

109 FERC ¶ 61, 153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

The California Independent System Operator
Corporation

Docket Nos. EL04-133-000
ER04-1198-000

(Not Consolidated)

ORDER GRANTING IN PART AND DENYING IN PART COMPLAINT,
DIRECTING COMPLIANCE FILING, CONDITIONALLY ACCEPTING FOR FILING
TARIFF REVISIONS, SUBJECT TO FURTHER COMMISSION ACTION AND
REFUND, AND ESTABLISHING DISPUTE RESOLUTION SERVICE
PROCEDURES

(Issued November 5, 2004)

1. In this order, we address two interrelated filings, which were filed concurrently by the California Independent System Operator Corporation (CAISO or ISO). In Docket No. EL04-133-000, we grant in part and deny in part the CAISO's complaint seeking to modify its Transmission Control Agreement (TCA) with the Participating Transmission Owners (Participating TO), to provide for the transfer of the Western Area Power Administration's (Western) rights and interests in the Path 15 Upgrade Project to the ISO's operational control, as partial Participating TO. We accept the CAISO-proposed revisions to the TCA, subject to certain modifications, effective November 1, 2004, and direct a compliance filing.

2. In Docket No. ER04-1198-000, we address the CAISO-proposed Amendment No. 63 to the ISO Tariff, which conforms the ISO Tariff to the proposed TCA and details how Western will be compensated for its contribution to the Path 15 Upgrade Project. Specifically, we accept for filing certain tariff revisions in the CAISO-proposed Amendment No. 63, and conditionally accept for filing remaining revised tariff sheets, subject to further Commission action, and suspend them for a nominal period, to become

effective November 1, 2004, as requested, subject to refund.¹ To aid parties to resolve the issues among themselves, we direct the Director of the Commission's Dispute Resolution Service (DRS) to convene a meeting of the parties to arrange a process that may foster negotiation and agreement with regard to the level of compensation for Western's involvement in this project. The parties, in turn, will be directed to report the progress of any negotiations to the Commission within 60 days from the date of this order.

3. This order benefits customers by allowing greatly needed capacity in the CAISO market to be energized expeditiously, while ensuring that the terms of this transfer of control to the CAISO are just and reasonable.

Background

4. Due to the bottleneck on Path 15,² where the electric transmission system narrows from three to two 500-kV transmission lines between Los Banos and the Gates Substation at Coalinga, transfer capability on this portion of Path 15 is severely congested at times. The Path 15 Upgrade Project, sponsored by Western, Trans-Elect NTD Path 15, LLC (Trans-Elect), and Pacific Gas and Electric Company (PG&E) (collectively project participants),³ is intended to alleviate congestion on Path 15 by providing approximately 1,500 MW of additional transfer capacity. This project consists of a third 500-kV line and associated transmission upgrades, which have been built parallel to the existing Path 15 transmission facilities at an estimated cost of \$250 million. The Path 15 Upgrade Project represents not only the first public-private partnership to undertake such a significant venture, but also represents one of the largest projects in the Western region since the California-Oregon Transmission Project of 1992.

¹ We accept for filing the following tariff revisions in Amendment No. 63: Second Revised Sheet No. 140, Third Revised Sheet No. 141, Original Sheet No. 141.00, First Revised Sheet No. 338, Original Sheet No. 338A, Third Revised Sheet No. 356, and Original Sheet No. 356A. Third Revised Sheet No. 148 and First Revised Sheet No. 148A are being conditionally accepted for filing, suspended for a nominal period and set for hearing.

² Path 15 is comprised of two 500-kV transmission lines in Central California and extends 84 miles to connect Southern California with the northern part of the state.

³ The Letter Agreement among the CAISO, PG&E, and Trans-Elect, and the Interconnection Agreement were accepted by the Commission for filing. *See Western Area Power Administration*, 99 FERC ¶ 61,306, *reh'g denied*, 100 FERC ¶ 61,331 (2002); *petition for review sub nom. Public Utilities Commission of the State of California v. FERC*, 367 F.3d 925 (2004); and *Pacific Gas & Electric Company*, 107 FERC ¶ 61,335 (2004).

5. PG&E and Trans-Elect jointly contributed 99.5 percent of the Path 15 Upgrade Project costs and intend to recover this amount through their respective Transmission Revenue Requirements (TRRs). Their respective entitlements are 18 and 72 percent. Western contributed 0.5 percent of the project costs (approximately \$1.3 million); however, the project participants have agreed to allow Western to hold a 10 percent entitlement in this project and recover 10 percent of the congestion and firm transmission rights (FTRs) auction revenues associated with this Upgrade.

