Filing Parties propose to keep these reimbursement arrangements separated by having for the Interconnection Customer execute an agreement with the Affected System Operator for Network Upgrades on Affected Systems, or on the electrical systems of non-interconnecting PTOs affected by the interconnection. The Filing Parties add that the interconnecting PTO will not be responsible for refunds for facilities that are not part of the PTO's Transmission System.

**Intervenor Comment: Distribution Upgrades and Affected Systems**

93. Constellation objects to the proposed change to LGIA Network Upgrade reimbursement provision (article 11.4.1) as a reimbursement limitation on Network Upgrades because reimbursement would exclude Network Upgrades outside of the

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<sup>51</sup> *See infra* section XIV.

CAISO-Controlled Grid. Constellation also objects to the exclusion of Distribution Upgrades from reimbursement as an incorrect classification of upgrades to facilities that are not operationally controlled by CAISO. Constellation concludes that this would compromise the proposed crediting provision.

94. Constellation argues that Distribution Upgrades, as defined by CAISO, are modifications to that part of a PTO's electric system that is not part of the CAISO Controlled Grid. Constellation further argues that since PTOs could, as the non-interconnecting PTO affected by an interconnection, be classified by CAISO's proposed change in definitions as Affected Systems, then pursuant to CAISO's proposed definitions, upgrades that are not part of the CAISO Controlled Grid would not be eligible for reimbursement.

### **Commission Determination**

95. We disagree with the reasoning in Constellation's objection to the definitions because under the Commission's interconnection pricing policy, Network and Distribution Upgrades do not have the same crediting provisions. In Order No. 2003, the Commission clarified that in instances where the Generating Facility interconnects with a Transmission Provider's jurisdictional distribution facility and upgrades on the Distribution System are necessary to accommodate a jurisdictional interconnection, the cost of such upgrades must be directly assigned to the Interconnection Customer. This is because an upgrade to the Distribution System generally does not benefit all Transmission Customers. Distribution facilities typically deliver electricity to particular localities and do not serve a bulk delivery service for the entire system as is the case for transmission facilities with Network Upgrades. Accordingly, it is not appropriate that all transmission customers share the cost of Distribution Upgrades.<sup>52</sup> Order Nos. 2003-A and 2003-B affirm that all Distribution Upgrades are to be directly assigned, i.e., paid for by the Interconnection Customer.

96. As proposed by CAISO, a Network Upgrade is a type of modification for interconnection to the CAISO-Controlled Grid. In contrast, a Distribution Upgrade is a type of modification to the portion of the PTO's system which is not part of the CAISO-Controlled Grid and over which the PTO retains operational control. Pursuant to the Commission and CAISO study procedures and reimbursement obligations, if systems study results determined that Network and or Distribution Upgrades were necessary to accommodate a particular interconnection request, only the Network Upgrades would be reimbursable. Under the Filing Parties' proposed LGIA, reimbursement of Network

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<sup>52</sup> See Order No. 2003 at P 697.

Upgrades that are part of the CAISO Controlled Grid would be accommodated under article 11.4.1. Reimbursement of Network Upgrades that are not part of the CAISO Controlled Grid, i.e., an upgrade to an Affected System, would be accommodated under article 11.4.2. This is also consistent with Order Nos. 2003-A and 2003-B reimbursement provisions for Network Upgrades funded by an Interconnection Customer, which provide that funding and repayment arrangements between an Interconnection Customer and an Affected System can either be accommodated under the customer-specific LGIA arrangements for interconnection service or can be separately provided in an agreement between the Interconnection Customer and the Affected System. We therefore find that the CAISO proposed revisions to LGIA articles 11.4.1 and 11.4.2, as discussed above, are acceptable.

### **CAISO Proposal: Repayment of Network Upgrades and Termination of LGIA**

97. The Filing Parties, in LGIA article 11.4.1, Repayment of Network Upgrades, propose that if the LGIA terminates within five years from the Commercial Operation Date, the PTO's obligation to pay refunds to the Interconnection Customer, or to a successor Interconnection Customer which makes use of the Network Upgrades, shall cease as of the date of LGIA termination. The Filing Parties believe that the obligation not to reimburse a generator that makes use of previously financed Network Upgrades is superior to the Commission's change in ownership reimbursement policy, as further discussed below.

98. First, the Filing Parties state that the obligation not to reimburse a generator if the LGIA terminates within five years of the Commercial Operation Date provides business certainty by avoiding an unclear obligation to monitor a possible successor to the original Interconnection Customer. The Filing Parties add that the obligation not to monitor a possible successor to the original Interconnection Customer eliminates the need to perform subsequent system impact analyses that consider the transmission system as it existed at some previous time to determine whether subsequent generators benefit from such upgrades. Further, the Filing Parties state that the obligation to repay would be costly to ratepayers who would, in the end, be required to pay interest for the period of time that the Network Upgrades were in service but unnecessary.

### **Commission Determination**

99. Order No. 2003-A provides that an Interconnection Customer must be reimbursed for the cost of Network Upgrades needed to interconnect the Generating Facility. The Interconnection Customer may assign such repayment rights to any person. If a Generating Facility fails to achieve commercial operation and another generator later is constructed that makes use of the Network Upgrades, then at that time the original Interconnection Customer shall be reimbursed for the amounts advanced for the Network

Upgrades.<sup>53</sup> If a Generating Facility achieves commercial operation, but later ceases commercial operation, the obligation to reimburse the generator exists as long as the LGIA remains in full force and effect.<sup>54</sup> The Filing Parties proposal is inconsistent with Order No. 2003-A, and the Filing Parties have not convinced us that a different approach is warranted here.

100. Order No. 2003-B stated that when a Generation Facility does not achieve commercial operation, the responsibility for keeping track of the entity that is potentially entitled to receive any transmission credits should reside with the Interconnection Customer, or with any successor entity that may later construct a Generation Facility that makes use of the Network Upgrades.<sup>55</sup> We find that this additional clarification renders moot CAISO's concerns with regard to burdensome responsibilities in maintaining business certainty.

101. Furthermore, consistent with the Commission's interconnection policy, payment for any system impact analyses required in order to determine whether subsequent generators benefit from such upgrades, would, as part of system studies, be the responsibility of the Interconnection Customer or the successor entity. Lastly, with regard to the accrual of interest on upfront payments in cases where the Generation Facility fails to achieve commercial operation, the Commission, in Order No. 2003-B, clarified that interest continues to accrue provided the Interconnection Agreement remains in effect.<sup>56</sup> Interest does not accrue after an Interconnection Agreement has been terminated by either Party or during any period in which no Interconnection Agreement is in effect. Therefore, we direct the Filing Parties to revise the repayment obligation in LGIA article 11.4.1, as discussed above, to be consistent with Order Nos. 2003-A and 2003-B.

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<sup>53</sup> *Pro forma* LGA article 11.4.1.

<sup>54</sup> *See* Order No. 2003-A at P 619; Order No. 2003-B at P 14.

<sup>55</sup> Order No. 2003-B at P 45.

<sup>56</sup> *Id.* at P 46.

**11. LGIP section 3.4.2 and LGIA article 11.4.1: Economic Test**  
**CAISO Proposal**

102. Under its proposed LGIP section 3.4.2, CAISO would review the economic viability of any Network Upgrade project that exceeds the lesser of \$20 million or \$200,000 per MW of installed capacity, to determine whether the overall benefits of the Network Upgrade meet or exceed their costs.<sup>57</sup> The amount of those benefits would be used as a de facto cap on the level of refund credits offered to the Interconnection Customer for funding Network Upgrades. The portion of the Network Upgrades funded by the Interconnection Customer that exceeds the benefits cap would be refunded with FTRs, if available. While not based on any specific analysis, CAISO claims the threshold generally represents an amount likely to have a measurable impact on ratepayer costs, from a system-wide perspective.

103. SoCal Edison states that the Economic Test will help address concerns that providing refund credits to the Interconnection Customer may result in “uneconomic” transmission upgrades. CAISO asserts that some deterrent is needed to limit generators from non-economic expansion of the grid. CAISO claims that its proposed cost-benefit test would guard against overly expensive projects. CAISO notes that it has been developing an economic methodology for transmission projects over the last several years and, in cooperation with CPUC, hopes to finalize the implementation details. In the meantime, CAISO requests that the Commission acknowledge this process and effort and permit CAISO to apply its proposed Economic Test on a case-by-case basis, where CAISO would have to demonstrate that such limits are reasonable and justified.

104. CAISO concedes that the issue of how to justify or determine the economic benefits of transmission projects is highly contentious. As an evolving area, CAISO requests that the Commission remain flexible and not require that the details of such a test be specified in the CAISO OATT. CAISO argues that the test is appropriate because it makes Interconnection Customers more sensitive to the costs of Network Upgrades, and avoids transmission ratepayers having to pay for large, uneconomic transmission additions.

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<sup>57</sup> Currently, Network Upgrade projects which cost more than \$20 million must be approved by the CAISO Board.

### **Intervenor Comments**

105. TANC, Southern Cities,<sup>58</sup> and Calpine oppose the Economic Test on the grounds that it fails to provide a rate methodology, and because it will distort price signals and hamper grid planning decisions. Calpine adds that the Economic Test violates the Commission's directive to eliminate case-specific determinations of the benefits of a particular transmission network upgrade. Calpine is also concerned that CAISO lacks the expertise or access to data that an accurate cost-benefit analysis would entail because it would ignore non-transmission benefits. Should the Commission accept CAISO's proposed Economic Test, these parties seek clarification of the precise considerations that would be included in CAISO's determination of economic viability. Calpine asks the Commission to reject the Economic Test because CAISO did not specify or detail the assumptions, procedures, software, and data necessary to perform the Economic Test and that such lack of transparency is unacceptable and may lead to excessive subjectivity since it cannot be independently verified or duplicated.

