UNITED STATES OF AMERICA 98 FERC 61,335
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

California Independent System Operator Corporation Docket Nos. ER01-889-003
ER01-889-005
ER01-889-006
ER01-889-009
ER01-889-010

California Independent System Operator Corporation Docket Nos. ER01-3013-001
ER01-3013-002

San Diego Gas & Electric Company, Docket No. EL00-95-036
Complainant,
v.
Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independent System Operator and the
California Power Exchange,
Respondents

ORDER CLARIFYING THE CREDITWORTHINESS REQUIREMENT,
DENYING REHEARING AND REJECTING IN PART
COMPLIANCE FILINGS

(Issued March 27, 2002)

In this order, we clarify the creditworthiness requirement under the California Independent System Operator Corporation (ISO) Tariff, reject compliance filings in part, and deny rehearing of an order issued November 7, 2001 (November 7 Order)[1] directing the ISO to enforce the creditworthiness requirement of its open access transmission tariff

and the Commission's orders. This order benefits the ISO's customers by ensuring timely payment to the ISO's energy suppliers and, thus, preventing future difficulties for the ISO in obtaining adequate supplies.

[1] California Independent System Operator Corporation, 97 FERC 61,151 (2001).

I. Background

The ISO Tariff imposes a creditworthiness requirement on utility distribution companies (UDCs), Scheduling Coordinators, and metered subsystems. Under that requirement, Southern California Edison Company (SoCal Edison), the California Department of Water Resources (DWR) and Pacific Gas and Electric Company (PG&E), among others, must either maintain an Approved Credit Rating or post security in an amount sufficient to cover their outstanding liability for transactions through the ISO grid. In January 2001, the ISO filed Amendment No. 36 to revise the Approved Credit Rating requirements of its Tariff.[2] The ISO stated that a downgrade of credit ratings of PG&E and SoCal Edison would result in these entities no longer meeting the creditworthiness requirements of the ISO tariff and would preclude SoCal Edison and PG&E from scheduling transactions and participating in the ISO's markets, absent the posting of security sufficient to cover their full liability to the ISO.

The Commission's February 14, 2001 creditworthiness order (February 14 Order) provided third-party suppliers assurances of a creditworthy buyer for all energy delivered to the loads throughout the ISO.[3] In this order, the Commission also accepted in part, subject to modification, Amendment No. 36. The Commission accepted the portion of Amendment No. 36 that applied to resources SoCal Edison and PG&E owned to meet their own load, but rejected the proposed modification that allowed scheduling of loads against generation owned by third parties. Because neither PG&E, nor SoCal Edison had sufficient resources to satisfy their load service obligations, the Commission required these companies to obtain a creditworthy party for their net short position, i.e., power that is not self-supplied by the UDCs. The Commission directed the ISO to file modifications to the ISO tariff within 15 days of the order to change provisions of Amendment No. 36 to allow for a waiver of the creditworthiness requirements for self-scheduling of the UDC's own resources and to incorporate provisions for an acceptable form of credit support that would provide adequate assurances of payment for third party suppliers.

On March 1, 2001 the ISO submitted a compliance filing

[2] Specifically, Amendment No. 36 sought to modify Section 2.2.3.2 of the ISO Tariff to provide on a day-to-day basis, a temporary grace period following a downgrade in the credit rating of Scheduling Coordinators during which period such Scheduling Coordinators could continue to schedule transactions without providing one of the specified forms of security.

[3] California Independent System Operator Corporation, et al., 94 FERC 61,132 (2001).

(March 1 Compliance) to revise the ISO Tariff in accordance with the February 14 Order. The ISO proposed a revision to Section 2.2.3.2 that would allow the ISO to accept schedules to serve the load of a UDC that no longer meets the creditworthiness requirements of the Tariff if the load is to be served from one of three types of resources: (1) a resource that the UDC owns; (2) a resource that the UDC has under contract to serve its load; and (3) a resource from which another entity has purchased Energy or with regard to which another entity has provided assurance of payment for Energy.

In an April 6, 2001 order (April 6 Order), the Commission granted a California generators group's motion to require the ISO to comply with the February 14 Order.[4] The Commission clarified that our February 14 Order did not exempt any transactions from the requirement to have in place a creditworthy buyer. The Commission directed the ISO to ensure the presence of a creditworthy buyer for all power that third-party suppliers provided to UDCs that did not meet the creditworthiness provisions of the ISO Tariff and for all energy delivered to the loads through the ISO, including power provided through real-time transactions.[5] On April 13, 2001, the ISO posted a "Market Notice Re Credit Issues" on its web-site in which it stated that DWR would "assume financial responsibility for all purchases by the ISO in its ancillary services and imbalance energy markets based on bids or other offers determined to be reasonable."[6]

[4] California Independent System Operator Corporation, et al., 95 FERC 61,026, reh'g denied, 95 FERC 61,391, reh'g denied, 96 FERC 61,267 (2001).

[5] We further explained that the ISO's creditworthiness requirements apply whether transactions are scheduled or not and we created no exception in our February 14 Order.

[6] In response to the FERC order of April 6, 2001, DWR authorized the ISO to make the following statement:

> To the extent (and only to the extent) that a purchase is not otherwise paid by any party or payable by another party meeting the credit standards set forth in the ISO Tariff (another "Qualified Party"), DWR will assume financial responsibility for all purchases by the ISO in its ancillary services and imbalance energy markets based on bids or other offers determined to be reasonable. Such determination of reasonableness will be made by DWR on a case by case basis and communicated

to the ISO. All bids into the ancillary services and imbalance energy markets will be deemed to be contingent on the acceptance of financial
(continued...)

On April 26, 2001, Commission staff, pursuant to delegated authority, issued a deficiency letter, which indicated that additional modifications to the Tariff were required from the ISO in order for it to comply with the February 14 Order (April 26 Letter Order). The ISO's March 1, 2001 Compliance Filing amended only the ISO Tariff provision applicable to scheduled transactions and omitted changes necessary to address creditworthiness standards for unscheduled transactions. The April 26 letter order further directed that the additional modifications should incorporate all arrangements or agreements between the ISO and DWR, as well as all purchasing agreements on behalf of PG&E and SoCal Edison.[7]

On May 11, 2001, the ISO filed a revised compliance filing (May 11 Compliance),[8] which included additional language stating that the creditworthiness requirements of Section 2.2.3.2 apply to the ISO's acceptance of Schedules and to all transactions in an ISO Market. The ISO proposed further language in Section 2.2.3.2 regarding the dispatch of Imbalance Energy.

In the May 11 Compliance filing, the ISO stated that only DWR had stepped forward to provide the credit support the Commission requires. However, DWR conditioned its continued credit support in two ways: (1) that it be allowed access to the ISO control room floor; and (2) that it be granted access to a limited amount of nonpublic information. The ISO requested that the Commission deem DWR's conditions as being outside the circumstances covered by the Commission's standards of conduct regulations in 18 C.F.R. Part 37. In the alternative, the ISO requested that the Commission grant the ISO an exemption to the applicable standards of conduct regulations.

On June 13, 2001, the Commission issued an order denying a

6 (...continued)
responsibility by DWR, to the extent not paid or payable by another Qualified Party. . . . In addition to the foregoing, DWR will assume financial responsibility for all purchases resulting from the issuance by the ISO of emergency dispatch instructions, to the extent not paid or payable by another Qualified Party.

7 The April 26 Letter Order also directed the amended compliance filing to include all procedures instituted to ensure that DWR is afforded the same non-preferential treatment as other market participants.

[8] The ISO stated that the tariff modifications are filed under protest with reservation of rights to challenge the April 6 Order.

request for rehearing of the April 6 Order stating that the ISO creditworthiness requirement entitles third-party suppliers to credit protection for both scheduled and unscheduled transactions, and clarifying that power suppliers were not allowed to ignore emergency dispatch orders even if a UDC or Scheduling Coordinator fails to meet the creditworthiness standards. The suppliers, though, were provided with the opportunity to file a complaint before the Commission to enforce their right to credit assurance.

The Commission issued the November 7 Order in response to a motion a group of California generators filed to require the ISO to enforce the creditworthiness provisions of its Tariff. The Commission found that, although DWR represented that it was the guarantor of transactions for the non-creditworthy UDCs, DWR had yet to pay for the net short positions, i.e. power that is not self-supplied by the UDCs. The Commission stated that, if the ISO did not provide a creditworthy party before the transaction is scheduled, as the ISO Tariff requires, the must-offer requirement would not apply because there exists a concurrent must-pay requirement. Thus, if the ISO did not comply with this part of its Tariff, the Commission would not require sellers to transact with the ISO and they would be free to negotiate with other in-state and out-of-state buyers of their choosing with mutually acceptable terms and conditions. The Commission also found in this order that, since DWR assumed responsibility for the ISO purchases and functioned as a Scheduling Coordinator for the net short position of PG&E and SoCal Edison, DWR must abide by the requirements of the ISO Tariff and the Scheduling Coordinator Agreement.