CAISO's Petition in Docket No. EL04-133-000

6. The TCA was created to establish the terms and conditions under which transmission owners will become Participating TOs and how the CAISO and each Participating TO will discharge their respective duties and responsibilities.⁴ In Docket No. EL04-133-000, the CAISO filed a petition to modify the TCA to, among other things, accommodate Western's desire to turn over to the CAISO its entitlements in the Path 15 Upgrade. As discussed in greater detail later in this order, should the Commission determine that the TCA may not be modified in this manner, the CAISO submits the instant petition as a complaint seeking the Commission determination that the TCA is unjust, unreasonable and unduly discriminatory if the CAISO is precluded from assuming operational control of the portion of the Path 15 Upgrade owned by Western.

7. With regard to the process utilized to bring forth these modifications, the CAISO states that the relevant parties engaged in extensive discussions over an eight-month period regarding this proposal; yet, the parties were not able to resolve all of their issues prior to making this filing. The CAISO further states that as a result of disagreement among parties to the TCA, the TCA cannot be modified without a Commission order because in accordance with the terms of the TCA, the TCA can be amended only by mutual agreement of the parties, through the CAISO's Alternative Dispute Resolution (ADR) procedures, or upon issuance of a Commission order.⁵

8. Specifically, the CAISO has proposed a number of modifications to the TCA. The following modifications are contentious: (1) changes to TCA section 3.3.1 that specify special conditions by which Western may withdraw as a Participating TO; (2) changes to TCA section 4.1.1 which grants Western "partial" Participating TO status and allows Western to turn over to the ISO only its portion of the Path 15 Upgrade instead of all of

⁴ A Participating TO is defined in the CAISO Tariff as: "A party to the TCA whose application under Section 2.2 of the TCA has been accepted and who has placed its transmission assets and Entitlements under the ISO's Operational Control in accordance with the TCA. A Participating TO may be an Original Participating TO or a New Participating TO."

⁵ TCA section 26.11.

its transmission facilities; (3) the addition of TCA section 10.5 which grants Western an exemption from the interconnection procedures under the TCA and allows Western to use the interconnection procedures outlined in the Western TO Tariff or Western Open Access Transmission Tariff (OATT); (4) changes to TCA section 8 that address critical protective systems that support the ISO-controlled grid; and (5) changes to TCA section 26.3.1 concerning the confidentiality of documents, materials, data or information pursuant to the TCA.⁶

9. The CAISO proposes that the Commission accept the proposed TCA modifications for filing, effective upon no less than ten days' notice after November 1, 2004. This effective date will allow the implementation of the transfer of operational control of the Path 15 Upgrade prior to energizing the Path 15 Upgrade. In support of its request, the CAISO argues that the transfer should take place as soon as the Upgrade is energized, to eliminate congestion along Path 15.

Proposed Amendment No. 63 in Docket No. ER04-1198-000

10. Concurrently with the petition to modify the TCA, the CAISO submitted a filing pursuant to section 205 of the Federal Power Act,⁷ proposing to revise the CAISO's Tariff with revised tariff sheets, captioned as Amendment No. 63, which would accommodate the transfer by Western to CAISO of operational control of Western's 10 percent interest. The proposed tariff revisions will allow Western to: (1) become a partial Participating TO with regard to the Path 15 Upgrade Project only; and (2) recover the congestion and FTR auction revenues associated with its 10 percent entitlement in the Path 15 Upgrade Project. To effectuate this, the CAISO proposes changes to section 3 of the CAISO Tariff to require Western to turn over operational control of only its rights and interests in the Path 15 Upgrade. The CAISO further proposes to treat Western as a

⁶ No concerns were raised by protestors regarding certain administrative changes to the TCA under FERC Electric Tariff No. 7, Second Replacement Transmission Control Agreement. The following tariff sheets reflect changes in the transmission entitlements of the Cities of Anaheim, Azusa, Banning and Riverside, California: (1) First Revised Sheet No. 97 (Superseding Original Sheet No. 97); and (2) First Revised Sheet No. 100 through 103 (Superseding Original Sheet No. 100 through 103). First Revised Sheet No. 184 (Superseding Original Sheet No. 184) reflects changes to the definition of "Business Day."

⁷ 16 U.S.C. § 824d (2004).

Project Sponsor⁸ in accordance with section 3.2.7 of the CAISO Tariff for the purpose of cost recovery.⁹ In so doing, Western will not be required to file a TRR with the CAISO for recovery of its investment associated with Path 15 Upgrade.

11. Section 3.2.7 of the CAISO Tariff is proposed to be modified as follows. Section 3.2.7.3(a) is modified to state that Project Sponsors will now be allowed to receive wheeling revenue and the method of determining the share of wheeling revenues that each Project Sponsor is entitled to receive.¹⁰ Section 3.2.7.3(d) will be modified to state that the Project Sponsor's share of wheeling, congestion and FTR auction revenues for an upgraded transmission facility will be calculated based in part on the ratings of the transmission facility before and after the upgrade or addition to the transmission facility. Lastly, section 3.2.7.4 is proposed to be modified to provide that, because Western is specified in proposed section 3.1.3 to recover revenue as a Project Sponsor, Western's transmission facility costs will not be included in the CAISO's Grid-wide component of the High Voltage Access Charge in accordance with Schedule 3 of Appendix F of the ISO Tariff.

