

UNITED STATES OF AMERICA 100 FERC ¶ 61,234
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. ER02-2321-000 and
ER02-2321-001

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS FOR FILING AND
ACCEPTING METERED SUBSYSTEM AGREEMENTS

(Issued August 30, 2002)

1. In this order, we accept, subject to modification, the California Independent System Operator Corporation's (California ISO or ISO) proposed Amendment No. 46 to its open access transmission tariff (OATT). We also accept a Metered Subsystem Aggregator (MSSA) Agreement between the California ISO and the Northern California Power Agency (NCPA) and Metered Subsystem (MSS) Agreements between the California ISO and the City of Roseville (Roseville) and the California ISO and the City of Santa Clara, California as Silicon Valley Power (Silicon Valley) (collectively, MSS Agreements). The OATT modifications, coupled with the MSS Agreements, are designed to allow governmental and non-participating transmission owning entities to participate in the California ISO markets. This order is in the public interest because it enables these public power entities to operate within the California ISO system more consistently with the California ISO protocols and market rules.

I. Background

2. On August 31, 2001 and November 16, 2001, in Docket Nos. ER01-2998-000 and ER02-358-000, Pacific Gas and Electric Company (PG&E) filed notices of termination of interconnection agreements with NCPA and Silicon Valley, respectively, and unexecuted Interconnection Agreements intended to replace the terminated agreements.

3. On February 27, 2002, NCPA filed an emergency petition in Docket No. EL02-64-000 seeking an expedited declaratory order confirming PG&E's continuing

contractual obligations under existing Interconnection Agreements and Contract 2948A.¹ NCPA also requested that the Commission institute a technical conference or other settlement resolution procedure that would allow NCPA, PG&E, and other interested parties, including the California ISO and Western, to reach agreement on the terms of replacement Interconnection Agreements and any related implementation issues.

4. On March 14, 2002, the Commission conditionally accepted the unexecuted replacement Interconnection Agreements for filing in Docket No. ER01-2998-000, et al., suspended them for five months, to become effective on September 1, 2002, subject to refund, and subject to further Commission order.² The Commission also accepted the notices of termination of the existing interconnection agreements, suspended them for five months, to become effective concurrently with the replacement Interconnection Agreements. Finally, the Commission directed staff to convene a technical conference at Commission headquarters for the parties in those proceedings to discuss the terms and implementation of the replacement Interconnection Agreements.

5. From May through July 2002, staff held a series of technical conferences at Commission headquarters for the parties.

6. On July 15, 2002, in Docket Nos. ER01-2998-002, et al., PG&E filed a Settlement Agreement (Settlement), a replacement Interconnection Agreement between PG&E and NCPA, a replacement Interconnection Agreement between PG&E and Silicon Valley, an Amendment No. Four to the Grizzly Agreement between PG&E and Silicon Valley, and a letter from Western to PG&E in support of the Settlement. Pursuant to the terms of the Settlement, the California ISO separately filed in the instant docket on July 15, 2002, as amended on July 30, 2002, proposed Amendment No. 46 to the California ISO OATT; an MSSA Agreement between the California ISO and NCPA; and MSS Agreements between the California ISO and Roseville and the California ISO and Silicon Valley. The California ISO requests waiver of the 60-day prior notice requirement and an effective date of September 1, 2002 so that the new MSS Agreements will go into effect

¹Contract No. 2948A is the 1967 agreement between the Western Area Power Administration (Western) and PG&E, as supplemented and amended, on file with the Commission as PG&E Rate Schedule FERC No. 79, for the sale, interchange and transmission of electric capacity and energy as it relates to deliveries to NCPA, Silicon Valley and Roseville.

²Pacific Gas and Electric Company, 98 FERC ¶ 61,281 (2002).

at the same time as the termination of the existing interconnection agreements with PG&E.