Additionally, the November 7 Order directed the ISO to comply with its Tariff and the Commission's creditworthiness orders by (1) requiring the ISO to enforce its billing and settlement procedures under its Tariff; (2) invoicing DWR for all ISO transactions it entered into on behalf of SoCal Edison and PG&E within 15 days of the date of the Order; (3) filing a report with the Commission within 15 days of the date of the Order that includes the overdue amounts from DWR and a schedule for payment of those overdue amounts within three months of the date of the Order; and (4) reinstating the prior billing and settlement procedures under the ISO Tariff. On November 21, 2001, the ISO submitted its compliance filing pursuant to the Commission's November 7 Order.

Numerous parties have filed pleadings concerning creditworthiness issues under the ISO Tariff in many docket numbers. Since the creditworthiness issues overlap in many of these dockets, this order addresses all of the pleadings from the following docket numbers: ER01-889-003, ER01-889-005, ER01-889-

006, ER01-889-009, ER01-889-0010, ER01-3013-001, ER01-3013-002 and EL00-95-036. We will outline the issues particular to each

proceeding below and combine discussion items where possible.

II. ER01-889-003 and ER01-889-005 Compliance Filings

A. ER01-889-003 Filings

As described above, on March 1, 2001, the ISO submitted a compliance filing to revise Section 2.2.3.2 of the Tariff. Notice of the ISO's filing was published in the Federal Register, 66 Fed. Reg. 14,894 (2001), with interventions, comments or protests due on or before March 22, 2001. Duke Energy North America, LLC and Duke Energy Trading and Marketing (jointly Duke); Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC (jointly Mirant); Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (jointly Reliant) and SoCal Edison filed timely comments or protests to the ISO's compliance filing. Enron Power Marketing, Inc. and Coral Power, L.L.C. (jointly Enron/Coral); PG&E; and the California Electricity Oversight Board (CEOB) filed timely protests or comments and motions to intervene. PPL EnergyPlus, LLC and PPL Montana, LLC (jointly PPL) filed a timely motion to intervene. On April 6, 2001, the ISO filed an answer to the comments and protests to the ISO's compliance filing.[9]

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2001), the timely, unopposed motions to intervene serve to make the movants parties to this proceeding. With respect to the ISO's answer to the protests and comments, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)92) (2001), generally prohibits an answer to a protest. However, in this case, we find the ISO's answer to the comments and protests to be helpful in the development of the record in this proceeding, and accordingly we accept it.

[9] Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC (collectively Dynegy) jointly filed a motion for expedited enforcement action against the ISO and a request for a shortened response time to this motion. DWR filed a motion to intervene and an answer in opposition to Dynegy's motion. The ISO also filed an answer in opposition to the Dynegy motion. These related motions and answers were docketed in ER01-889-003, ER01-889-005, and EL00-95-012. In the November 7 Order, the Commission addressed Dynegy's motion when it required that the

ISO comply with the creditworthiness provisions of its Tariff.

Duke requests that the Commission reject the March 1, 2001 compliance filing and direct the ISO to submit a tariff revision that establishes credit support for real-time energy and ancillary services purchases made from third-party suppliers to meet the UDCs' residual loads. Enron/Coral argues that the compliance filing should be rejected in part because, contrary to the intent of the February 14 Order, the proposed changes would allow third-party suppliers to be subject to increased financial exposure resulting from the defaults of SoCal Edison and PG&E.

Mirant states that, since the February 14 Order limited authorization of the implementation of Amendment 36 to the resources the UDCs owned and the authorization did not include resources third-parties owned that have contracts with non-creditworthy UDCs, this aspect of the compliance filing is beyond the scope of the February 14 Order. Mirant also states that, to the extent that the compliance filing would authorize third parties to provide credit support for UDCs without acting as a Scheduling Coordinator for that UDC, the compliance filing should be rejected as contrary to the ISO Tariff.

Reliant argues that the Commission should reject the ISO's compliance filing or, in the alternative, require modifications to Amendment 36 that are consistent with the February 14 Order and the ISO Tariff. Specifically, Reliant states that the Commission should not permit the ISO to waive credit requirements to allow the UDCs to schedule third party power now under contract and to have power acquired on their behalf by parties operating outside the ISO system. Reliant contends that, to do otherwise, would allow utilities to "skirt" the Tariff's credit requirements by allowing a third party to assume significant market obligations on behalf of a UDC without accepting the responsibility to act as the Scheduling Coordinator for the UDCs' residual load and meeting the existing creditworthiness standards required of Scheduling Coordinators.

SoCal Edison requests that the Commission order the ISO to modify its compliance filing to clarify that, so long as SoCal Edison is unable to meet the creditworthiness requirement in the ISO Tariff, SoCal Edison shall not be billed for the procurements the ISO made in its Real-Time markets. PG&E requests that the ISO be directed to fully address the issues raised in the February 14 Order. PG&E also states that the compliance filing does not sufficiently describe or clarify the arrangements the ISO currently has with DWR to purchase energy through third party transactions.

The CEOB supports the ISO's compliance filing because it maintains the assignment of financial risks embodied in voluntarily negotiated bilateral contracts, such as inter-utility agreements and power participation agreements involving qualifying facilities. The CEOB states that the ISO's compliance

filing preserves all rights and remedies afforded under those contracts, while precluding the possibility that the February 14 Order could be used to unilaterally reform or enlarge the security provisions of such contracts.

In its answer, the ISO makes the following arguments: (1) the February 14 Order requires the ISO to exempt transactions from the ISO Tariff's creditworthiness requirements involving resources the UDCs own or "control under contract" to serve UDC load; (2) exempting transactions from the ISO Tariff's creditworthiness requirements that involve resources from which another entity has purchased energy or has provided assurance of payment for energy on behalf of a UDC is consistent with the February 14 Order; (3) the February 14 Order, contrary to Reliant's argument, does not address the issue of Real-Time energy payments; and (4) the February 14 Order, contrary to SoCal Edison's argument, does not release SoCal Edison from its responsibility to pay for Real-Time energy to serve its load.

B. ER01-889-005 Filings

As described above, on May 11, 2001, the ISO submitted a second compliance filing to address the concerns the Commission raised in the April 26 Letter Order and to seek exemption from the standards of conduct provisions of its Tariff. Notice of the ISO's filing was published in the Federal Register, 66 Fed. Reg. 28,455 (2001), with interventions, comments or protests due on or before June 1, 2001.

Mirant, Northern California Power Agency (NCPA), PG&E, Modesto Irrigation District (MID), SoCal Edison, Dynegy, Reliant, and DWR filed timely protests or comments to the ISO's second compliance filing. The Sacramento Municipal Utility District (SMUD), Electric Power Supply Association (EPSA), and the Official Committee of Unsecured Creditors of PG&E filed timely protests or comments and motions to intervene. NRG Power Marketing, Inc. and NEO California Power LLC jointly filed a timely motion to intervene.

Duke and NEO California Power LLC filed untimely protests to the ISO's second compliance filing. The ISO filed an untimely answer to the motions to intervene, comments and protests to the ISO's second compliance filing.

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2001), the timely filed motions to intervene submitted in this docket serve to make the movants parties to this proceeding. With respect to the ISO's answer to the motions to intervene, comments and protests to the ISO's second compliance filing, we find the answers to be helpful

in the development of the record in this proceeding, and accordingly we accept them.

In seeking rejection of the ISO's May 11 Compliance filing, the protesters argue that the proposed tariff language is ambiguous regarding the application of the creditworthiness requirements. The protesters state that the compliance filing does not satisfy the requirements set forth in the February 14 and April 6 Orders, and it does not include or incorporate the arrangements and procedures required in the April 26 Letter Order.[10] Instead, the protesters comment that the ISO is vague in its description of its credit support arrangement when it states that "DWR has . . . indicated a willingness to back certain transactions in real time."[11] The protesters assert that this is contrary to Commission orders on creditworthiness that require all transactions to have a creditworthy counterparty.[12] The protesters state that the Commission should require that the ISO specify in its Tariff that creditworthiness requirements are applicable to all California ISO markets, instructed dispatches, and out-of-market calls.

NEO California states that the ISO's compliance filing should be rejected because the revised tariff language provides creditworthy assurance only to real-time energy imbalance transactions. Under this narrow interpretation, NEO California contends that it is not entitled to an assurance of payment for

[10] Specifically, PG&E states that the May 11 Compliance filing fails to stipulate arrangements with DWR, fails to describe its procedures for DWR purchasing, fails to identify which services are being procured by DWR or how those services are being acquired, and fails to adequately describe how those services are being provided or obtained in a not unduly preferential or discriminatory manner. PG&E Protest at 6.