106. Constellation argues that the Filing Parties' premise in support of the reasonableness of the Economic Test is flawed because the test will not send efficient siting signals. Constellation reasons that the earliest an Interconnection Customer would be provided a cost estimate and receive information regarding the cost consequences of its initial siting choice is after the system study process is completed. Consequently, when the generator learns the cost of its interconnection upgrades, sites have already been determined and development is well underway. Constellation further argues that CAISO's assumption that the site that is most efficient and provides the greatest system benefit is the site with the lowest upgrade costs is ill-premised and would, through the limitation of credits, provide a disincentive to locate generation where it is most needed.

### **CAISO Answer**

107. CAISO states that it currently does not have any locational or market driven price incentives to which developers would need to be sensitive in making siting decisions. Until such time as it can implement LMP, CAISO supports the use of the Economic Test as essential to review cost justifications for large Network Upgrades. Further, CAISO has developed and refined the specific methodology for the Economic Test over the last two years with extensive stakeholder input and it has already been used in the assessment

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<sup>58</sup> The cities of Anaheim, Azusa, Banning, Colton and Riverside, California filed a joint protest. Together, the Commission will refer to these cities as Southern Cities.

of a major transmission expansion project. CAISO adds that if, for example, the construction of a new Generating Facility would eliminate the need for a planned reliability project, the associated cost savings of deferring that reliability project would be considered in the development of the cost-benefit test.

### **Commission's February 2005 Deficiency Letter**

108. In the February 2005 Deficiency Letter, the Commission requested that CAISO explain the criteria for evaluating benefits in determining whether a Network Upgrade or an interconnection location is economically justifiable. In addition, the Commission asked CAISO whether it will make these criteria available to market participants, how it will account for future changes that may affect an earlier determination, and how CAISO will ensure that its decisions are objective and reasonable.

### **CAISO's Response to February 2005 Deficiency Letter**

109. CAISO responds that the Economic Test, based on empirically objective criteria, is a necessary interim measure until Generating Unit developers have locational price signals to help minimize transmission costs. As previously stated, CAISO plans to revisit its interconnection policies when a Market Design is implemented that allows for market-driven price incentives to influence plant location.

110. However, as an interim measure, CAISO states that it has developed and refined an economic methodology for transmission expansion evaluation (Transmission Economic Assessment Methodology), referred to as TEAM, and is now in a better position to describe the criteria and parameters of cost-benefit analysis for large transmission upgrades. TEAM, as described by CAISO, comprises five key components: (1) options for policy makers regarding the distributional economic effects of a transmission expansion project on consumers, producers, transmission owners or other entities; (2) full-network production cost and market-price simulation model that considers proposed projects within a WECC-approved base case, with consideration of alternative resources, transmission grid physical constraints, and the economic impacts of a project; (3) an approach to forecasting market prices that accounts for consumer benefits from reduced supplier market power and reduced production cost benefits; (4) a scientific method for addressing the risk and uncertainty of future market conditions such as future fuel costs and load forecasts and for assessing the impact of these variables on transmission expansion evaluation; (5) capturing the interaction between Generating Facility addition, demand-side management, and transmission investment decisions.

111. CAISO states that TEAM was filed with the California Commission in June 2004, has been available to the public and market participants, and will be continually updated and refined over time on the CAISO website. CAISO further states that the parameters for TEAM allow for some flexibility in the identification of benefits.

And, in light of the potential for large consumer impacts under California's current market structure, CAISO believes that it is reasonable and necessary to allow it flexibility to check for benefits that would justify a project, or for project developers to propose analyses that confirm economic benefits within TEAM. Lastly, CAISO states that by achieving project acceptance from key state regulatory siting officials, for the economic justification of projects, improvements to California's electricity infrastructure will find easier regulatory approval and streamlined construction schedules.

### **Commission Determination**

112. In its interconnection compliances, CAISO proposes to offer a single interconnection service, and proposes to allow the interconnection customer to elect a higher quality of service by paying for additional network upgrades that would provide improved deliverability. CAISO proposes to subject such requests to an economic test to ensure that the Interconnection Customer does not receive transmission credits for network upgrades whose benefits are less than their costs. Unfortunately, as CAISO notes, an economic test that is based upon a completely objective set of rules and procedures is difficult to develop.

113. Pursuant to the CAISO June 2004 report to the California Commission, TEAM is intended as a tool that will provide market participants, policy makers, and licensing authorities the information necessary to make informed decisions when planning and constructing a transmission upgrade.<sup>59</sup> TEAM is a framework for assessing the costs and benefits of transmission projects, against a range of future and therefore uncertain system conditions. We note that assumptions regarding future system conditions and modeling and simulation inputs can significantly affect the result of a cost-benefit assessment.

114. TANC, Southern Cities, and Calpine argue that CAISO has not defined the methodology for the Economic Test and has not provided information on how the test will be conducted or benefits measured. They argue that potential for discriminatory application exists unless the test is clearly defined and shown to be consistent with the Commission's transmission pricing policy. We agree. CAISO has not provided the necessary level of specificity within its tariff. While we understand CAISO's arguments regarding the need for flexibility, this stated need does not supersede CAISO's obligation to set forth its Commission-jurisdictional rates clearly and specifically in its

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<sup>59</sup> See Executive Summary, pp. 1-2 of the TEAM report filed with the California Commission, *available at* <http://www.caiso.com/docs/2004/06/03/2004060313241622985.pdf>.

tariff.<sup>60</sup> A minimum level of specificity within the tariff is necessary for the Commission to determine whether the charges that result are just and reasonable. It also allows interconnection customers the opportunity to assess for themselves whether they were properly charged. For example, CAISO's OATT should define "benefits," explain how the benefits are measured (e.g., CAISO-wide, California-wide, west-wide), establish the length of time over which benefits will be assessed, describe the difference between the scaled down version and the full version of the Economic Test and state when each will be applied, explain how CAISO will determine a cap for credits where the Economic Test identified a wide range of possible benefits for varying input assumptions, and provide details about how CAISO will apply the Economic Test. Therefore, we reject the Economic Test without prejudice and require CAISO to reimburse the Interconnection Customer for all Network Upgrades.

115. Constellation argues in its objection to the Economic Test that in the current market the earliest an Interconnection Customer would be provided a cost estimate and receive information regarding the cost consequences of its initial siting choice is after the system study process is completed. Consequently, when the Generator learns the cost of its interconnection upgrades, sites have already been determined and development is well underway. We find that the Scoping Meeting and Feasibility Study should mitigate these circumstances by providing an earlier opportunity for the Interconnection Customer to understand the cost consequences of its siting choices, and for possible discussion and consideration of alternative Interconnection sites.

**12. LGIA article 11.6.1: Compensation for Reactive Power Service and for Service Provided during Emergency System Conditions**

**The Commission's *pro forma* LGIA articles 11.6 and 11.6.1**

116. *Pro forma* articles 11.6 and 11.6.1 provide, in relevant part, that if the Transmission Provider requests or directs an Interconnection Customer to (1) absorb real or reactive power outside of the Transmission Provider's LGIP specified range, (2) absorb real or reactive power during Emergency Conditions, or (3) provide Emergency Condition services, the Transmission Provider must compensate the

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<sup>60</sup> See *Southern Company Services, Inc. v. FERC*, 353 F.3d 29, 35 (D.C. Cir. 2003); see also *Electrical District No. 1 v. FERC*, 774 F.2d 490, 493 (D.C. Cir. 1985) (noting that "necessary predictability" is the purpose of the filed rate doctrine).

Interconnection Customer in accordance with the Interconnection Customer's applicable rate schedule then in effect unless the provision of such service is subject to an RTO or ISO rate schedule. The Interconnection Customer would serve Transmission Provider or RTO or ISO with any filing of a proposed rate schedule at the time of such filing with the Commission.

### **The Filing Parties' Proposed Revision to LGIA article 11.6.1**

117. In their LGIA, the Filing Parties propose in relevant part to revise article 11.6.1 to require CAISO to compensate the Interconnection Customer for providing real and reactive power outside of the CAISO-specified range or during Emergency Conditions and for providing Emergency Condition services in accordance with the CAISO OATT. The Filing Parties explain that compensation for these services has been accepted by the Commission, and is provided in the CAISO OATT.

### **Intervenor's Protest**

118. Constellation objects to the Filing Parties' proposal to eliminate the right of the Interconnection Customer to file a rate schedule proposing reactive power compensation and to specify instead that the Interconnection Customer would be compensated in accordance with the CAISO Tariff.

### **CAISO's Answer**

119. In its Answer, CAISO responds that because the Commission has accepted the CAISO OATT service provisions under which compensation for reactive power and Emergency Condition services is provided, it is not necessary for an Interconnection Customer to file separately for compensation for these services. CAISO adds that its OATT provisions would continue to apply to all existing generation units and that it would be nonsensical for different rules to apply to new Generating Units for these services. CAISO states that in addition to creating a substantial administrative burden to track and compensate generation units differently, it would create an unreasonable distinction among these generation units for providing identical service.

### **Commission's February 2005 Deficiency Letter**

120. In the February 2005 Deficiency Letter, the Commission directed CAISO to provide cites for the sections of its OATT that outline the parameters for compensation for these services, and to explain how the relevant OATT sections are consistent with Order Nos. 2003 and 2003-A, for compensating the Interconnection Customer.