II. Description of the Filing

7. Amendment No. 46 proposes to modify the California ISO's OATT provisions concerning the operational relationship of MSS Operators to the California ISO. The proposed modifications to the OATT generally define the nature of the relationship of an MSS Operator to the California ISO including: (1) the ancillary service obligations of the MSS Operator, (2) the load following capabilities of the MSS Operator, (3) information sharing requirements between the MSS Operator and the California ISO, (4) the settlement procedures of California ISO charges, and (5) MSS Operator load shedding for emergency and reliability purposes. Amendment No. 46 also provides that an MSS Operator will not be required to shed load as a result of non-emergencies (*i.e.*, insufficient scheduled resources for economic reasons). Further, if the California ISO must curtail load as a result of emergencies, only those entities with the resource deficiencies will be required to shed load.

8. The MSS Agreements establish the terms and conditions by which NCPA, Roseville and Silicon Valley will: (1) operate their respective electric resources within the ISO Control Area; (2) schedule transactions using the California ISO-controlled grid and participate in the California ISO's markets; and (3) meet their operational requirements under the California ISO OATT. In meeting their operational requirements the participants may continue to operate in a fashion that adheres to their vertically integrated utility status, minimize the ancillary service requirements of the ISO, and require the MSS to pay certain ISO charges based upon the actual use of the ISO grid.³

III. Notices of Filings and Pleadings

9. Notices of the California ISO's filings were published in the Federal Register, 67 Fed. Reg. 48,644 (2002) and 67 Fed. Reg. 52,470 (2002), with comments, protests, and interventions due on or before August 5, 2002 and August 20, 2002, respectively.

10. Roseville, NCPA, Silicon Valley and the California Electricity Oversight Board (CEOB) filed timely motions to intervene and comments in support of the California

³Nearly all of the California ISO's charges (ancillary services charges, grid management charges, imbalance charges and neutrality adjustments) are currently assigned to Scheduling Coordinators based upon a gross load allocation.

ISO's filing. The M-S-R Public Power Agency, the Public Utilities Commission of the State of California, the Transmission Agency of Northern California, Western and Williams Energy Marketing & Trading Company filed timely motions to intervene.

11. The Metropolitan Water District of Southern California (Metropolitan), the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California (Southern Cities), Southern California Edison Company (Edison), the State Water Project of the California Department of Water Resources (California DWR), and the Association of California Water Agencies (Water Agencies Association) filed timely motions to intervene and comments.

12. The City of Redding, California (Redding) filed a timely motion to intervene with comments opposing the filing. The City of Vernon, California (Vernon) filed a timely motion to intervene, protest and requested another technical conference. The Modesto Irrigation District (Modesto) filed a timely motion to intervene, protest and motion to reject, and, in the alternative, request for hearing. The Turlock Irrigation District (Turlock) filed a timely motion to intervene, protest and request for hearing and consolidation. The Cogeneration Association of California and the Energy Producers and Users Coalition filed a motion to intervene out of time on August 6, 2002. Sempra Energy (Sempra) filed a motion to intervene out of time and protest on August 6, 2002.

13. On July 22, 2002, as supplemented on August 5, 2002, Modesto filed comments in Docket Nos. ER01-2998-002, et al. Since those comments addressed only the proposed California ISO OATT Amendment No. 46 filed in this proceeding, those comments will be addressed herein. On August 5, 2002, the California ISO filed reply comments to Modesto's comments in Docket Nos. ER01-2998-002, et al. The California ISO's reply in those proceedings will be addressed in this order as well. On August 14, 2002, NCPA and the California ISO filed joint reply comments to Modesto's comments in Docket Nos. ER01-2998-002, et al. These reply comments will be addressed here as well.

14. On August 20, 2002, the California ISO filed a motion for leave to file answer and answer to motions to intervene, protests, comments, requests for hearing and consolidation, request for clarification and request for technical conference. On that same date, NCPA filed an answer to motions to reject tariff language, motion for consolidation of dockets, proposed modifications and requests for hearing.