[11] PG&E asserts that the Commission's acceptance of Amendment No. 36, in part allows PG&E to transmit its own generation to its own load, and limits the effect of Section 2.2.7.3. PG&E states, however, that the procurement of third party generation for reliability purposes, to meet load not served by PG&E generation or for other purposes, is prohibited and must be done by some other entity than PG&E. Furthermore, PG&E states that the creditworthiness provision of the ISO Tariff does not refer to any specific type of transactions, as DWR would contemplate. PG&E Protest at 13-14.

[12] PG&E and SoCal Edison seek to ensure that creditworthy entities act as "counterparties" for the transactions in question, and assume the fiscal responsibility for all transactions with third party suppliers and that these purchases

are not part of some surety or guarantee arrangements.

capacity transactions under Summer Reliability Agreements, to which NEO California is a party.[13] NEO California argues that this is contrary to the Commission's prior creditworthiness orders.

PG&E, Modesto, NCPA and SoCal Edison state that the Commission should reject the ISO's request for a waiver of its standards of conduct that would allow DWR access to the ISO control room and access to certain "non-public information." PG&E states that the ISO should, as the April 26 Letter Order requires, abide by all procedures the ISO instituted to ensure that DWR is afforded the same non-preferential treatment as other market participants. Modesto states that, since both DWR and the ISO are performing the wholesale merchant function, the Commission should require the ISO and DWR to comply with the Commission's separation of function regulatory requirements. SMUD argues that the ISO's May 11 Tariff revisions should only be accepted if the conditions the ISO placed on the revisions, to allow DWR access rights to the ISO control room and to certain non-public information, are not included.

EPSA and Dynegy et al. support rejection of the compliance filing because of the "lack of separation" between DWR and the ISO as well as lack of independence on the part of the ISO. EPSA argues that under the ISO Tariff,[14] no market participant shall have the right to review or receive from the ISO any documents, data or other information of another Market Participant to the extent such documents, data or information is confidential or commercially sensitive. These parties contend that DWR, as a market participant, should be prohibited from receiving this information.

Unsecured Creditors of PG&E argue that PG&E cannot be treated as a creditworthy counterparty under the tariff for any third-party transactions. In addition the Unsecured Creditors of PG&E state that California Assembly Bill 1X (AB 1X) authorized DWR to make power purchases from the ISO and others necessary to serve demand in PG&E's service area (to cover PG&E's "net short" position), and permitted DWR to collect the costs of such purchases from retail customers. Accordingly, the ISO should not be able to shift the burden of these costs, which are properly allocable to DWR and recoverable from retail ratepayers

[13] NEO California constructed two generation projects under which the ISO is entitled to dispatch capacity from the projects for up to 500 hours during the period of June through October for three years. In return, the ISO agreed to pay NEO California a monthly payment based on the cost of constructing and operating the units.

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See ISO Tariff, Sections 20.3.1 and 20.3.3.

under AB 1X, to PG&E and its creditors. Unsecured Creditors of PG&E also state that, despite the Commission's directive that the ISO must revise its tariff sheets effective January 4, 2001 to more clearly reflect the creditworthiness requirements, the tariff sheets included with the ISO May 11 compliance filing propose an effective date of April 26, 2001. Unsecured Creditors of PG&E seek a January 4, 2001 effective date.

DWR supports the May 11 Compliance filing by stating that its California Energy Resources Scheduling Division's (CERS) must have access to the same information available to the ISO in making purchases because, as the entity entrusted with public funds

to make purchases, it must have sufficient information to exercise discretion as a prudent purchaser. In addition, DWR contends that the Commission has "forced" CERS to purchase on behalf of the ISO.

The ISO claims that the comments and protests of those parties in opposition to the May 11 Compliance filing are without merit and should be rejected. As such, the ISO requests that the Commission accept the Tariff revisions without condition or modification. The ISO argues that, contrary to the objections raised, the proposed creditworthiness requirements of Section 2.2.3.2 apply to "all transactions in an ISO Market" and that the ISO "will only instruct the dispatch of Imbalance Energy" on behalf of a Scheduling Coordinator that is creditworthy or to the extent that another entity (a creditworthy counterparty) "has provided assurance of payment on behalf of the Scheduling Coordinator." Furthermore, the term "ISO Market" is defined as "Any of the markets administered by the ISO under the ISO, including without limitation, Imbalance Energy,[15] Ancillary Services, and FTRs." According to the ISO, its Tariff revisions appropriately include energy that the ISO procures through negotiated agreements, (out-of-market requests), ancillary services and the dispatch of Imbalance Energy under emergency dispatch authority.

In addition, the ISO also argues that the objections to DWR's willingness to provide credit backing for only "certain transactions" is an attempt to convert the Commission's directives to obtain prior assurances of payment into a requirement that DWR commit to back all ISO purchases, regardless

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According to the ISO, Imbalance Energy under the ISO Tariff is defined as "Energy from Regulation, Spinning and Non-spinning Reserves, or Replacement Reserves or Energy from other Generating Units, System Resources or Load that are able to

respond to the ISO's request for more or less Energy."

of the price at which energy is offered for sale. The ISO asserts that DWR, in its role as financial backer of purchases on behalf of the end-use customers of the IOUs, can be distinguished from other Market Participants[16] because it (1) may not sell any power to retail end-use customers or to local publicly owned electric utilities at more than acquisition costs and (2) must strive to enter into contracts for energy resulting in reliable service at the lowest possible price per kilowatt-hour. Like the ISO, DWR must undertake its activities in the market in the public interest and on behalf of others without profit motive. Although DWR's purchase of energy under AB 1X falls within the definition of "Market Participant," the Commission has distinguished the activity of buying on behalf of others from the activities that bring an entity within the Commission's definition of "Market Participant." The ISO notes that a Confidentiality Agreement[17] governs the segregation of employees of CERS from the employees of DWR who act on behalf of the State Water Project. The ISO further asserts that the Confidentiality Agreement is intended to protect against the potential for preferential treatment of market participants that the Commission's standards of conduct were designed to prevent.

The ISO also disputes PG&E and SoCal Edison's claim that because they no longer satisfy the creditworthiness provisions for Scheduling Coordinators and UDCs they are relieved from all financial responsibility for energy and services the ISO procured on their behalf to serve their retail customers. The ISO argues that, to the contrary, the Commission's orders have been limited to addressing the need for a "creditworthy counterparty" for transactions and deliveries of energy made on behalf of PG&E and SoCal Edison. The ISO asserts that, pursuant to AB 1X, retail end users are deemed to have purchased the power from DWR and that payment for any sale is a direct obligation of the retail end user to DWR. The ISO states that AB 1X is "understood" to "guarantee repayment to the DWR Electric Power Fund and the taxpayers of California Fund."[18]

Finally, the ISO states that PG&E and SoCal Edison's

[16] Market Participant under the ISO Tariff is defined as "An entity, including a Scheduling Coordinator, who participates in the Energy marketplace through the buying, selling, transmission, or distribution of Energy or Ancillary Services into, out of, or through the ISO Controlled Grid.

[17] The Confidentiality Agreement provides that all employees or contractors of DWR that receive non-public information from the ISO are not to be engaged in the "sales or marketing

activities of DWR." ISO Answer dated June 19 at 19.

[18] ISO Answer at 23 (June 19, 2001).

responsibility for energy and services procured on their behalf arises not only from the ISO Tariff and state law, but also from contracts entered into with the ISO that the Commission has approved as part of the restructuring of the California electric markets.[19] The ISO asserts that in order for PG&E and SoCal Edison to be relieved of their obligations, these agreements would need to be modified or terminated and that PG&E and SoCal Edison have not initiated or justified such action.

C. Discussion Concerning ER01-889-003 and ER01-889-005

1. Proposed Tariff Language

In the May 11 Compliance filing, the ISO submitted the following tariff amendment language (the proposed language is underlined):

2.2.3.2 The creditworthiness requirements in this section apply to the ISO's acceptance of Schedules and to all transactions in an ISO market. Each Scheduling Coordinator, UDC or MSS shall either maintain an Approved Credit Rating (which may differ for different types of transactions with the ISO) or provide in favor of the ISO one of the following forms of security for an amount to be determined by the Scheduling Coordinator, UDC or MSS and notified to the ISO under Section 2.2.7.3.

(A) an irrevocable and unconditional letter of credit confirmed by a bank or financial institution reasonably acceptable to the ISO;
(B) an irrevocable and unconditional surety bond posted by an insurance company reasonably acceptable to the ISO;
(C) an unconditional and irrevocable guarantee by a company which has and maintains an Approved Credit Rating;
(D) a cash deposit standing to the credit of an interest bearing escrow account maintained at a bank or financial institution designated by the ISO;
(E) a certificate of deposit in the name of the ISO from a financial institution designated by the ISO; or
(F) a payment bond certificate in the name of the ISO from a financial institution designated by the ISO.