### **CAISO Response to February 2005 Deficiency Letter**

121. CAISO explains that, under section 2.5.3.4 of its OATT, Generating Units are required to maintain a schedule voltage at the point of interconnection as specified in their interconnection agreement or other applicable CAISO agreements. For Generating Units that do not operate under one of these agreements, section 2.5.3.4 of the CAISO OATT states that it is expected that the generation unit will maintain a power factor within a band of .90 lagging (producing VARS) and .95 leading (absorbing VARS). Assuming that the generation unit meets these requirements, no compensation would be provided for any reactive power provided to or absorbed from the CAISO grid. CAISO states that it treats all generation units the same, i.e., none are compensated for the provision of reactive power service when operated within the specified power factor design criteria range.

122. Regarding compensation for operating outside of the specified power factor design criteria range, section 2.5.18 of the CAISO OATT states that any Participating generator that is producing energy shall, upon CAISO's specific request, provide reactive energy output outside of the Participating generator's Voltage Support obligation (during a non-Emergency Condition or an Emergency Condition), as defined in section 2.5.3.4. Pursuant to Section 2.5.18, CAISO shall pay the opportunity cost for the Participating generator's reduction of energy output to enable reactive energy production.<sup>61</sup>

### **Commission Determination**

123. We find that CAISO's proposed article 11.6.1 revision to compensate the Interconnection Customer for providing real and reactive power outside of the CAISO specified range and for providing Emergency Condition services is consistent with Order Nos. 2003, 2003-A and 2003-B, as well as with CAISO's OATT where compensation provisions for these services have already been accepted by the Commission. We find that it is reasonable for CAISO to compensate all generators in the same manner for the provision of these services and the proposed change to article 11.6.1 is acceptable.

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<sup>61</sup> The formula for calculation of the opportunity cost is  $\text{Max} \{0, \text{Zonal Settlement Interval Ex Post Price} - \text{Generating Unit bid price}\} \times \text{reduction in Energy output (MW)}$ .

### 13. CAISO OATT section 5.7.5.1: Maintenance of Encumbrances

#### Current OATT Provision

124. Currently, section 5.7.5.1 of CAISO's OATT provides for the identification and mitigation of a new interconnection's adverse effect on the ability of the Interconnecting PTO to honor its Encumbrances existing when the interconnection is requested (maintenance of Encumbrance service).<sup>62</sup> To the extent that the interconnecting PTO determines in the System Impact Study that the Interconnection Customer's facility would adversely affect an Encumbrance, the Interconnection Customer would mitigate the adverse affect. As part of this filing, CAISO proposes to remove this provision from its OATT.

#### Intervenor Comments

125. Metropolitan protests that CAISO's proposed LGIP does not include a comparable provision for the PTO to honor its Encumbrances. Metropolitan states that the proposed LGIP requires CAISO to coordinate with Affected System Operators to determine the potential impact of a new interconnection project,<sup>63</sup> but nothing in the proposed LGIP appears to specifically require the PTO or the Interconnection Customer to mitigate any adverse effect on Encumbrances. Because Existing Contracts are included in the definition of an Encumbrance, Metropolitan argues that the elimination of CAISO's current maintenance of Encumbrance service would erode their protection. Accordingly, Metropolitan requests that the Commission order CAISO to either reinstate the maintenance of Encumbrance service provisions (OATT section 5.7.5.1) with terminology from Order Nos. 2003 and 2003-A, or to add such protections to its LGIP.

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<sup>62</sup> CAISO definition of Encumbrance: A legal restriction or covenant binding on a PTO that affects the operation of any transmission lines or associated facilities and which the ISO needs to take into account in exercising Operational Control over such transmission lines or associated facilities if the PTO is not to risk incurring significant liability. Encumbrances shall include Existing Contracts and may include (1) other legal restrictions or covenants meeting the definition of Encumbrance and arising under a contract or other arrangement entered into after the ISO Operations Date. CAISO Tariff, Appendix A: Master Definitions Supplement.

<sup>63</sup> See CAISO LGIP January 5 Transmittal Letter at 33.

### **Commission's February 2005 Deficiency Letter**

126. In the February 2005 Deficiency Letter, the Commission asked CAISO to explain why it removed the maintenance of Encumbrances service provision from its OATT, how the service would be provided, or why the commitment is no longer necessary, under the proposed interconnection revisions.

### **CAISO Response to February 2005 Deficiency Letter**

127. CAISO responds that when the Commission conditionally accepted Amendment No. 39, CAISO's current interconnection procedures, the Commission's intent was that the Order No. 2003 *pro forma* LGIP would completely displace the operative provisions of CAISO's current interconnection service provisions. Thus, CAISO states that it proposed to delete its OATT provision for the maintenance of Encumbrances, along with all other operative provisions of its interconnection procedures.

128. Further, CAISO states that it presumed, since a similar provision for maintenance of Encumbrances is not included in the Commission's *pro forma* LGIP, that the Commission did not consider such a provision appropriate. Lastly, CAISO states that it has no objection to adding a similar provision requiring Interconnection Customers to mitigate adverse effects on existing Encumbrances, if directed to do so by the Commission as part of a further compliance filing.

129. CAISO adds that it would consider the addition of a provision requiring Interconnection Customers to mitigate adverse effects on existing Encumbrances to be a useful clarification with respect to CAISO's administration of the relationship between these different aspects of the operation of the electric system. To include a provision for the maintenance of existing Encumbrances, CAISO proposes that the substance of its OATT s 5.7.5.1 be added to CAISO's proposed LGIP as LGIP section 2.5, regarding the LGIP Scope and Application, with editorial revisions to conform the existing OATT provision to the proposed LGIP.

### **Commission Determination**

130. In reviewing the current CAISO interconnection procedures, we find that the OATT Maintenance of Encumbrances is a service that should continue as another aspect of CAISO's operational considerations of Encumbrance commitments as they would relate to an interconnection request. In its series of compliance filings, CAISO has customized numerous provisions of the LGIP to adapt those provisions to current California market provisions. We will accept the LGIP revision to include a provision

for the maintenance of existing Encumbrances, as proposed in CAISO's Response to the February 2005 Deficiency Letter as it is consistent with CAISO's operational considerations of Encumbrance commitments and with the intent of the Commission's policy regarding Network Upgrades.

**14. LGIA article 5.19.1: Modification (to system or facilities)**

**Order No. 2003-A *pro forma* LGIA article 5.19.1**

131. The Order No. 2003-A *pro forma* article 5.19.1 provides, in relevant part, for notifications and approvals that are required when the Transmission Provider or the Interconnection Customer (Party or Parties) undertakes a modification to its facilities that may reasonably be expected to affect the other Party's facilities. This article also provides that if a Generation Facility's modification(s) does not require the Interconnection Customer to submit an Interconnection Request, the Transmission Provider will provide an estimate of any modifications to the Transmission System that are necessitated by the modification(s) along with a good faith estimate of costs.

**CAISO Proposal**

132. CAISO proposes, in LGIA article 5.19.1, to allow the PTO and CAISO to determine whether a Large Generating Facility modification is a Material Modification<sup>64</sup> in accordance with the LGIP. The Filing Parties justify this additional language by stating that, without this determination, modifications could be made that affect the reliability of the system without their receipt of an Interconnection Request.

**Intervenor Comments**

133. Southern Cities, CAC, and EPUC object to the additional language as conferring non-reviewable authority on CAISO and the PTOs to determine what constitutes a material modification, and as such, would expand the Filing Parties' original rights as compared to Order No. 2003-A *pro forma* language.

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<sup>64</sup> The Commission's *pro forma* LGIP/LGIA definition of Material Modification is, "those modifications that have a material impact on the cost or timing of an Interconnection Request with a later queue priority date."

### **Commission Determination**

134. We find this additional requirement to be consistent with CAISO OATT section 2, System Operations under Normal and Emergency Operating Conditions, and section 5, Relationship between ISO and generators. Each of these current OATT sections establishes procedures for system operations, and contact between generators and CAISO, in maintaining reliability during normal and emergency conditions. Lastly, in the proposed language, the Filing Parties commit that such determinations of what constitutes a Material Modification would be made in accordance with the LGIP. Therefore, this additional language is acceptable.

15. **LGIP section 3.1: Interconnection Requests**  
**LGIP section 5.7: Interconnection of Planned Generating Facilities**

### **CAISO Proposal**

135. Under the Commission's *pro forma* LGIP section 3.1, Interconnection Requests, an Interconnection Customer, as the owner of a planned Generating Facility, would submit an Interconnection Request under the following circumstances: (a) Generating Facilities that seek to interconnect to the CAISO Controlled Grid, (b) existing Generating Units that are modified to increase their total capability, and (c) existing Generating Units that are modified to change their electrical characteristics in a way that might affect grid reliability. CAISO has not proposed any substantive revisions to this section.

### **Intervenor Comments – Qualifying Facilities**

136. The CAC and the EPUC argue<sup>65</sup> that CAISO, in its proposed LGIP has failed to comply with Order No. 2003 in regard to existing Qualifying Facility (QF) units. CAC and EPUC argue that Order No. 2003 provides the owner of a QF which formerly sold its total output to a Participating Transmission Owner the following options. If the QF seeks to sell electric energy at wholesale in interstate commerce and represents that output of the Generation Facility will be substantially the same as before, the QF: (1) need not submit an Interconnection Request; and (2) need not join the interconnection queue.<sup>66</sup>

137. CAC and EPUC claim that neither CAISO's proposed LGIP nor Joint LGIA make reference to this Commission finding. CAC and EPUC state that the proposed revisions also incorporate references to the CAISO OATT and that the CAISO OATT does not

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<sup>65</sup> See CAC and the EPUC January 27<sup>th</sup> protest.

