UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)** **)**	**Docket Nos. EL00-95-023 and EL00-98-022**

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTIONS TO INTERVENE, COMMENTS, PROTESTS, AND OTHER FILINGS

I. INTRODUCTION AND SUMMARY

On April 2, 2001, the California Independent System Operator Corporation ("ISO")[1] filed Amendment No. 39 to the ISO Tariff in the above-referenced dockets. The ISO stated that Amendment No. 39 was intended to modify the provisions of the ISO Tariff with respect to new generator interconnections. The ISO requested that the filing be made effective on June 1, 2001.

A number of parties have moved to intervene in the present proceeding. Some of the motions to intervene include comments and protests concerning Amendment No. 39, as well as requests for specific relief.[2] Notably, a number of

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[1] Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] Motions to intervene, comments, protests, and/or other filings were submitted by the California Department of Water Resources ("DWR"); California Electricity Oversight Board ("EOB"); Calpine Corporation ("Calpine"); Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency ("Cities/M-S-R"); City of Vernon, California ("Vernon"); Duke Energy North America, LLC ("Duke"); Dynegy Power Marketing, Inc. ("Dynegy"); Enron Power Marketing, Inc. ("Enron"); The Metropolitan Water District of Southern California ("MWD"); Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Potrero, LLC, and Mirant Delta, LLC ("Mirant"); Northern California Power Agency ("NCPA"); Pacific Gas and Electric Company ("PG&E"); Reliant Energy Power Generation, Inc. ("Reliant"); Sacramento Municipal Utility District ("SMUD"); Salt River Project Agricultural Improvement and Power District ("Salt River Project"); San Diego Gas & Electric Company ("SDG&E"); Southern California Edison Company ("SCE"); Transmission Agency of Northern California ("TANC"); and Williams Energy Marketing & Trading Company ("Williams") A notice of intervention was filed by the Public Utilities Commission of the State of California.

the intervening parties state that they generally or fully support the changes proposed in Amendment No. 39.[3] Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the ISO now submits its Answer to the motions to intervene, comments, protests, and other filings submitted in the above-referenced docket.[4] The ISO does not oppose the intervention of the parties that have sought leave to intervene in this proceeding. However, as explained below, the ISO opposes certain of the requests for modification of the filing.

II. ANSWER

A. The ISO Does Not Oppose Consolidation of the Instant Proceeding With the Proceedings Concerning the Tariff Amendments Filed By PG&E, SCE, and SDG&E

A number of parties state that the instant proceeding should be consolidated with the proceedings concerning the filings submitted on April 2, 2001 by PG&E, SCE, and SDG&E, which set forth amendments to their respective tariffs revising procedures for interconnection to the ISO Controlled Grid.[5] The ISO does not oppose such a consolidation of proceedings.

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[3] *See* Enron at 2; EOB at 4; Mirant at 4; MWD at 7-8;

[4] Some of the parties commenting on Amendment No. 39 do so in portions of their pleadings that are variously styled, without differentiation. Parties also request affirmative relief in pleadings styled as comments and protests. There is no prohibition on the ISO's responding to the assertions in these pleadings. The ISO is entitled to respond to these pleadings and requests notwithstanding the labels applied to them. *Florida Power & Light Co.*, 67 FERC ¶ 61,315 (1994). In the event that any portion of this Answer is deemed an Answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R. § 385.213) to permit it to make this Answer. Good cause for this waiver exists here given the nature and complexity of this proceeding and the usefulness of this Answer in ensuring the development of a complete record. *See, e.g., Enron Corp.*, 78 FERC ¶ 61,179, at 61,733, 61,741 (1997); *El Paso Electric Co.*, 68 FERC ¶ 61,181, at 61,899 & n.57 (1994).

[5] CPUC at 3; NCPA at 4-5; PG&E at 3-4; SDG&E at 2. The referenced filings were submitted by PG&E in Docket Nos. EL00-95-024 and EL00-98-023, by SCE in Docket Nos. EL00-95-025 and EL00-98-024, and by SDG&E in Docket Nos. EL00-95-022 and EL00-98-021.