12. CAISO requests that Amendment No. 63 be made effective on November 1, 2004. The CAISO explains that the requested effective date will permit the transfer of operational control over Western's 10 percent interest in the Path 15 Upgrade to the CAISO prior to energizing the upgrade, which may occur as early as mid-November.

Motions to Intervene, Comments, and Protests

13. Notice of the filing in Docket No. EL04-133-000 was published in the *Federal Register*, 69 Fed. Reg. 56,210 (2004), with comments, protests, or interventions due on September 29, 2004. Notice of the filing in Docket No. ER04-1198-000 was published in the *Federal Register*, 69 Fed. Reg. 56,208 (2004), with comments, protests, or interventions due on September 28, 2004. Timely motions to intervene in both dockets were filed by entities listed in the Appendix to this order. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding.

⁸ A Project Sponsor is defined as a market participant that proposes the construction of a transmission addition or upgrade in accordance with section 3.2 of the CAISO's tariff. See Appendix D to the TCA.

⁹ In support of its position, the CAISO cites to *California Independent System Operator Corp.*, 102 FERC ¶ 61,278 (2003). (*Amendment No. 48 Order*).

¹⁰ Western states that its 150 MW entitlement will be for its own use and, thus, does not expect to receive wheeling revenues.

14. Trans-Elect filed a motion to intervene out-of-time in Docket No. ER04-1198-000. The Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Cities) filed a motion to intervene out-of-time in Docket No. EL04-133-000. Given the lack of undue prejudice and the parties' interests, we find good cause to grant under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), Trans-Elect's and the Cities' unopposed, untimely motions to intervene.

15. Several parties submitted comments and/or protests along with their motions to intervene. The CAISO and Western filed answers to protests in Docket Nos. EL04-133-000 and ER04-1198-000. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a), prohibits an answer to a protest unless otherwise permitted by the decisional authority. We will accept CAISO's and Western's answers to protests because these answers have assisted in our decision-making.

16. The following parties filed comments in support of the CAISO's filings: Sacramento Municipal Utility District, California Department of Water Resources State Water Project, and Western. The comments in opposition and protests will be addressed below.

Discussion

Cost Recovery and Partial Transfer of Western's Transmission Facilities

Comments and Protests

17. Several parties object to the CAISO's proposed changes to the TCA and tariff revisions on the ground that Western will be afforded preferential treatment and will receive benefits, such as a 10 percent right to congestion and FTR auction revenues that is disproportionate to Western's 0.5 percent investment in the Path 15 Upgrade.

18. Specifically, San Diego Gas & Electric Company (SDG&E) contends that Western is afforded preferential treatment because it would be allowed to transfer operational control to the CAISO over only certain facilities selected by Western. SDG&E and Southern California Edison Company (SoCal Edison) argue that the CAISO has failed to provide any reasonable explanation why Western should be treated differently from other Participating TOs. SoCal Edison adds that CAISO's reliability concerns are not justified. SDG&E further states that Western will be allowed to keep all related congestion revenues and FTR auction proceeds it derives from FTRs in this Upgrade, whereas other Participating TOs are required to submit a TRR and a Transmission Revenue Balancing Account (TRBA) which credits the Participating TO's TRR with, or reduces by, congestion, wheeling and FTR auction revenues.

19. Further, SoCal Edison states that the CAISO's previous attempt to obtain a partial Participating TO status for Western was rejected by the Commission in its prior order acting on Amendment No. 49.¹¹ It also argues that permitting Western to recover its costs as a Project Sponsor is inconsistent with the *Amendment No. 48 Order*. In SoCal's opinion, Amendment No. 48 was never intended to permit a Project Sponsor to obtain all incremental FTR auction revenues associated with an upgrade and permit the costs of the facility to also be included in the TRR of another participating TO that financed the same upgrade.

20. Pacific Gas & Electric Company (PG&E) states that, while it supports the proposed modifications to the CAISO Tariff to conform it to the TCA and to allow the CAISO to exercise operational control over Western's entitlement to the Path 15 Upgrade, it objects to the CAISO-proposed tariff changes regarding the cost recovery of Western's entitlement. PG&E claims that, during negotiations among the project participants, Western made a commitment to other parties that, in no circumstances, would it seek to profit from its participation in the project. PG&E further contends that Western intended only to seek reimbursement of the costs it actually incurred by virtue of its role as a participant in the Path 15 upgrade project. Nevertheless, PG&E notes, proposed Amendment No. 63 includes no cap or other limitation on the total amount of congestion revenues or FTR auction proceeds that Western might receive, which is fundamentally at odds with the representations made by Western to other project participants. Accordingly, PG&E requests that the Commission accept Amendment No. 63, suspend it for one day, and order a hearing on section 3.2.7.3 of the CAISO Tariff to determine the language necessary to limit revenues flowing to Western associated with its *de minimis* contribution to the project.