Letters of credit, guarantees, surety bonds, payment bond certificates, escrow agreements and certificates of deposit shall be in such form as the ISO may reasonably require from time to time by notice to

[19] These agreements include their Scheduling Coordinator Agreements, Utility Distribution Company Operating Agreements, the Transmission Control Agreement, various Meter Service

Agreements and the Responsible Participating Transmission Owner Agreements.

Scheduling Coordinators, UDCs or MSSs. A Scheduling Coordinator, UDC or MSS which does not maintain an Approved Credit Rating shall be subject to the limitations on trading set out in Section 2.2.7.3. Notwithstanding anything to the contrary in the ISO Tariff, a Scheduling Coordinator or UDC that had an Approved Credit Rating on January 3, 2001 and is an Original Participating Transmission Owner or is a Scheduling Coordinator for an Original Participating Transmission Owner shall not be precluded by Section 2.2.7.3 from scheduling transactions that serve a UDC's Load from

(1) a resource that the UDC owns;

(2) a resource that the UDC has under contract to serve its load; and

(3) a resource from which another entity has purchased Energy or with regard to which another entity has provided assurance of payment for Energy on behalf of the UDC, if that entity has an Approved Credit Rating or has posted security pursuant to Section 2.2.7.3.

The ISO will only instruct the dispatch of Imbalance Energy to the extent that the purchase of such Imbalance Energy is on behalf of a Scheduling Coordinator that complies with the creditworthiness requirements of this sections or to the extent an entity described in clause (3) above, has provided assurance of payment on behalf of the Scheduling Coordinator.

Our February 14 Order directed the ISO to allow a waiver of the creditworthiness requirements for self-scheduling of the UDCs' own resources and to incorporate provisions for an acceptable form of credit support that provides adequate assurances of payment for third party suppliers. Our April 6 Order provided clarification that all transactions in ISO markets required a creditworthy buyer and our April 26 Letter Order (which will be discussed further below) directed the ISO to, among other things, modify its proposed tariff language to incorporate creditworthiness standards for unscheduled transactions. We find that the proposed first sentence in Section 2.2.3.2 and items (1) and (2) along with the underlined phrase above that precedes item (1) satisfy the Commission directive in the February 14 Order and therefore, we accept these tariff revisions effective January 4, 2001.

However, the ISO's proposed language in (3) above, including

the language regarding the instructed dispatch of Imbalance Energy, fails to provide the adequate assurance of payment to third party suppliers that our February 14 Order required, and is therefore rejected. The proposed language creates a waiver for the non-creditworthy UDCs under 2.2.3.2 so long as there is a creditworthy counterparty for Energy purchases. However, the creditworthiness requirement is not limited to Energy transactions. In fact, Section 2.2.7.3 of the ISO Tariff stipulates that a UDC without an Approved Credit Rating must post a Security Amount that covers "the entity's outstanding and estimated liability for either (i) Grid Management Charge; and/or (ii) Imbalance Energy, Ancillary Services, Grid Operations Charge, Wheeling Access Charge, High Voltage Access Charge, Transition Charge, Usage Charges and FERC Annual Charges." Section 2.2.3.2 requires a UDC to maintain an Approved Credit Rating or post security. Section 2.2.7.3 explicitly defines the Security Amount. Because the Security Amount requirement is applicable to charges other than Energy, the assurance of payment from a creditworthy counterparty similarly cannot be limited solely to energy transactions. To permit otherwise would result in the absence of a creditworthy party for a variety of costs the ISO incurred to affect transactions on its system. For this reason, we conclude that the ISO must further modify Section 2.2.3.2 to ensure that the forms of acceptable security include the Security Amount calculated pursuant to Section 2.2.7.3 as follows (additional language to be included is underlined):

> Letters of credit, guarantees, surety bonds, payment bond certificates, escrow agreements and certificates of deposit must cover all applicable outstanding and estimated liabilities under Section 2.2.7.3 and shall be in such form as the ISO may reasonably require from time to time by notice to Scheduling Coordinators, UDCs or MSSs.

We direct the ISO to submit a further compliance filing to incorporate this additional language into the ISO Tariff within 15 days of the date of this order, to become effective January 4, 2001. Furthermore, as discussed above, we reject in part certain language contained in the ISO compliance filing.

We also note that on April 13, 2001, the ISO posted on its website a "Market Notice Re Credit Issues" concerning DWR's role as counterparty. The April 26 Letter Order mentioned the April 13, 2001 Market Notice and directed the ISO to file the following additional modifications to its tariff to comply with the February 14 order in terms of creditworthiness standards for unscheduled

transactions:

> These modifications should incorporate all arrangements or agreements between the ISO and DWR in regard to the above mentioned market notification, as well as all purchasing agreements on behalf of Pacific Gas and Electric or Southern California Edison Company. In addition, the compliance filing should be amended to include all procedures instituted by the ISO that ensure that DWR is afforded the same non-preferential treatment as other market participants especially power purchasers.

The ISO continues to claim that it has been, and is currently, in compliance with the Commission's creditworthiness orders based on DWR's assurances to it regarding DWR's financial backing of ISO transactions in ISO ancillary services and imbalance energy markets made to meet the non-creditworthy UDC's load requirements. We disagree. As discussed above, the creditworthiness requirement is not limited to Energy transactions; the Tariff requires that the creditworthy party back all of those charges included in Section 2.2.7.3 and those charges appropriately allocated to all Scheduling Coordinators to serve the net short position of the non-creditworthy UDCs.

The non-creditworthy UDCs request that the Commission revise the ISO Tariff to state that they are not financially responsible for service requiring purchase of Energy from third parties, such as those purchases DWR procured on their behalf. These non-creditworthy UDCs state that they should not be retroactively liable for these DWR purchases. The ISO Tariff requires that non-creditworthy UDCs have creditworthy backers, such as DWR, for their wholesale procurement costs. However, since the May 11 compliance filing did not include any agreement between the ISO and DWR or any purchasing agreements with PG&E and SoCal Edison, it is beyond the scope of this proceeding for the Commission to determine if the non-creditworthy UDCs remain ultimately liable for the purchases DWR procured on their behalf and for which it is immediately responsible for paying.

2. Standards of Conduct

The ISO states that DWR is the only party that has been willing to serve as a counterparty for sales to PG&E and SoCal Edison, and that unless it can satisfy DWR's conditions for access to the control room floor and to a limited amount of non-public information, it will no longer be able to ensure reliability. The ISO fails to provide information on the type of nonpublic information it proposes to offer DWR or why DWR thinks it needs that nonpublic information. Nonetheless, the ISO asserts that allowing DWR access to the control room floor and to

nonpublic information should not trigger the Standards of Conduct provision in its Tariff, in light of the "uniqueness" and "urgency" of the situation. In the alternative, the ISO requests a waiver of this provision due to the "extraordinary crisis facing the State of California."[20]

We find that allowing DWR access to the control room floor and to nonpublic information would contravene the Standards of Conduct provision in the ISO Tariff.[21] The very purpose of Standards of Conduct is to ensure that market participants "receive access to information that will enable them to obtain transmission service on a non-discriminatory basis" and to provide "all users of the open access transmission system access to the same information" through a standardized Open Access Same-Time Information System (OASIS).[22] Allowing DWR access to nonpublic information that is not available to any other market participant would clearly be discriminatory. Further, while we recognize the importance of the situation in California and the ISO's obligation to ensure reliability, the ISO has failed to demonstrate why it is necessary to grant one market participant, DWR, preferential treatment over all other market participants in order to meet its obligations and responsibilities.

Specifically, section 37.4(b)(5) of the Standards of Conduct requires that employees of a transmission provider "strictly enforce" all tariff provisions relating to the sale or purchase of open access transmission service that do not provide for the use of discretion.[23] Section 20.3.3 of the ISO tariff states the following:

> No Market Participant shall have the right hereunder to receive from the ISO or to review any documents, data or other information of another Market Participant to the extent such documents, data or information is to be treated [confidentially].

[20] On October 12, 2001, the ISO filed a "Status Report" in which it renewed its request that it be allowed a waiver concerning the Standards of Conduct provision of its Tariff.

[21] In the November 7 Order, we found that DWR should not be privy to confidential market information that is not made available to other market participants. See November 7 Order at 61,936.

[22] 18 C.F.R. 37.2(a) (2001). These standards apply to all activities and markets administered by the ISO, including the Imbalance Energy Market.

[23] 18 C.F.R. 37.4(b)(5)(I) (2001).

This tariff provision does not allow the ISO to use its discretion over these matters. DWR is now a market participant. In fact, it has become a dominant market participant. Therefore, allowing DWR access to nonpublic information that is not available to any other market participant would violate section 37.4(b)(5) of the Standards of Conduct. Even if the tariff provision allowed for the use of discretion, the Standards of Conduct would still require that the ISO exercise its discretion in a "fair," "impartial," and "non-discriminatory" manner and describe its decisions in a public log on OASIS.[24] Thus, even if the ISO were allowed to use its discretion in this matter, the ISO's proposed actions would still clearly contravene the Standards of Conduct.