B. Amendment No. 39 Is Fully Consistent With the Participating TOs' TO Tariff Filings

Contrary to the assertions of Duke, the Participating TOs' TO Tariff filings are compatible with the ISO's proposed filing.[6] The ISO recognizes that the TO Tariffs provide, in certain circumstances, greater detail than that contained in the ISO's proposed procedures, but the ISO believes that that detail is consistent with the proposed ISO Tariff language. Indeed, the ISO believes that it has struck an appropriate balance between the detail specified in the ISO Tariff versus that specified in the Participating TOs' TO Tariffs.[7]

Additionally, the ISO agrees with Vernon's proposed change to Section 5.7.2 to facilitate treatment of Vernon on the same basis as the other Participating TOs.[8] However, the ISO disagrees with Vernon's proposal to specify which Participating TO is responsible for processing the interconnection request in cases where more than one Participating TO owns the affected facilities.[9] The ISO believes that such matters are best addressed on a case-by-case basis, but that all Participating TOs should be consulted and involved in the interconnection process.

C. The ISO Will Have Appropriate Oversight of the Interconnection Process

Some parties argue that Amendment No. 39 gives the ISO too little control over the interconnection process; others argue that it gives the ISO too much discretion. Neither position has merit.

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6 *Cf.* Duke at 7-9.
7 *Cf.* NCPA at 3-4; Reliant at 3.
8 *See* Vernon at 3-4.
9 *See id.* at 4-5.

The ISO agrees with Duke that the ISO must proactively oversee the interconnection process and act as arbiter in instances where an applicant and the Interconnecting Participating TO disagree.[10] The ISO also believes that in instances where all parties cannot come to agreement on a matter, that matter is appropriately addressed through the ISO's ADR Procedures. However, the ISO disagrees with Duke that the proposed procedures do not provide for sufficient ISO oversight and responsibility with respect to the interconnection procedures. The ISO intends to oversee all aspects of the interconnection process,[11] especially those that entail direct involvement by a Participating TO. However, by necessity, the ISO must rely on the Participating TOs for performing certain tasks, such as System Impact and Facility Studies. At present, the ISO simply does not have the resources to exclusively perform those tasks. Reliance on the Participating TOs' expertise and resources to perform certain functions in no way diminishes the ISO's involvement and oversight of the interconnection process.

On the other hand, the ISO disagrees with SDG&E's assertion that the ISO's proposed procedures allow the ISO to exercise unfettered discretion to intervene in the study process (i.e., perform the System Impact Study), without even the need to offer timely notice or explanation.[12] Obviously, the ISO intends to work cooperatively and in coordination with the Participating TOs regarding the performance of necessary studies. The proposed provisions merely provide that the ISO may perform the System Impact Study. As noted above, the ISO does not have the resources to perform all of the studies that will be required when

[10] *See* Duke at 3-7.
[11] *Cf.* Reliant at 3-4.

administering the interconnection process. The proposed provision, however, will permit the ISO to participate in the study process as appropriate – especially when it may have a unique (e.g., regional) perspective on an issue. The ISO also disagrees that this provision could undermine the ability of the Participating TO to manage its interconnection workload and would promote disruptive forum shopping by applicants. As stated above, the ISO always intends to coordinate and work with the Participating TOs regarding the interconnection process. Additionally, the ISO understands the relationship between the proposed interconnection procedures and the ISO's planning process and will ensure that the two processes are compatible and complementary.[13]

Further, the ISO disagrees with Mirant's contention that it is necessary for the Commission to clarify that the ISO's interconnection procedures will apply to all interconnecting customers.[14] The proposed procedures expressly and clearly apply to all New Facility Operators that request interconnection.

D. Coordination Among the ISO, Interconnecting Participating TO, and New Facility Operator Is Already Freely Permitted Under Amendment No. 39

Calpine asserts that the interconnection procedures should be amended to allow greater coordination among the ISO, interconnecting Participating TO, and New Facility Operator.[15] Such an amendment is unnecessary. Nothing in the proposed procedures limits the type of coordination that Calpine seeks between the ISO, the Interconnecting Participating TO, and the New Facility

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12 *See* SDG&E at 4-5.
13 *Cf.* TANC at 2-3.
14 *See* Mirant at 5.
15 *See* Calpine at 8-9.

Operator.

E. The ISO Looks Forward to the Development of a Mutually Acceptable *Pro Forma* Interconnection Agreement

The ISO does not oppose Mirant's suggestion that the ISO use a broader, collaborative process in developing a *pro forma* Interconnection Agreement.[16] The ISO also agrees that existing and potential new suppliers may offer valuable experience and insight into the development of a *pro forma* Interconnection Agreement. Nothing in Amendment No. 39 suggests otherwise. As the ISO has stated previously, the ISO is interested in developing a standardized document that will be acceptable to all affected Market Participants.