IV. Comments on the Filing

A. Comments in Support

15. Roseville supports the filing because the comprehensive filing accomplishes the goal established by the Commission to provide "a transition to non-discriminatory open access transmission service without any interruption of service." Pacific Gas and Electric Company, et al., 98 FERC ¶ 61,281, at 62,211 (2002).

16. NCPA notes that the Settlement and the replacement Interconnection Agreements, filed in Docket Nos. ER01-2998-002, et al., and the proposed OATT language and the three MSS Agreements, filed herein, comprise a comprehensive package. NCPA stresses that the entire package should be approved without material modification because the Settlement allows the parties to withdraw from the Settlement if any element of the package is materially modified in a manner unacceptable to a party.

17. NCPA believes that the MSS Agreements and accompanying OATT language represent a good start in the effort to define and implement, for the first time, workable MSS arrangements. NCPA argues that if there are entities who believe that their own special circumstances are not taken into account and those entities wish to become MSSs or MSS Aggregators, then those entities should address their concerns to the California ISO and pursue negotiations directly or as part of the Transmission Access Charge settlement discussions in Docket Nos. ER00-2019-000, et al.

18. Silicon Valley supports the California ISO's filing but notes that it should not be deemed to have agreed to or acquiesced in the accuracy and completeness of the summaries and descriptions therein.

19. CEOB supports Amendment No. 46 and the concurrent filing of the MSS Agreements because of the benefits that will result from integrating governmental entities with the California ISO. Southern Cities support the California ISO's proposal in Amendment No. 46 to "target" load curtailment obligations in situations where load curtailment is required as a result of energy deficiencies for the Control Area.

B. Comments in Opposition

20. Metropolitan requests that the Commission clarify that the MSS Agreements filed herein will not serve as a boilerplate for future MSS agreements, allowing future agreements to be specifically tailored to meet the special needs of future MSS Operators. Modesto and Redding argue that there is no need to generically impose rules intended to

facilitate Silicon Valley's, NCPA's and Roseville's business arrangements with PG&E and the California ISO on all participants in the California ISO market. They claim that generically imposing the California ISO OATT rules on all ISO market participants is unnecessary and harmful to the market. Southern Cities are concerned that the proposal not be construed as pro forma. They note, however, that the filing does not request that the Commission adopt the MSS Agreements as pro forma agreements for all other potential MSS Operators. Southern Cities urge the Commission to clarify that acceptance of these agreements does not bind other potential MSS Operators to the same terms and conditions.

21. Modesto and Redding contend that recent decisions by the U.S. Court of Appeals for the District of Columbia and the Commission (i.e., Atlantic City Electric Company v. FERC, 295 F.3d 1 (2002) and California Independent System Operator Corporation, 100 FERC ¶ 61,055 (2002), respectively), limit the Commission's authority to require uniformity for participants doing business in markets operated by an ISO or regional transmission organization.

22. Turlock argues that Amendment No. 46 should be modified to recognize that one size does not fit all in the development and recognition of MSSs. It also contends that the current MSS proposal requires potential MSS utilities to cede too much control to the California ISO. Turlock requests that the Commission set this matter for hearing to allow the parties to determine which MSS provisions are more appropriately placed in the OATT and which should be negotiated individually and included in the individual MSS Agreements. Turlock requests that such a hearing be held in abeyance pending settlement discussions before a Settlement Judge. Turlock also requests that Docket Nos. ER01-2998-001, et al., and this docket be consolidated for the administrative convenience of the Commission and the parties.