We also conclude that a waiver of the Standards of Conduct is inappropriate in these circumstances. It would be discriminatory to allow DWR as a market participant, to receive a benefit, to the exclusion of other market participants, concerning likely significant information that arises from the ISO's control over the integrated transmission grid throughout most of California.

We reject DWR's argument that it is entitled to all the information to which the ISO has access. The ISO's primary function is to control the transmission grid, and the ISO needs the information to which it has access in order to perform that function. Since DWR is not and should not be involved in the operation of the transmission grid, we find that it has no need for this information. In addition, contrary to DWR's assertions, we did not "force" CERS to purchase on behalf of the ISO. The February 14 Order stated that the Commission would allow the ISO to excuse SoCal Edison and PG&E from posting security for third-party transactions, but only if appropriate substitute credit-support arrangements were made for those transactions. In recognition of the fact that DWR had begun making purchases on behalf of SoCal Edison and PG&E, we indicated that an agreement by DWR to back those utilities' liabilities for third-party-supplied power could substitute for SoCal Edison and PG&E posting security. We also offered a state bond as another example of an appropriate substitute.

The ISO's filing fails, as the April 26 Letter Order requires, to include procedures to ensure that DWR is not afforded preferential treatment on any existing agreements it has with DWR. Additionally, Section 37.4 of the Standards of Conduct requires transmission providers to make publicly available "current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to

[24] 18 C.F.R. 37.4(b)(5)(ii)-(iii) (2001).

determine that the Transmission Provider is in compliance with the requirements of this section."[25] We reiterate our requirement, made in the April 26 Letter Order, that the ISO file procedures to ensure that DWR is afforded the same non-preferential treatment as other market participants.

III. ER01-889-006 and EL00-95-036

On June 7, 2001, SoCal Edison filed a motion in which it requested that the Commission direct the ISO to comply with the Commission's creditworthiness orders and to cease invoicing SoCal Edison for costs the ISO incurred in transactions with third-party suppliers from the date that SoCal Edison first failed to satisfy the creditworthiness requirements set forth in the ISO Tariff. Reliant filed an answer in support of SoCal Edison in which it argues that the ISO Tariff requires payment by a creditworthy third party on behalf of a non-creditworthy entity and that enforcement action is necessary because the ISO and DWR have collaborated to avoid the creditworthiness requirement of the ISO Tariff.

On June 22, 2001, the ISO filed an answer to SoCal Edison's motion in which it argues that (1) its arrangements with DWR are in compliance with the Commission's orders on credit support issues; (2) the Commission's credit support orders do not relieve SoCal Edison of its financial responsibility for energy and services procured on behalf of its customers; and (3) since the demands of SoCal Edison's customers continues to "show up" on the ISO system, the ISO must continue to provide SoCal Edison's customers with energy and services.

On July 6, 2001, Dynegy filed an answer to the ISO's answer in which it argues that the Commission should retain both the creditworthiness provisions of the ISO Tariff and the 10 percent credit adder to the proxy price.

The Commission addressed the creditworthiness issues raised in the ER01-889-006 and EL00-95-036 dockets in the November 7 Order. Similarly, the Commission addressed the retention of the 10 percent credit adder in Investigation of Wholesale Rates of Public Utility Sellers or Energy and Ancillary Services in the Western Systems Coordinating Council, 97 FERC 61,294 (2001). We need not further respond to these issues.

IV. ER01 889-009, ER01-889-010, ER01-3013-001 and ER01-3013-002

A. Filings

On November 21, 2001, the ISO filed a compliance filing to

[25] 18 C.F.R. 37.4(c) (2001).

comply with the November 7 Order. Notice of the ISO's filing was published in the Federal Register, 66 Fed. Reg. 63,052 (2001), with interventions, comments or protests due on or before December 12, 2001. Independent Energy Producers Association (IEPA), PG&E and SoCal Edison, timely filed responses and comments to the ISO's compliance filing. The California Generators, DWR, and Williams Energy Marketing & Trading Company (Williams) timely filed protests to the compliance filing. The City of Redding, California, and Modesto Irrigation District timely filed comments and requested the rejection of the ISO's compliance filing. NRG Power Marketing, Inc. and NEO California Power LLC (NRG) filed a timely motion to intervene. The City of Vernon, California filed a timely motion to intervene and comments.

On December 26, 2001, DWR filed an answer to the timely filed comments, motions to reject and protests. On December 27, 2001, SoCal Edison filed an answer to DWR's protest to the compliance filing.

SoCal Edison, the California Electricity Oversight Board (CEOB), and DWR filed timely requests for rehearing. San Diego Gas & Electric Company (SDG&E) and SoCal Edison filed answers to DWR's request for rehearing.

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2001), the timely filed motion to intervene NRG submitted in Docket Nos. ER01-889-009 and ER01-3013-001 serve to make it a party to this proceeding. With respect to SoCal Edison's answer to DWR's protest, DWR's answer to protests to the ISO's compliance filing, and SDG&E's and SoCal Edison's answers to DWR's request for rehearing, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2001), generally prohibits an answer to a protest. We are not persuaded to allow the proposed answers, and accordingly will reject the answers.

B. ER01-889-010 and ER01-3013-002 Requests for Rehearing

SoCal Edison filed a rehearing request in which it argues that the Commission cannot eliminate the must-offer requirement. It states that the Commission established the must-offer requirement, together with other market mitigation measures to prevent the withholding of power and to ensure that the ISO could call upon available resources in the real-time market. SoCal Edison also cites the Order Establishing Prospective Mitigation and Monitoring Plan for the California Wholesale Electric Markets and Establishing an Investigation of Public Utility Rates in Wholesale Western Energy Markets, issued April 26, 2001, as stating that, in the absence of the must-offer requirement, just

and reasonable rates cannot be ensured.[26] Thus, SoCal Edison argues that the must-offer requirement is a prerequisite to just and reasonable rates in California and that it cannot be eliminated simply because the ISO is recalcitrant in obeying the Commission's creditworthiness orders.

While the must-offer requirement was necessary to ensure just and reasonable rates in Spring 2001, its necessity at that time does not prevent us from currently considering alternatives. Moreover, the must-offer requirement is accompanied by a must-pay requirement. Since it is unjust and unreasonable to require generators to sell power without a creditworthy party to support the must-pay requirement, the Commission found that the must-offer requirement would not apply.

The CEOB filed a rehearing request in which it asks the Commission to clarify part of the November 7 Order. The CEOB states that the November 7 Order, as the ISO interprets it, requires the ISO to invoice DWR for any and all charges that it would otherwise bill to the IOUs. Since the ISO has billed DWR for the full range of charges allocated to all Scheduling Coordinators, including those for which DWR claims it has not assumed financial responsibility, the CEOB requests that the Commission provide clarification. In the alternative, the CEOB asks that the Commission direct the ISO to invoice DWR only for "transactions made on DWR's behalf" and for other charges for which the DWR has agreed to assume credit responsibility.

Similarly, DWR filed a rehearing request in which it contends that the November 7 Order is in error. DWR contends that the November 7 Order fails to recognize the nature of CERS' responsibilities under the Tariff. DWR states that the November 7 Order erroneously contends that "DWR assumed the obligations of Scheduling Coordinator for the net short load under the Tariff,"[27] when, in fact, DWR has not assumed such responsibilities, and cannot under the Tariff be deemed responsible for load to which it has no metering relationship.

[26] In the April 26 Order, the Commission stated that it "cannot ensure such just and reasonable rates in the current circumstances in California unless all entities that sell energy through the markets operated by the ISO abide by the [must-offer requirement]." 95 FERC 61,115 at 61,356 (2001).

[27] November 7 Order at 61,659.

As we have repeatedly stated, the ISO Tariff imposes a duty on the ISO to enforce the Tariff's creditworthiness standards.[28] Credit support arrangements are necessary to ensure that suppliers receive adequate assurance of payment, avoid unacceptable financial risks, and ultimately, avoid price increases that the UDCs would otherwise incur and that would be passed on to customers. In fact, at the time DWR stepped in as the ISO's creditworthy counterparty in early 2001, the California energy markets were in a state of great turmoil. The sinking credit ratings of PG&E and SoCal Edison had many suppliers of California power arguing that, unless commercially reasonable assurances of payment were provided, they should not be required to sell to buyers who admitted they were on the verge of bankruptcy.[29]

We continue to believe that it is critical for the financial stability and overall health of the California energy markets that the ISO enforce the creditworthiness requirement of its Tariff. Accordingly, we reaffirm our November 7 Order finding that the ISO Tariff requires the creditworthy backer, DWR, to be financially responsible for the costs associated with the net short positions of the non-creditworthy UDCs.