F. Informal Communications Concerning Interconnection Applications Are Permitted and Encouraged

Calpine asserts that the ISO's procedures should allow minor deficiencies in an interconnection application to be remedied through informal communications.[17] The ISO agrees. There is nothing in the ISO's proposed procedures that in any way limits informal communications between an applicant and the ISO or applicable Participating TO. In fact, the ISO anticipates and encourages a prospective applicant to fully communicate with the ISO and Participating TO before submitting its application to ensure that its application is complete and can be processed in a timely fashion. Moreover, once an application has been submitted to the ISO, the ISO believes that the timelines contemplated by the proposed procedures allow plenty of opportunity for informal discussion among the parties.

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[16] *See* Mirant at 8.

[17] Calpine at 6.

G. The Expedited Procedures Contained In Proposed Section 5.7.3.1

The ISO agrees with PG&E and SCE that proposed Section 5.7.3.1.1 should be modified to eliminate the ambiguities these parties describe.[18] Moreover, the ISO agrees to Mirant's suggested modifications to Section 5.7.3.1(c) and -(d).[19] However, the ISO disagrees with Duke's arguments that the ISO's proposed expedited procedures under Section 5.7.3.1 need to be clarified as Duke suggests.[20]

H. The Non-Disclosure Provisions Contained In Proposed Section 5.7.3.3

Calpine states that the ISO's interconnection procedures should clarify that the ISO and interconnecting Participating TO will not disclose the identity of the applicant until an Interconnection Agreement is executed and that the procedures should also provide for confidential treatment of certain information related to the development of projects (e.g., information concerning the negotiation of real property rights).[21] As provided in Section 5.7.4, the ISO will, at the request of an applicant, keep the applicant's identity confidential and will only disclose certain limited information. This approach and the proposed procedures are consistent with applicable Commission precedent[22] and strike an appropriate balance between an applicant's desire for confidentiality and disclosure to the public of certain limited information.

Moreover, the ISO disagrees with Duke's assertion that the confidentiality

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18 PG&E at 6; SCE at 5-7.
19 *See* Mirant at 10.
20 *See* Duke at 10-11.
21 Calpine at 6-7.

provisions under Section 5.7.3.3 are too broad and provide the ISO and the Interconnecting Participating TO with too much discretion to determine when a generator's identity has otherwise become public.[23] The ISO is not in control of the information provided by New Facility Operators to other entities. To the extent that other entities make information regarding an applicant publicly available, the ISO should not have a continuing obligation to keep information such as the identity of an applicant confidential. However, the ISO will keep such information confidential if so requested or until that information is otherwise made publicly available.

PG&E and SCE propose that Section 5.7.3.3 should be modified to provide that the section does not and cannot require them to waive or violate any of the confidentiality provisions in their TO Tariffs.[24] The ISO agrees.

I. The Provisions In Amendment No. 39 Concerning Planning Procedures

PG&E and SCE state that proposed Section 5.7.4.1 should be clarified to provide that the posted technical interconnection standards will be consistent with the technical interconnection standards, respectively, of each California Investor Owned Utility.[25] The ISO agrees.

However, MWD's suggested changes to the planning procedures under Section 5.7.4.1 are unnecessary.[26] Contrary to the arguments of MWD, that section should not be modified to require the filing of any proposed cost or

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22 *See PJM Interconnection, L.L.C.*, 87 FERC ¶ 61,299, at 62,197-202, *reh'g denied*, 89 FERC ¶ 61,186 (1999).
23 *See* Duke at 10-11.
24 PG&E at 7; SCE at 7-8.
25 PG&E at 7; SCE at 8.
26 *See* MWD at 10-11.

benefit allocations that may be included in the ISO's planning procedures. The ISO understands the Commission's regulations and policies as to what aspects or provisions of jurisdictional service must be specified in its Tariff. The ISO will file, under Section 205 of the Federal Power Act ("FPA"), any matters that affect the rates or charges under the Tariff.

J. The Provisions In Amendment No. 39 Concerning the Performance of Interconnection Studies

PG&E and SCE state that proposed Section 5.7.4.2 should be clarified in certain respects.[27] The ISO agrees. The ISO also agrees that a minor typographical error in Section 5.7.4.2.1 needs to be corrected.[28] Additionally, the ISO generally agrees with these parties' proposed changes to Section 5.7.4.2.2,[29] but believes that modifications, in addition to the modifications that PG&E and SCE suggest, should be made to the wording of that section for the sake of clarity. The ISO proposes that the beginning of the section should read as follows (with the ISO's proposed changes being underlined or struck through as against PG&E's and SCE's proposed changes in the following text):

> **5.7.4.2.2 Facility Study Procedures.**
>
> If additions or upgrades to the ISO Controlled Grid are needed to satisfy a New Facility Operator's request for interconnection, the Interconnecting PTO shall tender, within the timelines specified in subparts (a) through (c) below, to a New Facility Operator a Facility Study Agreement that defines the scope, content, assumptions and terms of reference for such study, the estimated time to complete the required study, and pursuant to which the applicant agrees to reimburse the Interconnecting PTO for the actual costs of performing the required Facility Study. The New Facility Operator shall execute the Facility Study Agreement and return it to the

[27] PG&E at 7-8; SCE at 8-10.
[28] *See* PG&E at 8.
[29] *See* PG&E at 8; SCE at 10-11.