23. The California DWR argues that Amendment No. 46 does not ensure nondiscriminatory treatment for all California ISO market participants. It requests that the Commission condition any approval of Amendment No. 46 with a requirement that the California ISO, as part of the MD02 process, revise the California ISO OATT to (1) promote and facilitate nondiscriminatory self-provision of Ancillary Services, Energy and related services for all market participants; and (2) apply principles of cost causation in allocating all California ISO costs for all California ISO market participants. The California DWR argues that the MSS OATT language may exacerbate the tendency of the California ISO to socialize high costs to those who do not cause them but exempt lower cost operations from the socialization. It requests that the Commission further condition approval of Amendment No. 46 so that: (1) to the extent costs are not caused by MSS Operators that are properly excused from payment, the entities identified as

responsible for causing the costs should bear them; and (2) to the extent that MSS Operators are excused from payment because they have self-provided certain services, the California ISO costs should be reduced – and not reallocated – to all other market participants. The California DWR recommends proposed language regarding MSS cost consequences to be included in Amendment No. 46.

24. The Water Agencies Association believes that the revised MSS definition which requires ten years of existence is restrictive and unreasonable. It argues that the criterion for qualifying as an MSS should be quality of performance rather than the amount of time an entity has been an electric utility as proposed. It also argues that the proposed language unnecessarily restricts the local water agencies that would meet the definition. The Water Agencies Association recommends language to remedy both of these alleged deficiencies.

25. Sempra states that it is unable to ascertain the precise significance of the OATT changes proposed in Amendment No. 46. It finds that the proposed OATT changes will provide public power entities taking transmission service from the California ISO under the MSS provisions with rights and obligations that are different from those applicable to participating transmission owners (PTOs). Therefore, it requests that the Commission condition approval of Amendment No. 46 on the provisions being consistent with, and supportive of, the standard market design rule being finalized in Docket No. RM01-12-000 and not unduly discriminatory against the economic interests of PTOs and other market participants.

26. Vernon seeks clarification of whether the intent of the proposed OATT revisions is that load following by an MSS Operator will constitute self-supply of the regulation needs of the MSS. Vernon states that it will oppose the proposed OATT revisions if that is not the intent. It requests that a technical conference be held and/or the California ISO be required to further explain its proposal and respond to parties' questions before the Commission acts on this filing.

27. Turlock notes that it is a part owner of certain NCPA resources that are affected by the NCPA MSSA Agreement. Specifically, Turlock owns a 6.3305 percent entitlement in each of NCPA's Geothermal Plants 1 and 2 and 50 percent of the Graeagle hydroelectric project. Turlock asserts that the NCPA MSSA Agreement must be revised so that Turlock's resources remain under Turlock's control and are not subject to various provisions of the MSSA Agreement. Turlock requests that the Commission summarily order the modifications it suggests or, in the alternative, set the agreement for hearing, with the hearing held in abeyance pending settlement proceedings before a Commission Settlement Judge.

28. Modesto and Redding fear that the approval of Amendment No. 46 could prejudice their objections to Amendment No. 27 in Docket No. ER00-2019-000. The California ISO notes that neither the Federal Power Act (FPA) nor Commission regulation or precedent precludes a public utility from presenting revised proposals that address concerns raised about previous or pending OATT amendments.

29. Modesto articulates three principles it has put forth in Docket Nos. ER00-2019, et al., and correlating implementation issues that it set forth in its protest to Amendment No.46. It believes that (1) the form of Metered Subsystem shall reflect the right of a publicly owned utility to operate as a full-service utility within the ISO's control area; (2) all ISO charges and settlements under the Participating Metered Subsystem Agreement shall be based on actual use of the ISO Controlled Grid; and (3) the amount of MSS resources available to the Control Area Operator at a given time shall be limited to the amount of MSS resources actually reserved by the Control Area Operator for that same time. Redding sets forth these principles in its comments as well.

30. Modesto and Redding contend that the issues they have raised with respect to Amendment No. 27 in Docket No. ER00-2019 have not been resolved in the language proposed in Amendment No. 46. For example, they argue that proposed Section 23.4 would still require the MSS Operator to comply with "all provisions of the ISO OATT, as amended from time to time." They claim that even if limited to Utility Distribution Companies, the OATT amendments would subject municipal utilities to seemingly endless OATT revisions that could assist some market participants at the expense of others. They also claim that the amendments would further expose municipal utilities to an expansive and growing list of administrative charges that do not reflect a utility's actual use, or need to use, the ISO-Controlled Grid.