21. The California Electricity Oversight Board (CEOB) also supports CAISO's proposal to give Western a partial Participating TO status but opposes the cost recovery that Western would receive under the CAISO's proposal. It argues that the disproportion between the cost contribution made by Western (0.5 percent) and Western's 10 percent entitlement may potentially result in users of the upgraded Path 15 transmission paying more than is necessary for 100 percent cost recovery. Specifically, CEOB states that, under traditional ratemaking, a portion of the revenue which is slated to go to Western would have been assigned to the two other project participants and credited by those entities against their TRRs. CEOB asserts that, in the absence of these credits, the grid access charge will be higher than it otherwise would be.

22. Western filed comments in support of the CAISO's request to allow Western to turn over the operational control of only the Path 15 Upgrade facilities and to become a

¹¹ *California Independent System Operator Corp.*, 103 FERC ¶ 61,260 (2003) (*Amendment No. 49 Order*).

partial Participating TO. Western states that in the prior order, the Commission ruled that it may be appropriate for the CAISO to accept part of a federal entity's transmission facility if such an exemption is in the public interest.¹² Western further argues that granting Western the special status of a partial Participating TO is in the public interest because the Path 15 Upgrade is a high value project with overriding regional significance, and the exemption granted to Western will provide substantial benefits to customers. Similarly to the CAISO, Western also contends that a partial transfer of Western's transmission assets could be accomplished by granting Western the right to collect FTR auction revenues in accordance with Amendment 48. Western also states that by creating a limited exemption, the Commission would prevent any confusion in Western's administration of its OATT and a TO tariff.

Answers to Protests

23. In its answer, the CAISO states that Western's receipt of congestion and FTR auction revenues is consistent with the CAISO Tariff, including Amendment No. 48, and, more importantly, Western's transfer of operational control of its interest in the Path 15 Upgrade is *predicated* on Western's receiving such cost recovery treatment. The CAISO also points out that the difference between this situation and *the Amendment No. 48 Order* cited by SoCal Edison is that the latter was a transmission upgrade to a transmission line already under the CAISO's operational control, while the instant case involves a new transmission line that upgrades an existing transmission path already under the CAISO's operational control. The CAISO argues that market participants will benefit by the additional transmission capacity being made available by Western, without any additional TRRs being recovered through the Transmission Access Charge.

24. The CAISO proffers that the Commission may find that, in order to get such a vitally important project built, it was just and reasonable for Trans-Elect to bear slightly greater percentage of the costs than its capacity entitlement to the Upgrade. The CAISO references the *Amendment No. 48 Order*, where the Commission found that it was appropriate for FPL Energy, LLC (FPLE) to receive congestion revenues and FTR auction proceeds because FPLE brought additional capacity through the CAISO's Transmission Access Charge. The CAISO asserts that this is precisely the case here.

25. In response to protesters who argue that Western should not profit from its participation in the Path 15 project, and that Western's recovery should be capped at the level of its unreimbursed investment in the project (approximately \$1.3 million), the CAISO states that it would be willing to work with Western to return revenues that exceed its cost associated with the Path 15 Upgrade, provided that it does not jeopardize

¹² Western refers to *Amendment No. 49 Order*.

the formula rate that the Commission has in effect for the CAISO's Transmission Access Charge.

26. Western clarifies that, contrary to SoCal Edison's assertion, Western, as a federal power marketing administration, is required by law to determine the rates, terms and conditions for the use of federal property, including transmission services.¹³ With respect to its entitlement to Path 15, Western encourages SoCal Edison to participate in its rate process. Western also states that it is turning over its entitlement under Amendment No. 48 to avoid filing a TO tariff. However, in the event that there are over recoveries, Western commits to working with the CAISO to handle such over collections. Western believes that this flexibility will allow Western and the CAISO to develop a necessary mechanism to adequately address any over collections.¹⁴

Commission Determination

27. Here we address two interrelated but distinct issues: (1) whether Western should be permitted to transfer only a portion of its transmission facilities to the CAISO's operational control and thereby become a partial Participating TO; and (2) whether Western should be allowed to recover its costs as a Project Sponsor under section 3.2.7.3 of CAISO's Tariff, and whether the cost recovery should be capped.