Interconnecting PTO within 10 Business Days, together with payment for the reasonable estimated cost, as provided by the Interconnecting PTO, of the Facility Study.~~in accordance with the timelines set forth below:~~

(a) ~~i~~If a System Impact Study was completed by the Interconnecting PTO, the Facility Study Agreement shall be tendered within 15 Business Days of the completion of the System Impact Study~~;~~.

(b) ~~i~~If an entity other than the Interconnecting PTO completed a System Impact Study, the Facility Study Agreement shall be tendered within 15 Business Days of the date the System Impact Study is approved by the ISO and the Interconnecting PTO~~; or~~.

(c) ~~i~~If the ISO and the Interconnecting PTO determine that a System Impact Study is not required pursuant to Section 5.7.4.2.1, the Facility Study Agreement shall be tendered within 20 Business Days of receipt of the Completed Interconnection Application.

Should the Commission accept the language shown above, the ISO will make a compliance filing that includes that language.

Calpine asserts that the procedures regarding third-party performance of required studies should also be clarified in other respects to provide greater certainty.[30] The proposed procedures do not need to be clarified as Calpine recommends. The proposed procedures are clear and provide applicants with a large degree of latitude with respect to the completion of the necessary System Impact and Facility Studies.[31] In addition, the ISO believes that it has appropriately identified the projects that will be included in a System Impact or Facility Study. That is, consistent with accepted planning practices, the ISO will include all projects that have executed an Interconnection Agreement in its

[30] Calpine at 7-8.
[31] *See id.* at 8.

System Impact and Facility Studies.

The ISO disagrees with Duke's request that the ISO designate a cut-off after which point additional studies can no longer be performed, and that such a cut-off is consistent with Commission precedent.[32] Section 5.7.4.2 appropriately provides that the ISO may require additional studies, as reasonably required. The ISO must determine the impact of a New Facility on reliable system operation. To the extent that requires additional studies beyond the initial System Impact Study, the ISO should be able to require the performance of such studies in order to ensure that it can reliably operate and maintain the system. The ISO notes that, as an independent and objective evaluator of interconnection requests, it has no incentive to require unnecessary studies. Moreover, the ISO strongly supports expedited review and approval of all interconnection requests in light of the critical deficiency in generating resources in California. The ISO does not object to providing cost support for the additional studies it may require.

The ISO also agrees with Mirant that it is appropriate for the ISO to provide applicants with the necessary information and standards for performing their own System Impact Study or Facility Study.[33] However, the ISO believes that such information is best provided through ISO Planning Procedures that can be updated and posted on the ISO's Web site. The change to Section 5.7.4.2(c) that Mirant recommends is, therefore, unnecessary.[34] Moreover, contrary to the assertions of MWD, the proposed Tariff language is clear and consistent as to

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[32] *See* Duke at 12-14.
[33] *See* Mirant at 8-9.
[34] *See id.* at 11.

who can perform certain studies.[35]

The ISO agrees with Mirant's proposal that Section 5.7.4.2.1 should be modified so that the time period for review and action on a System Impact Study Agreement runs from the time of receipt, to conform with time periods described elsewhere in the ISO Tariff.[36] The timeline for responding to applications, studies, or proposed agreements should begin upon receipt of the document at issue. However, the ISO disagrees with Mirant's contention that the time period for review of a Facility Study Agreement should be extended from 10 Business Days to 21 Business Days.[37] In *American Electric Power Service Corporation*, the Commission accepted a 21 calendar day requirement.[38] The ISO's proposed timeline is consistent with the timeline approved in that case. However, as noted above, the ISO agrees that the deadline should run from the time of receipt.