In accepting DWR as the ISO's creditworthy backer in the February 14 Order, the Commission noted that DWR had served in this capacity with the backing of the State of California appropriations since January 2001.[30] The severe downgrade in PG&E's and SoCal Edison's credit ratings prevented these UDCs from being able to schedule their own load under the terms of the ISO Tariff. In trying to assuage the concerns of generators who threatened to discontinue supplying power to California, DWR stepped forward to "stand in the shoes" of these UDCs and accepted the responsibilities required under the ISO Tariff that these entities were no longer able to perform, e.g., these UDCs' scheduling obligations. In fact, the California legislation that enabled DWR to act in the place of these troubled UDCs expresses the State of California's intent that "[u]pon delivery of power to them, the retail end-use customers shall be deemed to have purchased that power from [DWR]. Payment for any sale shall be a direct obligation of the retail end-use customer to [DWR]."[31]

[28] See the February 14 Order, April 6 Order, and June 13 Order.

[29] California Independent System Operator Corporation, 94 FERC 61,132 at 61,507 (2001).

[30] See February 14 Order at 61,511.

[31] See Cal. Water Code Sec. 80104 (Deering 2001).

Prior to the November 7 Order, the ISO argued that it could not invoice DWR because the parties did not have an agreement for it to do so. In the November 7 Order, we found that the ISO was not precluded from invoicing DWR, and that a further agreement between DWR and the ISO was unnecessary because DWR had already signed a Scheduling Coordinator Agreement. When DWR assumed financial responsibility for the non-creditworthy UDCs, the Commission relied on DWR's existing Scheduling Coordinator Agreement to allow the ISO to invoice DWR for transactions to serve the UDCs' net short position. The Commission stated that "nothing in this agreement limits the scope to DWR's scheduling of its own load, or distinguishes DWR's functioning as the creditworthy party for the net short position for the non-creditworthy UDCs."[32] In fact, DWR's Scheduling Coordinator Agreement states that DWR agrees to abide by the terms and conditions of the Tariff without limitation.

Furthermore, the ISO also acknowledged that DWR had assumed the scheduling obligations for the non-creditworthy UDC's net short position (i.e., residual load not satisfied by their self-scheduled transactions) under the ISO Tariff. As we stated in the November 7 Order, the ISO confirmed the following facts: (1) both DWR and CERS have been assigned Scheduling Coordinator identifications; (2) transactions backed by DWR and CERS since January 2001 have been entered into using their Scheduling Coordinator identifications; and (3) the UDCs provide CERS with a calculation of the net short position for this purpose.[33]

DWR contends that the Commission improperly relied on a deposition to support the ISO's statements that DWR had assumed the obligations of Scheduling Coordinator for the non-creditworthy UDC's net short position under the ISO Tariff. We find that DWR is incorrect in stating that the Commission cannot rely on the ISO official's deposition. In relying on the deposition from the ISO official, the Commission took official notice of the facts surrounding DWR's recent actions.[34]

Furthermore, DWR argues that the deposition only proves that CERS acts as a Scheduling Coordinator when it schedules its bilateral contracts in day ahead and hour ahead markets to meet the net short energy forecasts the non-creditworthy UDCs provide to DWR. The deposition merely supports and helps to confirm the Commission's finding that, based on the obligations that DWR

[32] November 7 Order at 61,659.

[33] See Deposition of Jim Detmers, Volume No. 1 in Docket No. EL00-95-045 pages 15-17 and 285-86 (October 24, 2001).

[34] See 18 C.F.R. 385.508 (d) (2001) (official notice of facts); see also Fed. R. Evid. 201(b).

assumed, its signed Scheduling Coordinator Agreement, and the State of California's clear intent that end-use customers shall be deemed to have purchased power from DWR, DWR "stepped in the shoes" of the non-creditworthy UDCs.

DWR argues that Amendment 36 to the ISO Tariff would limit its credit backing to "payment for Energy" in Inter-Scheduling Coordinator trades and credit backing for "Imbalance Energy." Specifically, DWR makes the following contentions:
(1) Amendment 36 would require that CERS is obligated only to ensure "payment of Energy" and to credit back "Imbalance Energy," and CERS has met these objectives; (2) Amendment 36 would require that CERS have a different Scheduling Coordinator ID for credit backed transactions; and (3) Amendment 36 would limit DWR's credit backing responsibility to those with which it has a Scheduling Coordinator Meter Service Agreement, such as its State Water Project load. We note that the Commission never accepted the part of Amendment 36 that DWR relies on in making these arguments and, as explained above in Section II, we now reject the ISO's proposed language corresponding to these DWR statements. Accordingly, we need not further address these arguments.

DWR argues that certain charge types unrelated to "transmission with third-party suppliers on behalf of a non-creditworthy entity," such as penalties the UDCs incur for failure to comply with certain ISO dispatch directives associated with utility generation, should not receive credit backing. DWR contends that these penalties should be the payment responsibility of the party violating the directive. We find that these charge types were properly allocated to DWR as the creditworthy party backing the non-creditworthy UDCs. DWR's payment responsibilities as the creditworthy counterparty are to back the payments the UDCs are unable to make, including penalties these parties incurred in serving load. Furthermore, the ISO Tariff supports our finding that a creditworthy counterparty must support outstanding and estimated liabilities in Section 2.2.7.3 of the non-creditworthy UDCs.

DWR states that CERS has a model in place that allows CERS to meet net short requirements for SDG&E. DWR contends that this model should be used for all credit backing of UDC net short real-time energy. We find DWR's proposal to change the credit backing requirements using its "SDG&E model" to be beyond the scope of this rehearing request.

DWR also states that the November 7 Order violates the Tenth Amendment of the Constitution, which according to DWR allows states to "exempt themselves from a wide variety of obligations imposed by Congress under the Commerce Clause." Specifically, DWR argues that the Tenth Amendment prevents the Commission from requiring CERS to commit all public funds "to enforce and

implement a federal regulatory program." However, this argument is based on a faulty premise. DWR's credit support of the non-creditworthy UDCs does not "enforce" or "implement" a federal regulatory program. In fact, DWR's credit backing responsibilities arise from agreements it voluntarily entered into with the ISO pursuant to the ISO Tariff. Since the Commission only seeks to hold DWR to its responsibilities under the ISO Tariff, DWR's contention that the November 7 Order violates the Tenth Amendment is incorrect.

DWR also argues that the Eleventh Amendment and the State of California's sovereign immunity deprive the Commission of the authority to order CERS to pay any past due amounts owed by the non-creditworthy UDCs. DWR contends that, since the Commission issued its November 7 Order in response to the California generators' motion for enforcement of past creditworthiness orders, private parties have initiated a suit seeking financial relief from California that is barred under the Eleventh Amendment. We disagree. The Commission's November 7 Order was not a result of a suit by private parties seeking compensation from California. The Commission's actions concerning creditworthiness were necessitated by the need to ensure the existence of just and reasonable rates in the wholesale electricity markets in California and the West. Specifically, in order to ensure just and reasonable rates, the Commission merely enforced the ISO Tariff provisions concerning creditworthiness and DWR's voluntary responsibilities as the credit backing party. Since the Commission acted pursuant to its authority under the FPA, we find that private parties did not initiate a suit in a manner that would trigger Eleventh Amendment concerns.

DWR also contends that the November 7 Order contravenes the FPA and the Constitution, as it purports to regulate the purchasing activities of a State agency committing public funds in overtly dysfunctional markets and that this action denies the State of California reasonable purchasing discretion in expending public funds. Specifically, DWR cites and relies on the following Commission statement from the November 7 Order in making its argument:

> DWR does not have unilateral discretion to determine the rates for purchases it makes on behalf of PG&E and SoCal Edison and instead must accept and pay the rates set by this Commission. If DWR disagrees with these rates, it may challenge the rates through an appropriate filing with this Commission.

DWR contends that the Commission's attempt to regulate its purchasing activities is in violation of the FPA and lacks reasoned decision making. The Commission made its statement concerning "the rates for purchases" solely in response to DWR's failure to pay at that time for any of the net short positions of

the non-creditworthy UDCs. The Commission did not intend to regulate DWR's purchasing activities beyond DWR's attempt to alter the settlement process in a manner that was clearly not approved in the ISO Tariff. Rather, the statement was intended to inform DWR and the ISO that they could not alter the settlement process without approval from the Commission. As we stated in the November 7 Order, DWR is free to determine whether it will or will not make purchases, but when it decides to purchase from a jurisdictional entity whose rates are set by this Commission, it is obligated to pay such regulated rates. For all of the reasons described above, we deny the parties' requests for rehearing.