28. We find that Western should be allowed to become a partial Participating TO. While in the *Amendment No. 49 Order* we rejected without prejudice the CAISO's proposal to waive the tariff requirement that a new Participating TO must turn over operational control of all its transmission facilities to the CAISO, we held that, under certain circumstances, such waiver may be granted. Specifically, we ruled that a waiver from the general requirement can be granted "only in a very narrow circumstance, that is, if the request involves exempting a federal agency from this requirement and that agency is involved in a high value project both with overriding regional significance and that provides substantial benefits to customers."¹⁵ Under the instant circumstances, we find that a waiver of the requirement to turn over operational control to CAISO of all transmission facilities is appropriate. Western is a federal power marketing administration which financed the construction of the vitally important project. The

¹³ Western cites to 43 U.S.C. § 485, 10 C.F.R. Part 900; *Associated Electric Cooperative, Inc. v. Morton*, 507 F. 2d 1167, 1175-6 (D.C. Cir. 1974); *City of Santa Clara v. Andrus*, 572 F. 2d 660, 667 (9th Cir. 1978).

¹⁴ Western states that it is currently unaware of any limitations on the CAISO's ability to receive credits back from Western. Nonetheless, it is willing to examine this as part of its federal ratemaking process. Western again encourages SoCal Edison to raise this issue as part of that process.

¹⁵ See *Amendment No. 49 Order* at P 13.

energization of the Path 15 Upgrade will relieve severe congestion on Path 15 connecting Southern California with the northern part of the state. We will also permit Western to recover its investment as a Project Sponsor rather than a Participating TO with a TRR and accompanying TRBA. We also believe that Western is entitled to recover the amount of its project investment (approximately \$1.3 million) plus interest on the investment amount, which will compensate Western for the time value of money. The interest should be assessed at the Commission's approved interest rate. With regard to the recovery of amounts above Western's investment of approximately \$1.3 million, as adjusted by an interest payment, the record before us does not provide sufficient evidence to determine whether Western's compensation, as proposed by the CAISO, is just and reasonable. While the Commission previously approved Western's 10 percent entitlement in the Path 15 Upgrade, the issue of whether Western should receive revenues above approximately \$1.3 million plus interest was not contemplated in the Letter Agreement among Western, PG&E, and Trans-Elect, as accepted by the Commission.¹⁶

29. For these reasons, we encourage parties to resolve the issue of Western's compensation level through the Commission's DRS. The CAISO states that it is willing to work with Western to return revenues in excess of its project investment provided that the formula rate that the Commission has in effect for the CAISO's Transmission Access Charge is not affected. Western too has stated that it is willing to work with the CAISO to address this concern. Moreover, while Western states that it will include any excess revenues from its entitlement in a future federal rates proceeding; we believe that this may allow a set of customers other than those using Western's entitlement to benefit from revenues generated from the Path 15 Upgrade.

30. In the *Amendment No. 48 Order*, which addressed the CAISO's proposal to create the concept "Project Sponsor" to allow non-Participating TOs that fund transmission facility upgrades on the CAISO-controlled grid to receive compensation through wheeling, congestion and FTR Auction revenues in proportion to their entitlement of the upgrade, the Commission determined that a Project Sponsor should receive FTRs associated with the full amount of the capacity added to the system, as determined through the Western Electricity Coordinating Council regional reliability process, along with wheeling and congestion revenues.¹⁷ The Commission made this determination to

¹⁶ The Letter Agreement among the CAISO, PG&E, and Trans-Elect, and the Interconnection Agreement were accepted by the Commission for filing. *See Western Area Power Administration*, 99 FERC ¶ 61,306, *reh'g denied*, 100 FERC ¶ 61,331 (2002); *petition for review sub nom. Public Utilities Commission of the State of California v. FERC*, 367 F.3d 925 (2004); and *Pacific Gas & Electric Company*, 107 FERC ¶ 61,335 (2004).

¹⁷ *Amendment No. 48 Order* at P 21.

provide certainty and encourage investments in transmission upgrades.¹⁸ In Amendment No. 63, the CAISO proposes to grant Western “Project Sponsor” status for its critical role in the Path 15 Upgrade project, so that Western may recover its 10 percent entitlement to this project. While we welcome Western’s efforts, our concern is that the proposed compensation for Western is not based on any ratemaking theory or cost causation principles. Furthermore, we agree with the CEOB that, under the CAISO’s proposal, transmission customers who utilize the Path 15 Upgrade may be attributed higher costs than would otherwise apply if Western’s investment could be recovered under a TRR. For these reasons, we conditionally accept this aspect of Amendment No. 63 for filing, subject to further Commission action, and suspend it for a nominal period, to become effective November 1, 2004, as requested, subject to refund. We accept the rest of Amendment No. 63 for filing without changes.