31. Modesto and Redding also contend that the proposed OATT provisions in Amendment No. 46 applicable to MSSs are not minimized to ensure that municipal utilities do business with the California ISO as equivalent business partners, on an arm's-length basis.

32. Modesto states that during the technical conference it requested that the California ISO consider incorporating the proposed OATT amendments into the MSS Agreements. This outcome would be consistent with Modesto's position in Docket No. ER00-2019-000 and would resolve Modesto's concerns in this proceeding.

33. Modesto requests that the Commission reject Amendment No. 46 or, in the alternative, conduct a hearing.

C. The California ISO and NCPA's Response

34. The California ISO responds that OATTs are designed to ensure non-discriminatory open access through an OATT of general applicability and that the issues addressed in the proposed OATT amendments should not be addressed in bilateral agreements. Instead, the California ISO contends that they are appropriately included in the OATT to ensure comparable treatment for all transmission customers.

35. The California ISO acknowledges that the MSS provisions in Amendment No. 27 were not a "consensus product." But it emphasizes that Amendment No. 46 is incorporated in the Settlement, concurrently filed in ER01-2998-002, et al., which is supported by a broad coalition of municipal utilities as well as the investor owned utility.

36. The California ISO responds that Modesto's complaint that Amendment No. 27 required municipal utilities to "convert" their existing transmission contracts and join the California ISO to obtain MSS status fails to acknowledge that Amendment No. 46 and the Settlement do not include this requirement. Further, the California ISO responds that the revised MSS program accomplishes Modesto's Principle No. 1 by allowing the MSS to remain vertically integrated and not requiring the conversion of existing transmission contracts. It notes that Principle No. 2, that all charges should be net, has been rejected by the Commission in San Diego Gas and Electric Company, et al., 99 FERC ¶ 61,159, slip op. at 12-13. It further notes that the amendment reaches an accommodation as to which charges should be charged on a net basis and which should be assessed on a gross basis. Finally, it argues that the revised MSS program accomplishes Principle No. 3.

37. The California ISO responds that the possibility that an OATT could be modified is not a new concept and that a reservation of OATT modification rights is of particular importance given the ongoing market redesign and market standardization activities. The California ISO also disagrees that the OATT impairs in any way Modesto's or any other entity's ability to meet its requirements under, or receive the benefits of, bilateral transactions.

38. The California ISO argues that the reference to Atlantic City is inapposite. It contends that in this instance the Commission would not be imposing uniformity on regulated public utilities. Rather, it is the California ISO, the regulated public utility with FPA Section 205 filing rights, that is proposing to employ uniform rules to provide assurances to transmission customers that they will not suffer undue discrimination. The California ISO argues that neither Atlantic City nor any other appellate ruling limits the ability of a regulated public utility to propose and implement OATT provisions for that purpose. It also notes that in the Commission's recent rulemaking on Revised Public

Utility Filing Requirements, Order No. 2001, 67 Fed. Reg. 31,043, the Commission moved to a paradigm of standard agreements in which terms and conditions that are included in a public utility's OATT and bilateral contracts are replaced by pro forma service agreements.

39. NCPA and the California ISO argue that the California ISO had to incorporate the terms of the MSS Agreements into the OATT and make them generically available to other similarly situated entities. Otherwise, the ISO would have been subject to complaints of undue discrimination under the FPA. They further note that the inclusion of the language of the MSS Agreements in the OATT does not force any entity to become an MSS or MSSA against its will or to abrogate its existing transmission contracts. Additionally, NCPA and the California ISO respond that Amendment No. 46 will not preclude future negotiations of different contractual or OATT provisions any more than the MSS language in the current OATT precluded negotiation of the Settlement.