C. ER01-889-009 and ER01-3013-001 November 21, 2001 Compliance Filing

As stated above, on November 21, 2001, the ISO submitted a compliance filing pursuant to the November 7 Order. The November 7 Order directed the ISO to comply with its Tariff and the Commission's creditworthiness orders by (1) requiring the ISO to enforce its billing and settlement procedures under its Tariff; (2) invoicing DWR for all ISO transactions it entered into on behalf of SoCal Edison and PG&E within 15 days of the date of the Order, (3) filing a report with the Commission within 15 days of the date of the Order that includes the overdue amounts from DWR and a schedule for payment of those overdue amounts within three months of the date of the Order, and (4) reinstating the prior billing and settlement procedures under the ISO Tariff.

1. Enforcement of billing and settlement procedures under its Tariff

The ISO states that in compliance with the Commission's November 7 Order, it has implemented the following: the ISO will bill DWR as the Scheduling Coordinator for transactions in ISO markets on behalf of the non-creditworthy UDC's net short positions; the ISO will send bills directly to DWR for all costs applicable to transactions relating to the non-creditworthy UDC's net short positions; and the ISO will seek DWR's compliance with applicable ISO Tariff requirements for scheduling, bidding, billing and settlement procedures and also will cease honoring DWR's request for access to non-public information not otherwise available to all Scheduling Coordinators.

2. Invoice DWR for ISO transactions on behalf of SoCal Edison and PG&E

According to the compliance filing, the ISO invoiced DWR for the period of January 17 through July 31, 2001, for charges allocated to all Scheduling Coordinators. According to the ISO, these charges include, but are not limited to, charges for Ancillary Services, Day-Ahead and Hour-Ahead Inter-zonal

Congestion, Instructed Energy, Uninstructed Energy and Neutrality.[35] The ISO states that the November 7 Order directed the ISO to invoice DWR for transactions on behalf of the non-creditworthy UDC's net short positions, however, the ISO claims that in order to invoice DWR for only the net short position, the ISO must have additional meter data and schedules to calculate the net short positions.[36] As a result, the ISO can only invoice DWR for the entire unpaid amounts of all ISO market transactions on behalf of the non-creditworthy UDCs. The ISO states that upon receipt from DWR and/or the non-creditworthy UDCs of data specific to the non-creditworthy UDCs' net short positions, the ISO can prepare invoices specific to the non-creditworthy UDCs' net short positions. According to the ISO, the invoices that the ISO provided to DWR for the past due amounts are based upon those invoices for the relevant period that the ISO previously provided to PG&E and SoCal Edison. For the period of January 17 through July 31, 2001, the ISO calculates the overdue amounts due from DWR. When netted against amounts owed by the ISO markets to DWR, the ISO calculates the overdue amounts to be $955,699,762.10.[37] The invoices were delivered to DWR on November 20, 2001.

The ISO states that it calculated the August 2001 invoice, which was sent to PG&E and SoCal Edison, using the ISO's practices prior to the November 7 Order.[38] The ISO intends to re-invoice the August transactions directly to DWR, on January 24, 2002, after the ISO has completed settlement of the January 17 through July 31, 2001 DWR account. According to the ISO, transactions that occurred in September, October and November have not been invoiced and settled as of the date of the compliance filing. Therefore, the ISO states that beginning with

[35] See May 11 Compliance filing at 7-8.

[36] According to the ISO, the meter data and schedules it receives from SoCal Edison and PG&E do not differentiate between load served by the SoCal Edison's and PG&E's retained generation resources and load served by DWR in support of the net short positions.

[37] The ISO states that the amounts owed to PG&E and SoCal Edison for the period of January 17 through July 31, 2001 total approximately $3.6 billion. However, according to the ISO, DWR in turn is owed approximately $2.7 billion of this total amount. See ISO Appendix A at 1.

[38] The ISO sent the August 2001 invoices to PG&E and SoCal Edison. The ISO states that because payments for the month of August, 2001 were not overdue as of the date of the compliance filing, the ISO intends to defer settlement of August, 2001 transactions and re-invoice DWR after February 7, 2002.

the settlement statement for September 2001, the ISO will invoice DWR directly for amounts due for transactions on behalf of the non-creditworthy UDCs.[39]

3. Schedule for Payment of Overdue Amounts

In its compliance filing, the ISO set forth a payment schedule for DWR payments to the ISO of the overdue amounts. The payment schedule commenced on November 20, 2001 when the ISO delivered invoices to DWR for the past due amounts and advanced through the invoicing and payment dates for each month, with completion of all disbursements of past due amounts on February 7, 2002.

The ISO requests that it be allowed to deviate from Settlement Procedures in the ISO Tariff for this one-time settlement of the DWR amounts owed for the period January 17 through July 31, 2001, in order for it to facilitate the billing and settlement process. The ISO Tariff does not specifically provide for an "out of sequence" settlement calendar. Under the Settlements and Billing Protocol, Section 6.10.4, the ISO must apply any given monthly payment to the earliest unpaid balances. According to the ISO, it

proposes this modification to the billing and settlement procedures in the ISO Tariff to ensure that DWR funds are not applied to debts that accrued prior to enactment of legislation authorizing DWR to cover the non-creditworthy UDCs' net short positions.

The ISO states that its independent accountants will review the allocation of proceeds received from DWR and disbursed to ISO Market Participants. The accountants will report their findings in a report to be filed with the Commission and made available to the public on request.

4. Reinstatement of billing and settlement procedures under the ISO Tariff

The ISO proposed a temporary change in the ISO's settlement practices in its application for Tariff Amendment 40. Specifically, the ISO sought to modify its billing and settlement methodology, which since June 2000 had included a dual invoicing process.[40] The November 7 Order rejected this temporary change,

[39] May 11 Compliance filing at 12.

[40] Under the dual invoicing process, the ISO sends out a Preliminary Settlement Statement and based on receipts received
(continued...)

and in the compliance filing, the ISO commits to re-implement a dual invoicing process beginning with a November 2001 preliminary invoice on January 29, 2002.

D. Discussion of November 21, 2001 Compliance Filing Issues

DWR argues that the ISO's compliance filing is deficient because the ISO has invoiced CERS for costs that are unrelated to PG&E and SoCal Edison's net short position, and include all unpaid amounts associated with the their load. According to DWR, the ISO's obligation under its Tariff is to invoice CERS only for energy related costs in transactions where DWR serves as the creditworthy counterparty for the applicable portion of PG&E and SoCal Edison's load.[41]

DWR also asserts that the ISO invoices erroneously include costs attributable to wholesale municipal transactions for which the non-creditworthy UDCs provide certain Scheduling Coordinator services as a result of existing contract arrangements. DWR asserts that the ISO has billed CERS for all unpaid non-creditworthy UDC costs, whether or not they are related to the net short requirements of the non-creditworthy UDCs' retail customers. As the ISO explained, " . . .no mechanism exists to separate the scheduling and billing of the IOU net short position from other IOU scheduling activities, this invoice reflects all IOU scheduling activity."[42] DWR requests that the Commission

[40] (...continued)
from Scheduling Coordinators, sends out a separate Preliminary Invoice with a cash disbursement. Likewise, the ISO sends out a Final Settlement Statement and based on additional receipts received, issues a separate Final Invoice with the final cash disbursement.

[41] DWR states that the PG&E and SoCal Edison should retain responsibility to pay for charges that are not associated with CERS supplying the net short energy requirements. DWR Protest at 6.

[42] According to DWR, in response to CERS' request for correction of the invoice to exclude municipal load, the ISO replied,"The ISO records show unpaid amounts for the relevant Scheduling Coordinator Identification Numbers, but the ISO can not determine the portion, if any, of the amounts in such Scheduling Coordinator Identification Numbers that is applicable to the net short position as opposed to a wholesale transaction with a municipal utility. According[ly], the ISO can not make an adjustment to the February Invoice until the ISO has specific information to document that all net short position amounts are
(continued...)

direct the ISO to prepare revised CERS invoices accurately assessing costs for only energy related charge types and the non-creditworthy UDCs' net short position.

According to SoCal Edison, the ISO has reduced DWR's invoiced amounts by over $2.8 billion alleging that this amount reflects amounts owed to DWR for market transactions. According to SoCal Edison, it is inappropriate for the ISO to give DWR a reduction without either clearly explaining why the "market" owes money to DWR, attempting to establish through documentary evidence the actual amount of debt, and substantiating that the reduction is appropriate with respect to the transactions before the Commission.

The California Generators argue that the compliance filing fails to meet the Commission's prior creditworthiness directives or the November 7 Order. Specifically, the California Generators argue that the information submitted with the ISO's compliance filing does not provide sufficient information for market participants or the Commission to determine whether the ISO has appropriately and accurately billed DWR. It is also unclear whether the ISO has accounted for interest on amounts due pursuant to Section 11.12 of the ISO Tariff.[43] Therefore, the California Generators request that the independent review of the disbursement of DWR payments to suppliers should include a corresponding independent examination of the ISO's own calculations of amounts due from and owed to DWR as reflected on the netted invoices submitted to DWR. According to the California Generators, this review is necessary to ensure that amounts due from and owed to DWR are accurately calculated, invoiced and paid in accordance with the Commission's orders and the ISO Tariff.[44] In addition, the California Generators seek to expand the auditor's review to include a review of the ISO's classification of transactions subject to the November 7 Order and the method by which the ISO calculated amounts due from and owed to DWR.