31. In order to provide the parties with an opportunity to resolve the cost recovery matter, we will direct the Commission’s DRS to convene a meeting among the parties in this proceeding to address and resolve the appropriate compensation level for Western’s contribution to the Path 15 Upgrade project. The parties, in turn, will be directed to report the progress of any negotiations to the Commission within 60 days from the date of this order. Thereafter, the Commission will order further procedures to resolve the cost recovery issue as necessary.

Proposed TCA Modifications

32. Before we turn to the discussion of substantive issues raised by parties in their protests and comments to the CAISO’s complaint, we will address the contention by SoCal Edison that the TCA, as a multiparty agreement, cannot be amended unilaterally by the CAISO. In support of its position, SoCal Edison points to section 26.11 of the TCA, which permits revisions by mutual agreement of the parties to the TCA, through the ADR procedure, or upon issuance of an order by the Commission. SoCal Edison further contends that the Commission may not modify the TCA over the opposition of Participating TOs unless the public interest so requires. In SoCal Edison’s opinion, the proposed TCA amendments are not in the public interest.

¹⁸ *See id.*

33. We disagree with SoCal Edison. The section 26.11 language explicitly permits amendments to the TCA if they are directed by the Commission. Section 26.11 of the TCA provides:

This Agreement may be modified: (1) by mutual agreement of the Parties, subject to approval by FERC; (2) through the ISO ADR Procedure...; or (3) upon issuance of an order by FERC. (*emphasis added*).

Contrary to SoCal Edison's contention, CAISO is not required to demonstrate that the proposed modifications to the TCA are in the public interest. The *Mobile-Sierra* requirement to demonstrate that the proposed contract changes are in the public interest¹⁹ is not applicable in the instant case. Courts and the Commission have routinely applied a just and reasonable standard of review to contracts containing a provision that explicitly contemplates future changes to the contract by a regulatory action.²⁰ Section 26.11(3) expressly authorizes amendments to the TCA by a Commission order. For these reasons, we reject SoCal Edison's contention.

34. We therefore grant in part and deny in part, the CAISO's complaint seeking to modify the TCA and accept the CAISO's proposed revisions to the TCA, subject to modifications, effective November 1, 2004, and direct a compliance filing, as discussed below. The CAISO filed a petition to modify the TCA, or in the alternative, a complaint requesting the Commission acceptance of the proposed TCA modifications. We will treat the CAISO's filing as a section 206 complaint because the instant filing seeks not only the Commission declaration that the TCA is unjust and unreasonable and unduly discriminatory but also proposes to implement changes to the Commission-approved TCA.²¹

¹⁹ See *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); and *FPC v. Sierra Pacific Power*, 350 U.S. 348 (1956).

²⁰ See, e.g., *Papago Tribal Utility Authority v. FERC*, 723 F.2d 950, 954 (D.C. Cir. 1983); and *Kansas Cities v. FERC*, 723 F.2d 82, 87-88 (D.C. Cir. 1983)

²¹ The TCA was accepted for filing, subject to modifications, in March, 1998. See *California Independent System Operator Corp.*, 82 FERC ¶ 61,325 (1998).

Section 8 of the TCA: Critical Protective Systems that Support ISO Controlled Grid Operations

Comments and Protests

35. The Transmission Agency of Northern California (TANC), Modesto Irrigation District, the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency contend that certain CAISO-proposed modifications to the TCA should be clarified. In particular, they request clarification of proposed sections 8.1 (Remedial Action Systems, Under Frequency Load Shedding, Under Voltage Load Shedding) and 8.2 ((Protective Relay Systems), and rejection of section 8.3 (Non-ISO Controlled Protective Relay Systems, RAS, UVLS, UFLS Schemes). In the protesters' opinion, the CAISO should clarify that sections 8.1 and 8.2 apply only to transmission facilities that are subject to the CAISO's operational control. Otherwise, according to the protesters, proposed sections 8.1-8.3 could be read to apply to all transmission facilities owned by Western. TANC further argues that the requested clarification will be consistent with the Commission order on Amendment No. 2.²²

36. Sections 8.1 and 8.2 create certain obligations for participating TOs. Specifically, section 8.1 requires a participating TO to coordinate its Critical Protection Systems with the CAISO, other TOs, and Generators to ensure that its Remedial Action Scheme, Under Frequency Load Shedding, and Under Voltage Load Shedding schemes function on a coordinated and complementary basis in accordance with Western Systems Coordinating Council's (WSCC) and North American Electric Reliability Council's (NERC) policies and standards. Proposed section 8.2 obligates participating TOs to provide to the CAISO protective relay system functional information necessary to perform system planning and operating analysis and to operate the CAISO-controlled transmission facilities in accordance with the WSCC/NERC standards. Proposed section 8.3 requires that changes to non-CAISO-controlled Remedial Action Scheme, Under Frequency Load Shedding, and Under Voltage Load Shedding schemes, and protective relay systems that result in changes to the normal or emergency rating of a CAISO-controlled grid transmission facility shall be coordinated with CAISO prior to implementation of the changes.