The ISO disagrees with Mirant's suggestion that an applicant should not lose its queue position if it amends its application more than once.[39] The ISO believes that an applicant should not be able to continually amend its application and not lose its queue position. The ISO believes that to do as Mirant suggests will lead to gaming of the queue, as applicants could be motivated to submit an incomplete application just to reserve a place in the queue. Moreover, an applicant should not have to revise its application if, as the ISO contemplates, it contacts the ISO and Interconnecting Participating TO prior to submitting its application so as to clarify any issues with regard to its proposed project. To the

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35 *Cf.* MWD at 11-12.
36 *See* Mirant at 11.
37 *See id.*
38 *See American Electric Power Service Corporation*, 91 FERC ¶ 61,308, at 62,046-47

extent that Mirant is concerned that if ISO or the Interconnecting Participating TO direct or request modification of an application and as a result an applicant loses its queue position, it is not the intent of the ISO to treat such requests or directives as an "amended application." The ISO is merely trying to avoid the gaming issues identified above and to place some reasonable constraints on the number of times an applicant can unilaterally amend its application.

Additionally, DWR recommends changes to proposed Section 5.7.4.2.1, which concerns System Impact Study Procedures.[40] Although the ISO believes that the issues raised by DWR are addressed by the ISO's proposed language, the ISO does not object to DWR's proposed language. Similarly, the ISO does not object to the language that DWR asserts should be added to proposed Section 5.7.4.5.[41]

K. The ISO Agrees That the Timeline For Execution of An Interconnection Agreement Should Be Extended

Several parties assert that the timeline for execution of an Interconnection Agreement should be extended or eliminated.[42] The ISO agrees to modify the applicable provisions to provide additional time to execute an Interconnection Agreement. However, the ISO believes that it is appropriate to retain explicit timelines for execution of the Interconnection Agreement. Since execution of an Interconnection Agreement will determine whether a New Facility is included in a subsequent System Impact Study, the ISO believes it is necessary for applicants

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(2000), *reh'g denied in relevant part*, 94 FERC ¶ 61,166 (2001) ("*AEP*").

39 *See* Mirant at 11.

40 *See* DWR at 1-2.

41 *See id.* at 2.

42 Cities/M-S-R at 2-3; Duke at 14-17; PG&E at 8-10.

to execute an Interconnection Agreement in a timely manner so that it does not lead to erroneous or misleading study conclusions.

In addition, the ISO agrees with Dynegy's recommendation that unexecuted Interconnection Agreements should be filed within thirty days of an applicant's request.[43] The ISO notes that it will be the Interconnecting Participating TO, and not the ISO, that will have the responsibility to file such agreements. As it is today, Interconnection Agreements will be between the Interconnecting Participating TO and the New Facility Operator, and the ISO will not be party to that contract. The ISO will, of course, require the New Facility Operator to execute a Participating Generator Agreement.

The ISO also agrees with the suggested changes of PG&E and SCE.[44] Moreover, the ISO does not object to the various requests that the deadline for executing an Interconnection Agreement be extended to 90 days. In addition, as noted earlier, the ISO does not object to Mirant's request that the Interconnecting Participating TO be directed to file an unexecuted Interconnection Agreement with the Commission within 30 days of such request.

However, the ISO disagrees with Calpine that the procedures regarding the filing of an unexecuted Interconnection Agreement should be clarified as Calpine requests.[45] Consistent with applicable Commission precedent, the ISO provides, in Section 5.7 of its proposed procedures, that an applicant may request the Interconnecting Participating TO to file an unexecuted Interconnection Agreement with the Commission.

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[43] *See* Dynegy at 1-2.

[44] *See* PG&E at 8-10; SCE at 11-12.

The ISO also disagrees with Mirant's recommendation that the Interconnecting Participating TO should provide its proposed Interconnection Agreement after completion of the Facility Study.[46] As provided in proposed Section 5.7.4.3, a New Facility Operator must request the Interconnecting Participating TO provide an Interconnection Agreement within 10 Business Days of receipt of the completed Facility Study. This process provides the applicant a period to review the completed Facility Study and ensures that the applicant is comfortable with the results presented before the Interconnecting Participating TO proceeds with development of the Interconnection Agreement.

L. The Provisions In Amendment No. 39 Concerning Queuing

SCE states that Section 5.7.4.4.1(d) should be clarified to provide that a New Facility Operator has the right to seek the suspension of the interconnection queuing milestones when the adequacy of its studies is subject to an alternative dispute resolution proceeding between the ISO and the Interconnecting Participating TO.[47] The ISO has no objection to that modification.

Some of the parties suggest that the applicability of the queuing milestones to grandfathered interconnection requests needs to be clarified, and that the ISO should be required to apply the proposed procedures to all pre-existing requests to the extent practicable.[48] The ISO disagrees. As provided in Section 5.7, all requests to interconnect that predate the effectiveness of the proposed procedures are subject to the provisions of the then-applicable

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45 *See* Calpine at 9-10.
46 *See* Mirant at 11-12.
47 SCE at 12.
48 *See* Calpine at 10; Duke at 31-32.