<sup>66</sup> See Order No. 2003 at PP 165-166.

recognize the operational differences between merchant generator plants and QFs. CAC and EPUC assert that until the Filing Parties appropriately and expressly include the Commission's findings on these issues, the filings are contrary to Order No. 2003, and must be amended.

### **CAISO's Answer**

138. CAISO responds that it and the PTOs are concerned that an existing cogeneration facility may maintain the total output to the system, but change the character or pattern of use on the system in such a manner that system reliability is compromised. While CAISO wishes to minimize administrative burden to the existing cogenerator, the affidavit would establish the right to inspect the facility to verify that no change has occurred that would negatively impact reliability on the CAISO Controlled Grid.

139. Regarding the operational differences between merchant generator plants and QFs, CAISO states that the Commission has just ordered CAISO to implement a new *pro forma* Participating Generator Agreement (PGA) for QFs that provides for recognition of special QF operating characteristics, and that this new PGA should address CAC/EPUC concerns about operational inconsistencies between the Commission's Order No. 2003 procedures for QFs and the CAISO OATT.

### **Commission Determination**

140. Opinion No. 464<sup>67</sup> directed CAISO to file a *pro forma* PGA specifically for QFs, because CAISO's existing *pro forma* PGA was not just and reasonable when applied to QFs. We direct the Filing Parties to amend their LGIP and LGIA in a compliance filing to be consistent with the PGA designed for QFs.

## **E. Effective Date for Final Rule Interconnection Policy and Procedures**

### **1. CAISO Proposal**

141. CAISO proposes that Interconnection Agreements currently in use will remain effective until the Commission approves its revised LGIP, LGIA, and Interconnection Study Agreements. CAISO requests that its LGIP and LGIA be effective prospectively because a substantial disruption to interconnection efforts in progress may result with a retroactive effective date.

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<sup>67</sup> *California Independent System Operator Corporation*, 104 FERC ¶ 61,196 (2003).

## 2. Intervenor Comment

142. Metropolitan argues that it is unclear what happens to two-party interconnection agreements that existed prior to the LGIA, LGIP, or even prior to the start of CAISO operations. Metropolitan requests that the Commission clarify this matter by stating that existing interconnection contracts should be honored, regardless of the new procedures or agreements being proposed.

## 3. Commission Determination

143. As stated earlier, the proposed revisions to the LGIP and LGIA will become effective on the date of issuance of this order. Regarding the transition from existing interconnection provisions to the provisions at issue here, the Commission's *pro forma* LGIP section on interconnection requests submitted prior to the effective date of the LGIP Procedures,<sup>68</sup> provides that if an Interconnection Agreement has been executed prior to the effective date of the LGIP, the agreement would be grandfathered. Further, if an Interconnection Customer has signed an Interconnection Study Agreement as of the LGIP effective date, the Interconnection Customer will have the option to either continue with the rest of its Interconnection Studies under the Transmission Provider's existing study process or to complete those remaining studies for which it does not have a signed Interconnection Study Agreement under the *pro forma* LGIP. The Commission intended to accommodate an Interconnection Customer by not forcing it to complete the remaining studies under the old interconnection procedures, which could subject it to undue discrimination and discourage expeditious development of new generation. CAISO's LGIP includes the same provisions as the *pro forma* LGIP for offering an Interconnection Customer the choice to transition into the new Interconnection Procedures. Therefore, no further clarification is necessary.

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<sup>68</sup> See *pro forma* LGIP section 5.1.1.3, Procedures for Interconnection Requests Submitted Prior to Effective Date of Standards Large Generator Interconnection Procedures

**F. Twenty Megawatt Size Distinction between Small and Large Generators**

**1. CAISO Proposal**

144. CAISO proposes to temporarily amend the definition of “Large Generating Facility” by removing the 20 megawatt size descriptor.<sup>69</sup> The revised definition would effectively eliminate any distinction in procedures for interconnecting a Large or Small Generator, and include all new Generating Facility interconnections, pending Commission issuance of the “Small Generator” interconnection rule.

**2. Intervenor’s Comments**

145. Metropolitan and TANC both argue that, by removing the 20 megawatt minimum size limit, CAISO’s proposal would subject all new generators seeking interconnection with the CAISO Controlled Grid to CAISO’s LGIP, in direct violation of Order Nos. 2003, 2003-A, and 2003-B. Calpine submits that it does not object to CAISO’s proposal to remove the 20 megawatt minimum size limit on a temporary basis, so long as it is limited to interconnection and not distribution projects. To eliminate confusion, Calpine suggests that the LGIP be modified to clearly state that it does not apply to Generating Units interconnected to a distribution system within the CAISO Control Area.

**3. CAISO Answer**

146. CAISO reiterates that it proposed removing the 20 megawatt distinction because, without such a modification, the smaller Generating Facilities would be left to CAISO OATT provisions now outdated and superseded by implementation of the LGIP.

**4. Commission Determination**

147. We reject CAISO’s proposal to eliminate the size distinction, in its interconnection procedures, between a Large and Small Generating Facility. Because the Commission’s Order No. 2006 Final Rule on Small Generator Interconnection has already been issued, this issue is moot.<sup>70</sup> Until CAISO makes its required compliance filing under Order No.

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<sup>69</sup> A Large Generating Facility has a Generating Facility Capacity of more than 20 MW, whereas a Small Generating Facility has a Capacity of no more than 20 MW. *See pro forma* LGIP definitions of Large and Small Generating Facilities.

<sup>70</sup> *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 Fed. Reg. 27933 (May 16, 2005), FERC Stats. & Regs. ¶ (2005) (Order No. 2006).

2006, we direct CAISO to re-designate its current interconnection rules as applying only to generators less than or equal to 20 megawatts and file these tariff changes with the Commission.<sup>71</sup> While we are directing CAISO to modify its current interconnection rules to only apply to Small Generators until CAISO makes its Order No. 2006 filing, we do not intend Small Generators to be disadvantaged by the fact that CAISO has made its filing yet.<sup>72</sup> If any Small Generator believes that CAISO is treating it in an unduly discriminatory manner, it can file a complaint with this Commission under section 206 of the FPA.

**G. Separate Operation and Maintenance Agreement, and Reliability Management System Agreement**

**1. CAISO Proposal**

148. Under Order No. 2003, article 5.2(9) of the *pro forma* LGIA does not obligate Interconnection Customers to enter into separate O&M agreements in the event they opt to build Transmission Provider Interconnection Facilities on behalf of the PTO. Rather, the *pro forma* LGIA explicitly includes provisions addressing the operation and maintenance of both network and interconnection facilities. In their Order Nos. 2003 and 2003-A LGIA compliance filing, the Filing Parties seek to amend *pro forma* LGIA article 5.2(9) to require Interconnection Customers who opt to build the PTO portion of Interconnection Facilities and Stand Alone Network Upgrades to enter into a separate O&M agreement with the PTO for those facilities. Under LGIA article 9.1, the Filing Parties also propose to require Interconnection Customers to sign a Reliability Management System (RMS) Agreement as an express condition of the proposed LGIA.

**2. Intervenor Comments**

149. TANC opposes these proposed amendments. Specifically, TANC states that the Commission should not allow the Filing Parties to create additional hurdles for Interconnection Customers. At a minimum, TANC requests that the Commission require the Filing Parties to submit any proposed separate agreements along with the LGIA.

**3. CAISO Answer**

150. With regard to its proposed amendment to *pro forma* LGIA article 9.1, CAISO notes that the WECC requires all generators within the Western Interconnection

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<sup>71</sup> See *Ameren Services Co.*, 106 FERC ¶ 61,261 at n.6 (2004).

<sup>72</sup> See *Southern Co. Services, Inc.*, 107 FERC ¶ 61,317 at P 17 (2004).

(including the ISO Control Area) to sign an RMS Agreement, and that the proposed mention of this WECC requirement within the LGIA is meant merely as a reminder to all parties of this reliability obligation. Despite TANC's contention, CAISO asserts that the RMS Agreement is already publicly available to TANC and the Commission on the WECC website. CAISO states that execution of the RMS Agreement should not hinder the Interconnection Customer, but will facilitate the interconnection process by informing customers of this obligation.

#### **4. SoCal Edison Answer**

151. SoCal Edison argues that it is inappropriate for the Filing Parties to file a *pro forma* RMS Agreement. SoCal Edison states that the RMS Agreement is a *pro forma* agreement that the WECC has already filed with the Commission. The Commission requires WECC to file any proposed changes to the agreement. As such, SoCal Edison opposes TANC's suggestion that the Commission require the RMS Agreement to be filed with the proposed LGIA.

#### **5. Commission Determination**

152. The Commission agrees with TANC that any proposed separate O&M agreement is unnecessary. Several LGIA articles, taken together, provide sufficient safeguards and flexibility to assure the stability and reliability of the PTO's transmission system without the need for separate O&M agreements.<sup>73</sup>

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<sup>73</sup> Under article 5.2 of the *pro forma* LGIA, a Transmission Provider must approve and accept customer-built facilities for operation and maintenance, provided the customer uses Good Utility Practice, follows PTO standards and specifications, and obtains PTO approval for the facilities' design. Articles 9.3 and 10.1 of the *pro forma* LGIA require a Transmission Provider to operate and maintain the transmission system and the Transmission Provider's Interconnection Facilities in accordance with the terms of the Interconnection Agreement. *Pro forma* LGIA article 10.5 requires the Interconnection Customer to be responsible for all reasonable expenses and overheads associated with the operation, maintenance, repair, and replacement of the Transmission Provider's Interconnection Facilities. The revised LGIA articles 52, 9.3, 10.1 and 10.5 also contain these service provisions.