The CAISO's Answer to Protests

37. In its answer to protests, the CAISO clarifies that sections 8.1 and 8.2 are only intended to apply to all transmission facilities of Participating TOs, including the portion of the Path 15 Upgrade that would be in the CAISO's operational control. The CAISO also states that proposed section 8.3 is necessary in order to prevent unexpected

²² See *California Independent System Operator Corp.*, 82 FERC ¶ 61,312 (1998) (Amendment No. 2 Order).

changes in the ratings of transmission facilities within the CAISO-controlled grid, which could impact reliability.

Commission Determination

38. We agree with protestors that proposed sections 8.1 and 8.2 of the TCA may be interpreted as setting requirements for non-jurisdictional facilities. In the *Amendment No. 2 Order*, the Commission rejected the CAISO's proposal to create a new definition for its Control Area, which would have included numerous entities whose transmission facilities located within the CAISO's Control Area were not part of the CAISO's controlled grid. The Commission ruled that proposed Amendment No. 2 would broadly expand the CAISO's control over non-jurisdictional facilities that were not transferred to the CAISO's operational control.²³ Accordingly, we will require the CAISO to modify sections 8.1 and 8.2 to clarify that the section 8.1 and 8.2 requirements apply only to the transmission facilities that are part of the CAISO's controlled grid. For the same reasons, we will reject proposed section 8.3.

Interconnection Provision

Comments and Protests

39. Section 10.5 of the TCA (Interconnection Responsibilities of Western) states that Western's general requirements for interconnection are the requirements set forth in Western's TO Tariff or in Western's OATT, as applicable. This section states further that "[e]xecution of this Agreement shall not constitute agreement of any Party that Western is in compliance with FERC's regulations governing interconnections." SoCal Edison opposes this change, but only to the extent that such interconnection procedures are inconsistent with the procedures outlined in the ISO Tariff. SoCal Edison points out that the CAISO has provided no explanation for Western's inability to comply with the CAISO's interconnection procedures. It further states that under the proposed provision, it is unclear from whom a generator interconnecting to the Path 15 Upgrade should obtain interconnection service.

Commission Determination

40. As a general matter we believe that generator interconnection to facilities under the control of the CAISO should be governed by the CAISO tariff. In this case, where we have three project participants, we believe that one tariff should govern. We are unaware by the record before us in this case of how using the CAISO tariff may

²³ See *id.* at 62,241.

compromise Western's mandate under federal statutes and regulations. Accordingly, we reject without prejudice this provision.

Consistency with Federal Law and Regulations

Comments and Protests

41. SoCal Edison challenges the CAISO's proposed TCA section 26.14, which provides that Western will not incur any liability for failing to comply with a TCA provision if that provision is inconsistent with any federal statute, or regulation or order lawfully promulgated thereunder. SoCal Edison is concerned that the proposed provision grants Western special rights that could be used by Western to withdraw from the CAISO without giving any notice. SoCal Edison requests that the Commission reject this provision.

Commission Determination

42. We disagree with SoCal Edison's contention. Proposed TCA section 26.14 excuses *any* party to the TCA, not only Western, from liability for failure to comply with the TCA in the event that the TCA is inconsistent with any federal law, order, or regulation. Specifically, section 26.14 states in pertinent part:

... No Party shall incur any liability by failing to comply with a provision of this Agreement that is inapplicable to it by reason of being inconsistent with any federal statute, or regulation, or order lawfully promulgated thereunder...

In addition, the proposed provision requires the "non-complying" party "to use its best efforts to comply with this Agreement to the extent that applicable federal laws, and regulation and orders lawfully promulgated thereunder, permit it to do so."

43. Furthermore, under the proposed provision, the notice requirement will be waived for Western only if: (1) Western's withdrawal from the CAISO is directed by the United States Congress and (2) Western's withdrawal is requested by another party to the TCA due to a Western-issued regulation. However, under the proposed provisions, Western does not have the right to withdraw from the TCA without notice or after a significantly shortened notice period. The notice and other withdrawal requirements in section 3.3 of the TCA will apply to Western, should it decide to leave the CAISO.

44. Moreover, in a prior order, the Commission exempted certain non-public utilities from the requirement conditioning their withdrawal from the CAISO due to impending adverse tax action.²⁴ In that order, the Commission stated that its decision to eliminate the requirement at issue there removed the financial risk of participating in the CAISO for those entities.²⁵ Similarly, our decision in this order will remove for Western regulatory risks associated with its status of a federal power marketing entity and thus will allow the transfer of operational control over a portion of the vitally important Path 15 Upgrade to the CAISO. Therefore, we deny SoCal Edison's request.