Interconnecting Participating TO's TO Tariff. It would be inappropriate to apply the ISO's new procedures to those requests. Moreover, the ISO maintains that the proposed queuing milestones, as set forth in the proposed interconnection procedures, are attainable and unambiguous.[49]

The ISO also strongly objects to Duke's recommendation that specific milestones should be negotiable on a case-by-case basis.[50] Determination of appropriate milestones on a case-by-case basis is administratively unworkable. Further, since all New Facilities will have to satisfy the ISO's identified milestones, there is no need to establish separate, facility-specific milestones. Lastly, it is only by establishing consistent and generic milestones that all applicants can easily and effectively determine their place in the queue and therefore estimate their ultimate cost responsibility (which is determined, in part, by queue position).

The ISO also disagrees that the six-month time frame for satisfying applicable data adequacy requirements is unrealistic. While, in certain circumstances, additional time may be needed to satisfy the data adequacy requirement, the ISO believes that establishing an aggressive but reasonable timetable for satisfying the requirement is appropriate.

The ISO disagrees with Mirant's recommendation that a 90-day extension to satisfy the Data Adequacy queuing milestone should be allowed.[51] The ISO's proposed procedures already allow for the deadline to be extended by 30 Business Days if an applicant requests such an extension at least 5 Business

[49] *Cf.* Calpine at 11-12.
[50] *See* Duke at 18-21.

Days prior to the deadline. If the applicant requests such an extension, the applicant will not lose its queue position. The ISO believes that its proposal is reasonable.

Further, the ISO does not support Duke's recommendation that the Commission direct the ISO and TOs to strike the proposal to require a generator not subject to any state siting requirements to show that it is moving forward with development by providing the information set forth in 18 C.F.R. § 2.20. This information is already required under the existing TO Tariffs; and this requirement places all applicants on an equal footing.

Duke requests that the ISO explain the impact on a generator's queue position and the rest of the queue if a generator misses a milestone deadline. The ISO has proposed queuing procedures that establish clear timelines for satisfying certain milestones. To the extent an applicant cannot satisfy a particular milestone, the applicant can subsequently satisfy the milestone and be placed in a queue position comparable to that of others who have satisfied the same milestones. That is, if an applicant misses a milestone, the applicant loses its queue position (based on its Completed Application Date) but can re-establish a queue position once it has satisfied the applicable milestones.

The ISO also disagrees with SDG&E's proposed modifications to the ISO's proposed queuing procedures.[52] The ISO believes that the proposed queuing procedures provide appropriate incentives for New Facility Operators to proceed with the development of their projects in a timely manner. The ISO is

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51 *See* Mirant at 12.

52 *See* SDG&E at 6-7.

concerned that introduction of a "pay for additional days" concept will create opportunities for gaming the queue and may disadvantage smaller applicants.

Moreover, the ISO does not support the modification proposed by Enron as to the deadline for obtaining a New Facility License.[53] The ISO continues to believe that the fifteen-month deadline for obtaining a New Facility License is appropriate. Moreover, the California Energy Commission is continuing to identify ways to shorten and expedite its approval process.

M. The Provisions In Amendment No. 39 Concerning the Allocation of Costs

Calpine argues that Amendment No. 39 would force new generation to bear the burden of costs to interconnect a generator to the ISO Controlled Grid for reliability purposes. Calpine also asserts that the Commission should direct that all system upgrade costs associated with new generation should be rolled into transmission rates.[54] The ISO disagrees with Calpine's recommendation that all reliability-related transmission system upgrades should be rolled into transmission rates. It is consistent with the principle of cost causation and Commission precedent to directly assign the costs of such upgrades to new Generating Units interconnecting to the ISO Controlled Grid. As proposed by the ISO, direct assignment of these costs would occur only if the required facilities were not already included in the ISO's integrated transmission plan and are not otherwise needed but to reliably interconnect the new Generating Unit. Contrary to Calpine's assertions, these reliability-related upgrades will not provide system-wide benefits to load. These upgrades would not otherwise be needed *but for*

[53] *See* Enron at 2-3.

the new Generating Unit's interconnection; such Direct Assignment Facilities are by their nature exclusive-use facilities and therefore are not likely to benefit anyone but the New Facility Operator.