153. The Commission will accept the proposed revision to LGIA article 9.1 that would require Interconnection Customers to sign an RMS Agreement as this is a regional reliability requirement under the WECC. Furthermore, the Commission has already accepted other utilities incorporating RMS Agreements into their OATTs.<sup>74</sup> The Commission directs CAISO to include the RMS Agreement, verbatim, as an appendix to the LGIA.

## **H. Provision of Security (LGIA article 11.5)**

### **1. CAISO Proposal**

154. Article 11.5 of the *pro forma* LGIA provides for the posting of security to cover the cost of constructing any necessary interconnection facilities. CAISO's proposal would require Interconnection Customers to post additional security to cover operation and maintenance (O&M) expenses for a period of four months, and to cover the estimated costs to remove the PTO's Interconnection Facilities upon termination of the LGIA.

### **2. Intervenor Comments**

155. Constellation, in its filed protest, objects to the Filing Parties' proposed modifications to the *pro forma* LGIA article 11.5 requiring Interconnection Customers to provide additional security equal to four months of O&M expenses and removal costs.<sup>75</sup> Constellation notes that the Commission issued Order No. 2003 to standardize interconnection rules and eliminate differences in Transmission Owners' practices. Constellation argues that the Filing Parties' preference to maintain their current practices in violation of Order No. 2003 does not justify the requested change in their proposed LGIA. Further, allocation of removal costs to the Interconnection Customer is speculative and difficult.

156. In their protest, Southern Cities state that a number of changes are included in the proposed LGIP and LGIA that change the balance of rights and obligations in the Commission's *pro forma* LGIP and LGIA, creating additional obligations on the Interconnection Customers.<sup>76</sup> Southern Cities cite the increase in the level of security a PTO can demand from an Interconnection Customer from the Commission's *pro forma* LGIA to the Filing Parties' proposed LGIA as an example.

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<sup>74</sup> See, e.g., *Arizona Public Service Co.*, 107 FERC ¶ 61,255 at P 20, 28 (2004).

<sup>75</sup> See Constellation's Protest at 14-15.

<sup>76</sup> See Southern Cities' Protest at 6-7.

### 3. SoCal Edison Answer

157. In its Answer filed in Docket No. ER04-445-005, *et al.*, SoCal Edison states that it began requiring security from Interconnection Customers for the interconnection facilities for four months of O&M expense and removal costs following the 2001 California energy crisis. This requirement is in interconnection agreements between SoCal Edison and generators executed under both SoCal Edison's TO Tariff and Wholesale Distribution Access Tariff (WDAT).

158. According to SoCal Edison, security is also necessary to minimize shareholder risk that a generator will not pay for the removal cost of the PTO's Interconnection Facilities following termination of the LGIA.

159. SoCal Edison agrees with Constellation that the potential for removal of Network Upgrades would be speculative, but the proposed LGIA does not require the Interconnection Customer to pay the costs for any removal of Network Upgrades. The proposed LGIA only obligates Interconnection Customers to pay removal costs associated with the PTO Interconnection Facilities. Estimated costs would be based on the cost of labor to remove the facilities less any salvage value of the removed facilities. SoCal Edison states these costs can be estimated from accounting data for similar facilities.

160. In its response to the Southern Cities protest, SoCal Edison states that Southern Cities have "selectively chosen several changes" that SoCal Edison proposed to the *pro forma* documents to argue that there has been an alteration in the balance of rights and obligations between the Interconnection Customer and Transmission Provider.<sup>77</sup> However, SoCal Edison notes that the Southern Cities fail to mention the changes made to the *pro forma* documents that benefit the Interconnection Customer.

### 4. Commission Determination

161. The Commission rejects CAISO's proposal to require the posting of additional security. Order No. 2003 does not require the posting of such security. The proposed security revenue requirement is unreasonable given that O&M expenses should be included in the PTO's transmission revenue requirements. Without further explanation from CAISO of why it needs additional security for O&M expenses, the Commission is not convinced that such security is necessary. Nor has CAISO explained why it proposes

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<sup>77</sup> See SoCal Edison's Answer at 9. See also CAISO Answer at 16-17 (refuting Southern Cities' claims that the proposed LGIA materially alter the balance of rights and obligations from Order No. 2003).

to require security for removal of a PTO's Interconnection Facilities. The Commission is concerned that excess security requirements may discourage the interconnection of new facilities.

**I. Compliance with PTOs' Interconnection Handbooks (LGIP section 11.5 and LGIA article 5.10.4)**

**1. CAISO Proposal**

162. CAISO proposes to add a new LGIP section 11.5 to its OATT and a new LGIA article 5.10.4 that would require the Interconnection Customer's Interconnection Facilities to be designed, constructed, operated, and maintained in accordance with the PTO's Interconnection Handbook. According to CAISO, this requirement is needed to "define the technical requirements for that portion of the CAISO Controlled Grid that is receiving the interconnection."<sup>78</sup> In order to ensure the safety and reliability of all interconnections, CAISO asserts that an Interconnection Customer must be aware of, and conform its facilities to, the specific characteristics and practices of the PTO system to which it is interconnecting.

**2. Intervenor Comments**

163. In its protest, TANC argues that, because the Interconnection Handbooks have not been filed with the Commission, Interconnection Customers cannot determine how an applicable PTO's Interconnection Handbook's requirements may impact them. TANC adds that in addition to creating a significant deviation from the *pro forma* LGIA, these and other new requirements would eliminate the uniformity between competing wholesale electricity markets across the United States, and hamper the overall purpose of Order No. 2003 to, "lower wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale electricity market."<sup>79</sup> TANC requests that the Commission require that the Filing Parties submit the proposed Interconnection Handbooks in their compliance filings.

164. Calpine requests that reference to Interconnection Handbooks be deleted because the handbooks are not Commission-approved documents and risk opening a loophole that would erode the benefits of standardizing the interconnection process. If the Commission determines that more specific technical standards for interconnection are necessary,

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<sup>78</sup> See CAISO January 5, 2005 transmittal letter at 31.

<sup>79</sup> See Order No. 2003 at P 1.

Calpine requests that the applicable Interconnection Handbooks: (1) be appended to the LGIA in an appendix; (2) be applied in a uniform and non-discriminatory manner; and (3) be subject to CAISO's supervision.

165. In their protests, Southern Cities state that throughout the proposed LGIP, LGIA, and CAISO OATT amendments, CAISO and the Filing Parties include references to the requirement that Interconnection Customers must comply with the Interconnection Handbook.<sup>80</sup> Southern Cities requests that the Commission clarify that the *pro forma* LGIA and LGIP provisions override any inconsistent requirements imposed by the Interconnection Handbooks.<sup>81</sup> Southern Cities also express concern that the PTOs will not be filing the Interconnection Handbooks with the Commission, but instead will only be posting them on their websites. Southern Cities also state that the PTOs seem to be able to amend the handbooks without filing changes with the Commission. They ask that the Interconnection Handbooks and any proposed changes be filed with the Commission.

### **3. SoCal Edison Answer**

166. In its Answer, SoCal Edison supports CAISO's proposal to require compliance with the PTOs' Interconnection Handbooks and does not oppose a requirement that the PTOs post and maintain their Interconnection Handbooks on their respective websites. SoCal Edison asserts that retaining article 5.10.4 is crucial for transmission system safety and reliability. Regarding TANC's concerns that the Interconnection Handbooks are not filed with the Commission, SoCal Edison contends that Interconnection Customers have always been required to comply with the numerous technical interconnection standards established by CAISO and PTOs, none of which are filed with the Commission. SoCal Edison states that the Commission has already found that utilities need not file their interconnection guidelines. SoCal Edison characterizes TANC's proposed filing requirement as overbroad and one that would be extremely burdensome for both the Commission and the PTOs.

### **4. Commission Determination**

167. The Commission will accept CAISO's proposal to require compliance with the PTOs' Interconnection Handbooks as consistent with Order No. 2003-A. The Commission agrees with SoCal Edison that each PTO's transmission system may have certain standards and protocols for the interconnection of new generation that must be

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<sup>80</sup> See Southern Cities' Protest at 3.

<sup>81</sup> Southern Cities states that this clarification is consistent with the Commission's recent order in *Southern California Edison Co.*, 110 FERC ¶ 61,176 at P 45 (2005).

followed in order to protect the safety and reliability of those systems. In Order No. 2003-A, the Commission held that the Transmission Provider may impose supplemental interconnection requirements not specifically delineated in the Applicable Reliability Council requirements (particularly those related to system protection and safety), where the Applicable Reliability Council requirements specifically provide for the inclusion of such additional requirements.<sup>82</sup>

168. If the Transmission Provider imposes other interconnection requirements, such as those related to system protection and safety that are not contained or referenced in the Applicable Reliability Council requirements, Order No. 2003-A requires the Transmission Provider to propose and justify these requirements in its compliance filing as a separate Appendix.<sup>83</sup> The Commission may require the filing of particular contracts or practices such as technical bulletins and manuals, which affect or relate to jurisdictional rates and services. However, we may also exercise our discretion to allow utilities to forego the filing of such contracts or practices.<sup>84</sup> SoCal Edison asserts that the Commission has already found that utilities do not need to file their interconnection guidelines. We agree with SoCal Edison and will not require the PTOs to file their entire interconnection guidelines. However, we recognize that certain sections of PTOs' Interconnection Handbooks may impact rates, terms, and conditions of service. For example, PG&E's Interconnection Handbook includes sections that potentially impact costs which will be assigned to customers.<sup>85</sup> We direct PG&E to file section G2.17, and others like it, with the Commission.<sup>86</sup> We direct the other PTOs to review their Interconnection Handbooks for similar provisions and to file those provisions with the Commission.