Proposed Confidentiality Provision

Comments and Protests

45. CEOB challenges the CAISO-proposed TCA section 26.3 on the treatment of confidential information. It believes that the proposed provision is too restrictive and that governmental agencies should be provided an informal access to confidential data and that the CAISO should supply a reason for characterizing certain data as confidential and seeking to remove it. In connection with this, CEOB proposes additional language allowing CEOB to access confidential data whether by informal or formal request. CEOB admits in its filing that it is authorized under its organizational statute to subpoena confidential information from the CAISO.²⁶ However, it argues that the ability to obtain confidential information informally would expedite information requests and preserve the CEOB's resources.

46. In its prior order,²⁷ the Commission has already addressed a similar request by the CAISO to grant CEOB informal access to confidential information. The Commission denied the CAISO's request because the CAISO "ha[d] given no examples of instances where the CEOB was unable to gain access to confidential information through standard procedures under state law and the current tariff."²⁸ Accordingly, we deny CEOB's request for modification in this order.

²⁴ See *California Independent System Operator Corp.*, 103 FERC ¶ 61,113 (2003)

²⁵ See *id.* at P 2.

²⁶ CEOB's Motion to Intervene and Comments, Docket No. EL04-133-000, September 29, 2004, at n. 3.

²⁷ *California Independent System Operator Corp.*, 98 FERC ¶ 61,187, *order on reh'g*, 99 FERC ¶ 61,253 (2002).

²⁸ See *id.* at 61,681

Motions to Consolidate

47. SDG&E and SoCal Edison request that Docket Nos. EL04-133-000 and ER04-1198-000 be consolidated. They argue that these two dockets are interrelated and should be addressed together in one proceeding. SDG&E explains that Western cannot become a partial Participating TO under the existing terms and conditions of the TCA and it is the partial Participating TO status that necessitates the CAISO-proposed tariff revisions. CAISO opposes consolidation of these two dockets. CAISO argues that the main concern raised by the parties is the cost recovery by Western, and the TCA does not address this issue.

48. We deny these motions to consolidate. We find that the issues pertaining to the proposed TCA are resolved in this order. Also, we have accepted some of the CAISO's proposed tariff revisions in Amendment No. 63 but have suspended and set for hearing other tariff revisions that are currently pending resolution with the help of the Commission's DRS. For this reason, we will not consolidate Docket Nos. EL04-133-000 and ER04-1198-000 into one proceeding.

The Commission orders:

(A) The CAISO's complaint is hereby granted in part and denied in part.

(B) The proposed revisions to the TCA are hereby accepted for filing, subject to modifications, effective November 1, 2004, as requested.

(C) The CAISO is hereby directed to submit, within thirty (30) days of the date of issuance of this order, the compliance filing to modify certain provisions in the TCA, as described in detail in the body of this order

(D) Second Revised Sheet No. 140, Third Revised Sheet No. 141, Original Sheet No. 141.00, First Revised Sheet No. 338, Original Sheet No. 338A, Third Revised Sheet No. 356, and Original Sheet No. 356A are hereby accepted for filing, effective November 1, 2004, as requested.

(E) Third Revised Sheet No. 148 and First Revised Sheet No. 148A are hereby conditionally accepted for filing, and suspended for a nominal period, to become effective November 1, 2004, as requested, subject to refund.

(F) Waiver of the prior notice requirement is hereby granted.

(G) The Director of the Commission's Dispute Resolution Service is hereby directed to convene a meeting of the parties within seven (7) calendar days after the date of issuance of this order, as discussed in the body of this order.

(H) Parties are hereby directed to report the progress of any negotiations to the Commission within sixty (60) days from the date of this order.

(I) The motions to consolidate are hereby denied for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

List of Intervenors in Docket No. EL04-133-000

California Department of Water Resources State Water Project
California Electricity Oversight Board
Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California
Cities of Redding and Santa Clara, California, and M-S-R Public Power Agency
Modesto Irrigation District
Pacific Gas and Electric Company
Sacramento Municipal Utility District
San Diego Gas & Electric Company
Southern California Edison Company
Trans-Elect NTD Path 15, LLC
Transmission Agency of Northern California
Western Area Power Administration

List of Intervenors in Docket No. ER04-1198-000

Cities of Redding and Santa Clara, California, and M-S-R Public Power Agency
City of Vernon, California
Metropolitan Water District of Southern California
Modesto Irrigation District
Northern California Power Agency
Pacific Gas and Electric Company
San Diego Gas & Electric Company
Southern California Edison Company
Trans-Elect NTD Path 15, LLC
Transmission Agency of Northern California
Western Area Power Administration
Williams Power Company, Inc.