While the ISO agrees that barriers to entry for new generation should be minimized, especially in light of California's critical supply/demand imbalance, the ISO disagrees that it should eliminate all meaningful locational price signals to new generation. Under Calpine's proposal, a new Generating Unit could locate in an area of the system and create or exacerbate reliability problems in that area. At the same time, the ISO agrees with Williams that, to the extent that a New Facility Operator sponsors and pays for a delivery upgrade, the New Facility Owner would be entitled to applicable Firm Transmission Rights ("FTRs") associated with those facilities.[55]

Cities/M-S-R notes that the ISO's proposed procedures do not address the payment responsibility for the costs of associated additional congestion which may be caused by new generators, nor the cost responsibility or mitigation of adverse impacts on interconnected facilities and systems caused by the installation of new generation.[56] As proposed, New Facility Operators will not be responsible for mitigating congestion and all congestion will be managed under the ISO's Congestion Management protocols. The ISO disagrees with Cities/M-S-R that New Facility Operators should bear all costs related to the installation of new generation, including all costs of additional Congestion.[57] It is appropriate

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54 *See* Calpine at 3-5.
55 *See* Williams at 3-4.
56 *See* Cities/M-S-R at 3-4. *See also* SMUD at 5, 9-10.
57 *See* Cities/M-S-R at 4-5. *See also* MWD at 7-9.

for Congestion to be managed under the ISO's Congestion Management protocols, i.e., the protocols developed to manage Congestion through market mechanisms.

In addition, the proposed procedures contemplate that a New Facility Operator may voluntarily sponsor, and pay for, a Delivery Upgrade to ensure that it can deliver its output to load. The ISO agrees with SMUD that all necessary upgrades must be completed prior to energization of the proposed project.[58] However, the ISO disagrees to the extent that SMUD intends that New Facility Operators must also pay for and build, prior to energization, Delivery Upgrades. It is the ISO's position that applicants should be able to voluntarily offer to build Delivery Upgrades, but that such upgrades should not be required as a pre-condition to energization. In addition, while the ISO recognizes SMUD's concern regarding the proliferation of Remedial Action Schemes ("RAS") to mitigate certain reliability problems, the ISO does not believe it is appropriate to prohibit utilization of such measures. If such measures are effective in resolving certain reliability problems and are cost-effective when compared to transmission facility upgrades, a New Facility Operator should be able to elect such an option. The ISO will require that generators using RAS and connecting to Participating TOs make the RAS fully automatic. Additionally, the ISO will monitor RAS complexity and RAS actions to make sure system reliability and operability are not impacted.

With respect to the cost responsibility or mitigation of adverse impacts on interconnected facilities and systems caused by the installation of new generation, the ISO agrees that such issues will have to be addressed on a case-

by-case basis.[59] The proposed procedures provide that New Facility Operators must mitigate all adverse impacts on existing Encumbrances. However, certain of the larger policy issues, such as whether a New Facility Operator must mitigate any impact on another entity's system, are not at issue here.[60]

Moreover, the ISO disagrees with SDG&E's proposal to require a New Facility Operator to mitigate any adverse impact on simultaneous transfer path capabilities.[61] Whereas a New Facility should not be able to adversely impact a Western System Coordinating Council ("WSCC") path rating (i.e., its non-simultaneous rating), since that is an existing WSCC requirement, a New Facility Operator should not be required, in all cases, to mitigate the impact of a path's simultaneous transfer path capability. Such an impact is best addressed through market mechanisms such as the ISO's Congestion Management protocols. Moreover, to the extent that the ISO requires New Facility Operators to mitigate such impacts, the costs of interconnection could be extremely high. The ISO believes that issues regarding the impact on simultaneous transfer path capabilities, the ability to reliably serve load, and resource adequacy are best addressed through the ISO's coordinated transmission planning process.

Duke and Dynegy argue that the ISO has not justified its cost responsibility proposal as set forth in Section 5.7.5. They maintain that the ISO should justify the absence of a crediting mechanism.[62] The ISO believes that its proposal is appropriate and consistent with Commission precedent. New Facility

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58 *See* SMUD at 3-9.
59 *See* Cities/M-S-R at 4; MWD at 9-10.
60 *Cf.* Salt River Project at 1, 3-5.
61 *See* SDG&E at 2-4. *See also* SMUD at 5, 9-10.