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<sup>82</sup> Order No. 2003-A at P 399 (“The Transmission Provider must impose such requirements on itself and all other Interconnection Customers, including its Affiliates.”). The WECC guidelines allow the individual utility to impose additional requirements.

<sup>83</sup> *Id.*

<sup>84</sup> *See, e.g., Resale Power Group of Iowa, Inc. v. IES Utilities, Inc.*, 85 FERC ¶ 61,424 at 62,599 (1998); *Public Service Co. of Colorado*, 67 FERC ¶ 61,371 at 62,267 (1994).

<sup>85</sup> *See, e.g., Pacific Gas & Electric, Generation Interconnection Handbook*, section G2.17 (2004) (“At the Generation Entity’s expense, PG&E will perform a detailed interconnection study to identify the cost of any required modifications to PG&E’s protection and control systems that are required to interconnect a new generation source.”).

<sup>86</sup> *See PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,456 (2005).

169. Further, to ensure fairness, and that compliance with these Interconnection Handbooks is applied in a uniform and non-discriminatory manner, the Commission will also require the PTOs to post and maintain, on their respective websites, a complete and up-to-date copy of their Interconnection Handbooks. The Commission agrees with CAISO that the ability of all interested parties to monitor changes to the Interconnection Handbooks would enhance interconnection procedures and agreements.<sup>87</sup>

**J. LGIA article 3.3 - Inconsistencies between Proposed LGIA & CAISO OATT**

170. The Filing Parties failed to reach consensus on article 3.3 of their proposed LGIA and ask the Commission to resolve the dispute.

**1. CAISO Proposal**

171. CAISO, PG&E, and SDG&E propose in LGIA article 3.3 to have the CAISO OATT govern where a proposed LGIA provision, that dictates rights and obligations between CAISO and the PTO, or between CAISO and the Interconnection Customer, is inconsistent with the CAISO OATT. According to CAISO, such an approach ensures that generators subject to the proposed LGIA are treated the same as all other generators with respect to the division of rights and obligations with CAISO. Further, the proponents of this approach argue that it would eliminate the risk that individual items may be altered in customer-specific versions of the proposed LGIA, in a manner inconsistent with the CAISO OATT. CAISO asserts that this approach is the only way to assure consistent treatment under the CAISO OATT.

**2. SoCal Edison Proposal**

172. Alternatively, SoCal Edison proposes that article 3.3 should have the CAISO OATT govern where the proposed LGIA specifically provides that a matter is to be determined in accordance with the CAISO OATT. Where a provision of the proposed LGIA for which CAISO has exclusive section 205 rights pursuant to *pro forma* LGIA article 30.11 is inconsistent with the CAISO OATT, SoCal Edison proposes to have the CAISO OATT govern. The LGIA would govern any other provisions that are expressly covered by the LGIA but do not fall into these two categories. While the CAISO approach for article 3.3 would allow CAISO to amend the proposed LGIA by filing a

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<sup>87</sup> See *Southern California Edison Co.*, 110 FERC ¶ 61,176 at P 45 (2005) (where the Commission denied protestors' request that SoCal Edison be required to include its Interconnection Handbook in its Wholesale Distribution Access Tariff (LGIP and LGIA)).

change to the CAISO OATT, SoCal Edison counters that such indirect revision should not be allowed because it would put an unreasonable burden on PTOs and Interconnection Customers to track every change to the CAISO OATT. SoCal Edison maintains that the CAISO approach would negate the efforts the Filing Parties made to allocate responsibilities in article 30.11 of the LGIA.

### **3. Commission Determination**

173. The Commission will accept CAISO's proposed article 3.3 as consistent with Order No. 2003 because that approach is more likely to ensure consistent, nondiscriminatory treatment under the CAISO OATT. The Commission agrees that a service agreement must be consistent with its governing tariff. Although the LGIA is intended to be a service agreement under both the CAISO OATT and the relevant PTO's tariff, we conclude that to further the goal of standardization, it is appropriate to interpret the LGIA under a single tariff, in this case the CAISO OATT, even though it is also a service agreement under the PTO's tariff.<sup>88</sup> Finally, should CAISO ever propose OATT changes inconsistent with the terms and conditions of the proposed LGIA, parties can raise their concerns at that time.

#### **K. Compliance Issues - Clarification of Filings Rights**

##### **1. CAISO Proposal**

174. In their proposed LGIA compliance filing, the Filing Parties ask the Commission to clarify the filing requirements for executed LGIAs that conform to the Commission-approved standard. While Order No. 2003 states that such individual filings will not be required,<sup>89</sup> the Filing Parties ask for guidance as to whether the Commission wants to review the support for specific charges the Interconnection Customer must pay that are reflected in each customer-specific LGIA.

##### **2. Commission Determination**

175. As stated in Order No. 2003-A,<sup>90</sup> a conforming LGIA that is executed by the parties does not need to be filed with the Commission if the public utility has (1) a standard form of agreement on file with the Commission and (2) submits an Electronic Quarterly Report. The Commission will not require the filing of rate sheets showing the

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<sup>88</sup> See P 10.

<sup>89</sup> Order No. 2003 at P 915.

<sup>90</sup> See Order No. 2003-A at P 201.

Interconnection Customer's specific costs. However, if an Interconnection Customer wishes to challenge the rates in a specific Interconnection Agreement, it may do so in a complaint to the Commission.

**L. LGIA as a Stand-Alone agreement and Allocation of 205 Filing Rights**

176. The Filing Parties state that one of the fundamental differences between their proposed LGIA and the Commission's *pro forma* LGIA is their desire to keep the LGIA as a stand-alone agreement from both the CAISO OATT and TO Tariffs. The Filing Parties note that the proposed LGIA was not filed as a new section of such tariffs for several reasons. One key factor is the three-party nature of the agreement and the FPA section 205 rights associated with the agreement.

**1. CAISO Proposal**

177. The Filing Parties argue that placing their proposed LGIA into the CAISO OATT or TO Tariffs would complicate the parties' ability to amend LGIA services in their respective tariffs. In particular, placing the proposed LGIA into the CAISO OATT would make it difficult for CAISO, as the administrator of its OATT, to retain sole section 205 rights to its OATT. Similarly, the PTOs request that CAISO not be granted the right to modify any section of their TO Tariffs under section 205. As such, the Filing Parties have filed their proposed LGIA as a stand-alone agreement, and request acceptance of it as a stand-alone document, separate from the CAISO OATT and TO Tariffs.

178. In addition, the Filing Parties propose to divide section 205 rights between the PTOs and CAISO. The Filing Parties claim this change is "consistent with or superior to" the *pro forma* LGIA because it reflects the differing roles of each entity in providing Interconnection Service on the CAISO Controlled Grid.

179. The Filing Parties state that, as a separate Commission-approved agreement, the proposed LGIA will remain stable because changes to it must still be approved by the Commission. The Filing Parties agree that the *pro forma* LGIA shall not be subject to change through application to the Commission pursuant to section 205 of the FPA without their unanimous agreement. Once the *pro forma* LGIA is approved, these parties agree that it can be modified only through a joint filing by the Filing Parties, or through FPA section 206. Because the Filing Parties assert that it was not logical to include this agreement concerning the waiver of unilateral section 205 rights for the *pro forma* LGIA in their proposed LGIA, the CAISO OATT, or the TO Tariffs, they ask the Commission either to confirm this agreement in our ruling upon their compliance filing or to guide them regarding the appropriate means to document this agreement.

180. The Filing Parties further explain that when a customer-specific LGIA is executed for an Interconnection Customer,<sup>91</sup> the LGIA will divide the section 205 rights among CAISO and the PTO, as proposed in the Filing Parties' revisions to *pro forma* LGIA article 30.11. Under this proposal, CAISO and the PTOs each would have unilateral section 205 rights to file changes to the administrative provisions of both the *pro forma* and customer-specific LGIA, as further discussed below, such as scope of service, metering, communication, emergencies, notices, force majeure, default, indemnity, assignment, and confidentiality.<sup>92</sup> However, the PTOs would have exclusive section 205 rights to change the following provisions of the LGIA: building the interconnection facilities (articles 5.1-5.6); testing and inspecting the facilities (article 6); Interconnection Customer obligations and the use of interconnection facilities by third parties (articles 9.4 and 9.9); facilities maintenance (article 10); information requirements (article 24); and audits (article 25). CAISO would retain the exclusive section 205 rights to change the following LGIA provisions: those linked to the CAISO OATT (articles 3.2, 25.3.2, and 24.4.1); those requiring generator balancing services (articles 4.3 and 4.6); and those providing compensation to CAISO for reactive power or emergency response (article 11.6).