[42] (...continued)
fully invoiced to CERS." DWR Protest at 8.

[43] Section 11.12 provides that interest accrues on overdue amounts until the date that such amounts are remitted to the ISO Clearing Account for payment to market participants.

[44] The California Generators states that the review would determine whether the ISO has appropriately applied specific provisions of its Tariff in distinguishing between inter-Scheduling Coordinator trades entered into by DWR and out-of-market transactions entered into by the ISO, the costs for which are shared by other generators that deviate from their schedules.

IEPA, Vernon, Williams and California Generators argue that the ISO is obligated to and has appropriately invoiced DWR for all market transactions entered into on behalf of PG&E and SoCal Edison. According to Vernon, if PG&E and SoCal Edison are not creditworthy and if DWR has not fully committed itself to backing payments for their services, then the ISO should not provide them service under the Tariff. IEPA states that the nature of the dispute in this case is related to the continued lack of clarity regarding DWR's obligation under the ISO Tariff. DWR is disputing its obligation to pay certain charge types typically[45] imposed upon a Scheduling Coordinator.

According to IEPA, it is not appropriate for DWR to split "responsibilities" based on charge type classifications. This would require the ISO to treat DWR differently than any other SC with respect to the scope of applicable charges. IEPA requests that the Commission require public accounting of the disputed amount, the total dollars implicated and the expected date of resolution in order for the market to have a certain time frame for resolving past due amounts.

Redding and Modesto request that the Commission reject the compliance filing and the ISO's requested waiver to deviate from the ISO Tariff for an "out of sequence" settlement calendar. Redding and Modesto argue that the ISO must abide by its Tariff, and pay all outstanding obligations in the order in which they were incurred.

SoCal Edison disputes the ISO's claim that it does not have the meter data to differentiate between the Load served by the non-creditworthy UDCs' retained generation and the Load served by DWR in support of the non-creditworthy UDCs' net short position. To the contrary, the ISO has the necessary meter data for generating sites in the ISO Control Area and for load in the ISO Control Area. Therefore, there is no foundation for the ISO's claim of missing data and no justification for the need to modify the compliance filing. In addition, SoCal Edison states that the November 7 Order did not limit the application of the creditworthiness orders to the non-creditworthy UDC's "net short" position, which the ISO defines as "[non-creditworthy UDCs'] Load not served by the [non-creditworthy UDC] generation." SoCal Edison states that this definition is vague and inconsistent with numerous Commission orders which provided that the ISO must have a creditworthy counter-party in place for all of its transactions

[45] Specifically, it appears DWR is protesting the following ISO charges: grid management charge, demand relief program costs, inter-zonal congestion management charge, transmission charges, under scheduling penalties, and non-utility load related charges.

with third-party suppliers. According to SoCal Edison, the ISO must explain whether its definition of the "Load" of the non-creditworthy UDCs includes, for example, ancillary services, out-of-market charges, and other transactions that the ISO enters into with third-party suppliers in order to serve the customers in the IOU's service area.

We accept in part and reject in part the ISO's compliance filing. We also require the ISO to submit certain information. We accept certain stated commitments by the ISO in (1), (2) and (4) above to treat DWR as a Scheduling Coordinator and bill DWR directly for the non-creditworthy UDC's net short position. We accept the ISO's request for "out of sequence" application of overdue payments. Our November 7 Order directed the ISO to invoice and collect past due amounts from DWR, who agreed to assume this responsibility upon the enactment of legislative funding on January 17, 2001. Therefore, we find it appropriate for the ISO to employ an "out of sequence" application of these past due amounts. We also accept the ISO's reinstatement of the billing and settlement procedures under the ISO Tariff. These are consistent with our November 7 Order.

We reject the ISO's compliance filing as it relates to the invoices sent on November 20 and direct a new compliance filing to be made within 15 days of the date of this order reflecting a full reconciliation of charges, as discussed below. In invoicing DWR for past due amounts, the ISO stated the following:

> The amount owed to ISO markets by the IOUs for the period of January 17 through July 31, 2001 total approximately $3.6 billion. [C]DWR in turn is owed approximately $2.7 billion of this amount. As a result, [C]DWR owes approximately $955 million for transactions in ISO markets on behalf of the IOUs for this period.

We find that it is inappropriate for the ISO to reduce DWR's invoiced amounts by $2.7 billion without substantiating its reduction. The ISO's "net" reduction is unexplained and unsupported. We direct the ISO to re-invoice those gross amounts owed by DWR for all ISO transactions DWR entered into on behalf of the non-creditworthy UDCs. Any reduction of these amounts owed by DWR in each month should include a full and complete explanation of the reduction with supporting documentation. The supporting documentation should identify the charge type classifications reflected in the invoiced amounts and explain whether the invoiced amounts include interest on amounts due. We direct the ISO to provide a transparent means by which this Commission and other parties can determine whether the invoiced amounts were properly calculated. We direct the ISO to submit

this further compliance filing within 15 days of the date of this order.

Under section 11.4.2 of the ISO Tariff, DWR as a Scheduling Coordinator may dispute any item or calculation set forth in any Preliminary Settlement Statement. In response to DWR's assertion that the ISO's invoices include costs associated with the non-creditworthy UDCs self-supplying, we direct DWR to use the ISO Tariff Sections 11 and 13 concerning billing, settlement and dispute resolution to resolve this issue.[46] We note, however, that Section 11.6.2 states that, "Each Scheduling Coordinator shall pay any net debit and shall be entitled to receive any net credit shown in an invoice on the Payment Date, whether or not there is any dispute regarding the amount of the debit or credit. Finally, we expect the ISO to enforce the tariff provisions in the event of default or delay in payments due under the ISO Tariff.[47]

The Commission orders:

(A) The SoCal Edison, CEOB and DWR requests for rehearing are hereby denied, as discussed in the body of this order.

(B) The ISO is hereby directed to submit a compliance filing within 15 days from the date of this order, pursuant to the discussion in the body of this order.

By the Commission. Commissioner Massey dissented in part with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,

Deputy Secretary.

[46] For example, under Section 11.4.2, all Scheduling Coordinators have the right to dispute any item or calculation set forth in any Preliminary Settlement Statement and Section 13 generally applies to all disputes between parties.

[47] Under Section 2.2.3.3 of the Tariff, the ISO is required to review the creditworthiness of any Scheduling Coordinator, UDC or MSS that delays or defaults in making payments due under the ISO Tariff. As a consequence of that review, the ISO may require such Scheduling Coordinator, UDC or MSS, despite having an Approved Credit Rating, to provide a form of credit support.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation   Docket
Nos. ER01-889-003
ER01-889-005
ER01-889-006
ER01-889-009
ER01-889-010

California Independent System Operator Corporation   Docket
Nos. ER01-
3013-
001
ER01-3013-002

San Diego Gas & Electric Company   Docket No.   EL00-
95-036

Complaint,

v.

Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independents System Operator and the

Docket No. ER01-889-003, et al.

California Power Exchange,
Respondents

(Issued March 27, 2002)

MASSEY, Commissioner, dissenting in part:

I cannot support denying rehearing regarding the Commission's prior decision that states that if the ISO does not provide a creditworthy party to back the transactions of the non-creditworthy utilities, the must offer requirement set out in our mitigation orders will no longer apply. I dissented from this decision in the prior order and will dissent from it again today.

The must offer requirement is a critical part of the mitigation program the Commission put in place in our April and June orders, finding the program necessary to ensure just and reasonable rates in California's dysfunctional electricity market. The mitigation conditions are to remain in place until September 2002. While the Western markets are behaving right now, we cannot be assured that this will continue. In fact, I give the must offer requirement a lot of the credit for the current lower prices. The Commission has made no finding that some or all of the California mitigation program is now unnecessary. Accordingly, I do not understand the language in today's order that says that "(w)hile the must-offer requirement was necessary to ensure just and reasonable rates in Spring 2001, its necessity at that time does not prevent us from currently considering alternatives." I am not aware of any alternatives to the must offer requirement that are currently being considered.

I do agree, however, that generators must be paid for their services, especially given that generators are required to sell into the ISO market by the Commission's must offer condition. However, if generators fail to get paid under the ISO's tariff procedures, then the Commission could pursue remedial action such as seeking injunctive relief. Removing the must offer condition would be ill advised. I would have granted rehearing on this issue.

Therefore, I respectfully dissent in part from today's order.

William L. Massey
Commissioner