Operators will not pay the cost of any reliability-related upgrades if the ISO already has plans to install those same facilities (i.e., if the ISO has determined that they are necessary for reliable system operation, it is appropriate to roll the cost of those facilities into transmission rates). This approach is consistent with Commission precedent, as stated in *AEP*, in that it requires New Facility Operators to pay the full cost of reliability-related upgrades that would not otherwise be needed "but for" the facility's interconnection.[63] In *AEP*, the Commission also stated that, prior to initiation of transmission service, it is appropriate for a new generator to pay the full cost of necessary reliability upgrades.[64] As discussed above, since generators in California do not pay for transmission (i.e., load pays the embedded costs of transmission facilities under the ISO Tariff), it is appropriate that they pay the cost of all reliability upgrades necessitated by their interconnection. During deliberations concerning Amendment No. 39, the ISO did consider whether to re-determine, going forward, cost responsibility for reliability upgrades as new generating facilities interconnect with the system. In the end, however, the ISO concluded that such an approach was unworkable and would require a complex tracking, billing, and crediting mechanism.

The ISO disagrees with Mirant that changes are necessary to proposed Section 5.7.5.1.[65] The purpose of Section 5.7.5.1 is to clearly provide that the ISO will continue to honor all existing Encumbrances, as identified in the

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62 *See* Duke at 21-24; Dynegy at 2-3.
63 *See AEP*, 91 FERC at 62,050-52.
64 *Id.* at 62,050-51.
65 *Cf.* Mirant at 9-10.

Transmission Control Agreement, and that consistent with the provisions of Section 2.4 of the ISO Tariff, the Participating TOs are appropriately charged with interpreting and administering all of their existing contractual obligations.

While Mirant recognizes that the ISO's approach to the recovery of interconnection-related costs is in line with current Commission precedent, Mirant urges the Commission to reconsider its approach, and would require the ISO and Participating TOs to roll into the total cost of transmission the cost of Reliability Upgrades.[66] As explained above, the Commission precedent on this matter is appropriate and provides some measure of price signal to new generators as to where to locate on the system. The ISO is concerned that absent these costs being directly assigned to new generators, developers may locate on reliability-challenged areas of the system. Moreover, as noted above, the ISO does not support adoption of a crediting mechanism as either appropriate or warranted. The ISO also believes that the definition of Direct Assignment Facilities is appropriate and is consistent with that approved for other transmission providers.[67]

However, the ISO agrees with Mirant's proposed change to Section 5.7.5(a) to give Participating TOs 120 calendar days, from the time the required studies are completed and facilities built, to provide the required information.[68] The ISO also does not object to the changes to Section 5.7.5(d) proposed by PG&E.[69]

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66 *Id.* at 5-8.
67 *See AEP*, 91 FERC at 62,050-51.
68 *See* Mirant at 12.
69 *See* PG&E at 10.

N. The Terms Defined In Amendment No. 39

The ISO agrees that the defined terms that PG&E and SCE discuss should be modified as they request.[70] However, contrary to the assertions of some parties, the definitions of Direct Assignment Facility, Facility Study, and Good Faith Deposit are clear and appropriate, and should not be modified.[71]

O. Undisputed Matters

PG&E and SCE propose that Section 5.7.1 should be modified to apply to generators that interconnect directly with the ISO Controlled Grid (with a specific mitigation exception applicable), and should have no application to the interconnection of generators at distribution-level voltages.[72] The ISO agrees to these changes. PG&E and SCE also assert that proposed Section 5.7.2 should be clarified to reflect that: (1) a New Facility Operator is defined as an owner of a Generating Unit that seeks to be or is directly interconnected to the ISO Controlled Grid, and not to the Interconnecting Participating TO's distribution facilities; and (2) distribution-level interconnections, including the Interconnecting Participating TO's administration thereof, will continue to be governed by the Wholesale Distribution Access Tariff or CPUC Rule 21, as applicable.[73] Additionally, Duke states that proposed Section 5.7.1(b) should be modified to clarify that the ISO's interconnection procedures apply only to the *incremental* increase in capacity.[74] The ISO agrees that these changes would be appropriate improvements to Amendment No. 39's proposed interconnection process.

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70 *See* PG&E at 10; SCE at 13.
71 *Cf.* Calpine at 12-13; Mirant at 10-11.
72 PG&E at 5-6; SCE at 4-5.
73 PG&E at 6; SCE at 5.

Mirant states that interest on a Good Faith Deposit should accrue at the rate specified in 18 C.F.R. § 35.19a.[75] The ISO agrees with this proposal.

Additionally, the ISO agrees that the typographical error in proposed Section 5.7.6, as pointed out by PG&E, should be corrected.[76]

III. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission accept Amendment No. 39 without further procedures, except as described above.

Respectfully submitted,

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74 Duke at 9-10.
75 *See* Mirant at 10-11.
76 *See* PG&E at 10.