## **2. Commission Determination**

181. The Commission rejects the Filing Parties' request to file their proposed LGIA as a stand-alone document. Order No. 2003 is explicit in requiring "public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised [OATTs] to add" the *pro forma* LGIP and LGIA.<sup>93</sup> The Commission's authority to require the addition of the *pro forma* LGIP and LGIA to the OATT derives

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<sup>91</sup> Under the Filing Parties' proposal, each customer-specific LGIA would be a Service Agreement under both the CAISO Tariff and the TO Tariff of the PTO to whose facilities the interconnection is being made.

<sup>92</sup> These provisions are found predominantly in articles 1-9 and 13-23 of the *pro forma* LGIA.

<sup>93</sup> Order No. 2003 at P 2.

from our findings of undue discrimination in the interstate electric transmission market that formed the basis for Order No. 888.<sup>94</sup> As such, the Commission will require CAISO to amend its OATT to include the Filing Parties' proposed LGIA.

182. Order No. 2003 recognizes that in some circumstances the Transmission Provider is distinct from the Transmission Owner. California is an area where the ownership and operation of transmission facilities are bifurcated, and interconnection is to the Transmission Owner's facilities. Normally the Transmission Provider is the only entity that can change its OATT. But, given these unique circumstances and because the Commission is requiring CAISO to include the LGIA in its OATT, the Filing Parties have proposed a process with three features: (1) LGIA article 30.11 divides section 205 rights between the PTOs and CAISO; (2) the *pro forma* LGIA shall not be subject to change through application to the Commission pursuant to section 205 of the FPA without the unanimous agreement of CAISO and the PTOs; and (3) upon approval, the *pro forma* LGIA can only be modified through a joint filing by the Filing Parties, or through FPA section 206.

183. The Filing Parties proposal to allocate section 205 filing rights among and between CAISO and the three PTOs for customer-specific LGIAs is the kind of voluntary proposal allowed under the FPA in *Atlantic City Electric Company v. FERC*.<sup>95</sup> Under *Atlantic City*, voluntary agreements to allocate these rights may be acceptable where the interests of the region as a whole and market participants are properly safeguarded. The Filing Parties' proposal satisfies this standard. On balance, the Filing Parties' proposal provides for a reasonable allocation of section 205 filing rights.<sup>96</sup> Under these circumstances, voluntary filing rights arrangements among these public utilities, whose rights would otherwise overlap, is consistent with Commission policy where the interests of the CAISO region and market participants are safeguarded.

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<sup>94</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. & 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. & 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC & 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC & 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>95</sup> *Atlantic City Electric Company v. FERC*, 295 F.3d 1 (D.C. Cir. 2002) (*Atlantic City*).

<sup>96</sup> The court, in *Atlantic City*, acknowledged this point when it held that “[o]f course, utilities may choose to voluntarily give up, by contract, some of their rate-filing freedom under Section 205.” *Atlantic City* at 10.

184. Transmission Owners will not be permitted to exercise any undue discrimination over the matters for which they have been allocated section 205 filing authority. The Commission is accepting the Filing Parties' proposal with the express understanding that our acceptance is meant to accommodate the parties' voluntary allocation of authority to accord the PTOs certain filing rights. No PTO filing can or will become effective, and thus binding on any entity, absent Commission review and approval. If the PTOs use their filing rights in a way that compromises CAISO functions or causes undue discrimination between or among CAISO members or customers, the Commission will consider whether this agreement is just and reasonable. In addition, no right accorded to any Transmission Owner under the Filing Parties' proposal will prohibit the Commission from exercising our full authority under section 206 of the FPA, as may be necessary, or prohibit any market participant from seeking the relief available under the FPA.

**M. Study Agreements as Stand-Alone documents**

**1. CAISO Proposal**

185. CAISO filed Interconnection Study agreements related to its LGIP and requests acceptance of these study agreements as stand-alone *pro forma* documents, separate from the CAISO OATT. In its transmittal letter, CAISO states that filing these studies as stand-alone documents is consistent with its existing practice regarding *pro forma* agreements and will be posted instead on the CAISO internet homepage.

**2. Commission Determination**

186. The Commission will deny CAISO's request to accept its study agreements as stand-alone *pro forma* documents because the study agreements directly affect customer rates and services. The study agreements are also part of the LGIP, which we are requiring CAISO to append to its OATT. As such, these study agreements must be included as part of the CAISO OATT.

**N. Taxes (LGIA Article 5.17)**

187. Order Nos. 2003 and 2003-A *pro forma* LGIA article 5.17 addresses responsibilities related to the income tax treatment of payments the Interconnection Customer makes for the Transmission Provider's Interconnection Facilities and Network Upgrades.

**1. CAISO Proposal**

188. While the proposed LGIA article 5.17 mirrors many portions of the *pro forma* LGIA article 5.17, it also includes revisions to some of this *pro forma* language. In addition to substituting the term "Participating TO" for the *pro forma* LGIA's

“Transmission Provider” in article 5.17, the Filing Parties propose various changes to these tax provisions. Objections to proposed revisions to Order Nos. 2003 and 2003-A’s *pro forma* LGIA article 5.17 are discussed below.

## 2. Intervenor Comments

189. Calpine has submitted several protests over the last year expressing concerns regarding how both the *pro forma* LGIA and the proposed LGIA deal with tax issues. Calpine asserts that the proposed LGIA article 5.17 contains certain unexplained and unjustified deviations from the Order No. 2003-A *pro forma* LGIA that should be rejected.

190. Calpine’s protest reiterates its previously expressed concerns regarding the Commission’s Order Nos. 2003 and 2003-A *pro forma* LGIA article 5.17.3. In general, Calpine asserts that the Commission’s *pro forma* article 5.17.3 (1) requires the Interconnection Customer to indemnify the Transmission Provider for the cost consequences of any current tax liability imposed against the Transmission Provider because of payments made by the Interconnection Customer to the Transmission Provider under the agreement; (2) provides that the Transmission Provider cannot charge the Interconnection Customer a gross-up to cover potential income taxes unless it has determined in good faith that payments from the Interconnection Customer should be reported subject to taxation, or a governmental authority directed it to report the payments as subject to taxation; and (3) addresses the circumstances in which a Transmission Provider can ask for security from the Interconnection Customer to cover potential tax liability. Calpine requested that the Commission remove these security provisions from the Commission’s *pro forma* LGIA.

191. Absent the complete removal of the article 5.17.3 security provisions from the Commission’s *pro forma* LGIA and the proposed LGIA, Calpine requests that the Filing Parties’ rewrite their proposed LGIA security provisions. Calpine argues that the Filing Parties’ proposed LGIA article 5.17.3 leaves the imposition of a security requirement and the amount and form of the required security to the unfettered discretion of the PTO, subject only to a Commission ruling otherwise. According to Calpine, this article also makes the security equal to the PTO’s maximum tax liability in the worst possible scenario. It requests that the Filing Parties’ revise the language in article 5.17.3 to require a security deposit only if it is reasonable to believe that (1) the PTO is likely to be subject to income tax as a result of the payments by the Interconnection Customer; and (2) the Interconnection Customer is unlikely to be able to satisfy its indemnification obligation. Further, Calpine believes that the Interconnection Customer should have the right to challenge the reasonableness determination at the Commission. Calpine also objects to

the proposed LGIA requesting a security of 100 percent of the potential tax liability when a smaller percentage may be reasonable. Absent a showing by the PTO that a higher percentage is necessary to protect its interests, Calpine requests that the Commission limit the PTO's security requirement to 20 percent of the potential liability.

192. Calpine also specifically opposes the Filing Parties' proposed revision of the indemnification obligation in article 5.17.3 of Order No. 2003-A's *pro forma* LGIA. The third paragraph of the *pro forma* LGIA article 5.17.3 addresses the termination of the indemnification obligation. *Pro forma* LGIA article 5.17.3 stated that the indemnification obligation would "terminate at the earlier of two events: (1) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by Transmission Provider upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17." The Filing Parties modified this wording by having the obligation "terminate at the *later* of (1) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by *the Participating TO* upon request of the IRS, to keep these years open for audit or adjustment, or (2) the *date the risk of subsequent taxability as described in Article 5.17.6 no longer exists, as reasonably determined by the Participating TO.*" (emphasis added).

193. Calpine finds the modification to the second prong of this paragraph acceptable, but protests the Filing Parties' attempts to change the termination date to the *later* of these events. The proposed LGIA article 5.17.3 would remove the 10-year limit on indemnification set by the *pro forma* LGIA. Calpine strongly opposes the removal of this limitation language because it substantively deviates from the *pro forma* LGIA. Calpine argues that there is no showing that if the IRS were going to make these payments taxable, the IRS would defer action more than 10 years after the contributions have been made. Calpine asks the Commission to reject CAISO's proposed revision because the risk of a subsequent taxable event occurring after 10 years is a contingent risk that does not justify an indefinite indemnification obligation. In its protest, Constellation also objects to the Filing Parties' attempts to extend the period over which customers must indemnify against subsequent taxable events in proposed LGIA article 5.17.3.

194. Order No. 2003-A deleted a provision in the Order No. 2003 *pro forma* LGIA stating that an Interconnection Customer's security obligations for tax liability would be reduced by a favorable private letter ruling from the IRS on tax liability. As in its request for rehearing of Order No. 2003-A, Calpine asks the Commission to direct CAISO to reinsert a provision in article 5.17.5 requiring a reduction in tax gross-up security upon the receipt of a favorable private letter ruling from the IRS. Calpine asserts that a favorable private letter ruling from the IRS substantially reduces the small risk that a Transmission Provider would be responsible for unrecoverable tax expenses.

195. LGIA article 5.17.6 addresses the subsequent taxable events that may trigger payment of a tax gross-up amount. Calpine protests what it characterizes as the Filing Parties' attempt to reverse the Commission's determination that possible tax gross-ups be limited to 10 years. Calpine argues that the Filing Parties' proposed revision must be rejected because the *pro forma* LGIA article 5.17.6 correctly limited a possible subsequent taxable event to something that occurs within 10 years after the interconnection facilities are placed into service.

196. Calpine protests Order No. 2003-A's *pro forma* LGIA article 5.17.7 (Contests of Governmental Authority determinations). Order No. 2003 required the Transmission Provider to appeal or protest a decision from a governmental authority that there is tax liability if requested by the Interconnection Customer. Order No. 2003-A gave discretion to the Transmission Provider whether to appeal or protest a tax decision. Calpine protests the Filing Parties' proposed article 5.17.7 because it incorporates Order 2003-A's approach and asks the Commission to make such actions mandatory if requested by the Interconnection Customer.

197. Southern Cities express concerns that proposed LGIA tax provisions again shift the balance of rights and obligations inherent in the *pro forma* LGIA to put additional obligations on the Interconnection Customers. For example, the proposed LGIA substantively changes *pro forma* LGIA articles 5.17.3 and 5.17.6. Southern Cities claim that these changes significantly expand the Interconnection Customer's tax obligations.

### **3. SoCal Edison Answer**

198. In its Answer, SoCal Edison refutes Constellation's protest of the Filing Parties' proposed revisions to article 5.17.3 and 5.17.6's termination of the indemnification obligation. Specifically, SoCal asserts that Constellation failed to dispute that a subsequent taxable event could possibly occur outside 10 years. As such, SoCal Edison asserts that the extension of the tax indemnification past 10 years supports the fundamental premise that a utility should never be responsible for Interconnection Customer tax obligations. SoCal Edison also states that Constellation does not dispute the premise that if a utility is taxed for the Interconnection Customer's failure to meet safe harbor standards, the customer must indemnify. SoCal Edison's answer does not directly address Calpine's protest.

### **4. Commission Determination**

199. Calpine's request that the Commission remove the *pro forma* article 5.17.3 security provisions from the Commission's *pro forma* LGIA and the proposed LGIA constitutes a collateral attack of Order Nos. 2003 and 2003-A. The Commission rejects Calpine's request.

200. Order No. 2003-A article 5.17.3 provides indemnification protection until the applicable IRS statute of limitations has expired. The Commission rejects CAISO's proposed revision as unnecessary because *pro forma* article 5.17.3 limits the indemnification obligation so that it terminates when there is no further risk of new tax liability.

201. The Commission also rejects Calpine's request to reinstate in article 5.17.5 a requirement that tax gross-up security be reduced upon receipt of a favorable private letter ruling from the IRS for the same reasons this provision was deleted from Order No. 2003's *pro forma* LGIA in Order No. 2003-A.<sup>97</sup> The Commission further rejects this request as a collateral attack of Order No. 2003-A.

202. Because CAISO has provided no justification for its proposed revision to *pro forma* LGIA article 5.17.6 to remove the 10-year limit on the occurrence of a subsequent taxable event, the Commission rejects this CAISO proposal.

203. Order No. 2003-A revised Order No. 2003's *pro forma* LGIA article 5.17.7 that required the Transmission Provider to appeal or protest a governmental authority's determination of a tax liability, and seek a refund of taxes paid, if requested by the Interconnection Customer. Order No. 2003-A turned this requirement into a good faith choice by the Transmission Provider. Calpine supports the return to the mandatory requirement adopted in Order No. 2003, which granted the decision to contest a tax determination to the Interconnection Customer. As CAISO has done little more than comply here with Order No. 2003-A's *pro forma* LGIA article 5.17.7, Calpine's protest is an impermissible collateral attack on Order No. 2003-A.

#### **O. Miscellaneous Provisions**

204. In their proposed LGIA article 18.1, rather than capitalizing "Indemnifying Party" as required by Order No. 2003-B, the Filing Parties fail to capitalize "indemnifying" and reference their January 5, 2005 LGIA filing to justify this change. The Filing Parties note that this change eliminates a term that is not defined in the *pro forma* LGIA and therefore reduces confusion and eliminates disputes about who is being referred to in this paragraph. The Commission finds that it is clear from the context what an "Indemnifying Party" is and therefore we reject this change.

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<sup>97</sup> See Order No. 2003-A at P 344.

205. In their proposed LGIA article 19.1, the Filing Parties changed the order 2003-B language from “Party’s” to “party’s” in the second sentence. The Filing Parties assert that they made this change because any secured party is not likely to be a Party to the LGIA, and therefore it is imprecise to capitalize that term in this context. We will accept the minor change to Article 19.1 of the LGIA, where the Filing Parties are changing “Party’s” to “party’s,” which is consistent with the Commission’s change to this provision in Order No. 2003-C

The Commission orders:

(A) CAISO’s proposed modifications to the *pro forma* LGIP and LGIA are conditionally accepted in part and rejected in part as discussed in the body of this order, effective upon issuance of this order.

(B) CAISO is directed to submit a compliance filing which includes modifications as discussed in the body of this order within 60 days of issuance of this order.

(C) SoCal Edison, PG&E, and SDG&E’s TO Tariff filings are accepted as discussed in the body of this order, effective upon issuance of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**APPENDIX A**

**INTERVENORS IN CAISO DOCKET NO. ER04-445-006**  
**(LGIP Compliance Filing)**

California Electricity Oversight Board  
Calpine Corporation (Calpine)  
Cities of Anaheim, Azusa, Banning, Colton and Riverside, California (Southern  
Cities) Cogeneration Association of California (CAC)<sup>98</sup>  
Constellation Generation Group, LLC (Constellation)  
Metropolitan Water District of Southern California (Metropolitan)  
Southern California Edison Company (SoCal Edison)  
Transmission Agency of Northern California (TANC)

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<sup>98</sup> CAC represents the power generation, power marketing and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, ChevronTexaco Kern Field Projects, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, ChevronTexaco North Midway Cogeneration Project, ChevronTexaco McKittrick Cogeneration Project, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

**APPENDIX B**

**INTERVENORS IN CAISO DOCKET NOS.  
ER04-445-005, ER04-435-008, ER04-441-004, and ER04-443-004  
(Joint LGIA Compliance Filing)**

California Electricity Oversight Board  
Calpine Corporation (Calpine)  
Cogeneration Association of California (CAC)<sup>99</sup>  
Transmission Agency of Northern California (TANC)

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<sup>99</sup> CAC represents the power generation, power marketing and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, ChevronTexaco Kern Field Projects, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, ChevronTexaco North Midway Cogeneration Project, ChevronTexaco McKittrick Cogeneration Project, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

**APPENDIX C**

**INTERVENORS IN CAISO DOCKET NO. ER04-441-005**  
**(San Diego Gas & Electric Company's Transmission Owner Tariff**  
**Compliance Filing)**

California Electricity Oversight Board  
Calpine Corporation (Calpine)  
Cities of Anaheim, Azusa, Banning, Colton and Riverside, California (Southern  
Cities)  
Cogeneration Association of California (CAC)<sup>100</sup>  
Transmission Agency of Northern California (TANC)

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<sup>100</sup> CAC represents the power generation, power marketing and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, ChevronTexaco Kern Field Projects, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, ChevronTexaco North Midway Cogeneration Project, ChevronTexaco McKittrick Cogeneration Project, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

**APPENDIX D**

**INTERVENORS IN CAISO DOCKET NO. ER04-443-005**  
**(Pacific Gas & Electric Company's Transmission Owner Tariff Compliance**  
**Filing)**

California Electricity Oversight Board  
Calpine Corporation (Calpine)  
Cities of Anaheim, Azusa, Banning, Colton and Riverside, California (Southern  
Cities)  
Cogeneration Association of California (CAC)<sup>101</sup>  
Metropolitan Water District of Southern California (Metropolitan)  
Transmission Agency of Northern California (TANC)

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<sup>101</sup> CAC represents the power generation, power marketing and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, ChevronTexaco Kern Field Projects, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, ChevronTexaco North Midway Cogeneration Project, ChevronTexaco McKittrick Cogeneration Project, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

**APPENDIX E**

**INTERVENORS IN CAISO DOCKET NO. ER04-435-007**  
**(Southern California Edison Company's Transmission Owner Tariff**  
**Compliance Filing)**

California Electricity Oversight Board  
Calpine Corporation (Calpine)  
Cities of Anaheim, Azusa, Banning, Colton and Riverside, California (Southern  
Cities)  
Cogeneration Association of California (CAC)<sup>102</sup>  
Constellation Generation Group, LLC (Constellation)  
Metropolitan Water District of Southern California (Metropolitan)  
Transmission Agency of Northern California (TANC)

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<sup>102</sup> CAC represents the power generation, power marketing and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, ChevronTexaco Kern Field Projects, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, ChevronTexaco North Midway Cogeneration Project, ChevronTexaco McKittrick Cogeneration Project, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

**APPENDIX F**

**INTERVENORS IN CAISO DOCKET NO. ER04-445-008**  
**(Order No. 2003-B LGIP Compliance Filing)**

Coral Power, L.L.C.

**APPENDIX G**

**INTERVENORS IN CAISO DOCKET NO. ER04-445-007, ER04-435-009,  
ER04-441-006, and ER04-443-006  
(Order No. 2003-B LGIA Compliance Filing)**

Coral Power, L.L.C.