40. NCPA and the California ISO state that all issues raised by the three principles articulated by Modesto and Redding are included in the NCPA MSSA Agreement, except for two, which are addressed below. NCPA and the California ISO note that in its negotiations NCPA explicitly sought and obtained the right to operate as a full-service utility within the California ISO control area. NCPA and the California ISO state that NCPA will be responsible for its own Unaccounted For Energy, will be able to use its own resources to balance its supply and demand and to follow load, and will settle its deviations in the California ISO Imbalance Energy market. Finally, NCPA will supply the California ISO with data to allow the ISO to verify performance, and NCPA may make bilateral sales and bids into the market as desired pursuant to the ISO's protocols. NCPA and the California ISO note that the NCPA MSSA Agreement makes a critical distinction between shortfalls caused by true contingencies and those caused by the inability or unwillingness of an entity to pay for energy, noting that the agreement can be used to subsidize the one and not the other.

41. NCPA and the California ISO believe that the only two issues not included in the NCPA MSSA Agreement are the amendment of agreements and gross vs. net allocation of costs. NCPA and the California ISO recognize that all entities would like an agreement that was never subject to amendment or change by the California ISO or the Commission but that approval of such an agreement was unlikely. NCPA and the California ISO cite to the Commission's precedent regarding cost allocation in Pacific Gas & Electric Company, et al., 81 FERC ¶ 61,122 (1997); California Independent System Operator Corporation, 91 FERC ¶ 61,205 (2000); and California Independent

System Operator, et al., 98 FERC ¶ 61,327 (2002) for the proposition that this issue has been resolved.

42. In its answer, NCPA indicates that Section IV.3 of the Settlement, filed in Docket Nos. ER01-2998-002, et al., was included to note that there was no intent to affect Turlock's rights under its existing transmission contracts, including its Interconnection Agreement with PG&E. NCPA also notes that Section 3.1 of the NCPA MSSA Agreement was added specifically to recognize that Turlock had entitlements in certain NCPA generation facilities and that NCPA is unable to make any contractual commitments on behalf of those entitlements. NCPA states that it has committed to Turlock that it will enter into appropriate arrangements to preserve Turlock's access to its entitlements at NCPA facilities.

V. Discussion

A. Procedural Matters

43. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely motions to intervene in the dockets in which they were filed serve to make those who filed a party to those proceedings. In addition, we will grant the Cogeneration Association of California and the Energy Producers and Users Coalition's and Sempra's untimely interventions, since we find that doing so at this early stage of this proceeding will not unduly disrupt the proceeding or place undue burdens on the parties.

44. Under Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2002), no answer may be made to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded that good cause has been shown that would justify accepting the California ISO's answer to the protests. We will therefore reject that answer. We will allow NCPA's answer in this case only to the extent that it provides information regarding Turlock's part ownership of NCPA's generating units because it has provided information that has aided us in understanding the matters at issue in this proceeding.

B. Commission Determination

1. Discriminatory Provisions

45. We find that the provisions of Amendment No. 46 are not unduly discriminatory. The issues addressed by Amendment No. 46 are necessary to permit municipal utilities to

participate in California ISO operations. NCPA, Roseville and Silicon Valley are vertically integrated municipal utilities which have the ability to self-supply and follow load from both generation internal to their MSS Operator area and bilateral contracts and can be metered off of the California ISO grid. While the California ISO's treatment of these utilities is, in some instances, different from that of the California ISO's treatment of PTOs like Sempra and the California DWR, those differences are not undue. Sempra and the California DWR are not similarly situated.

46. We disagree that the proposed allocation of charges to MSS Operators by the California ISO under Amendment No. 46 is unreasonable and preferential. The California ISO proposes to allocate certain charges applicable to MSS Operators based upon net metered demand.⁴ We find this reasonable because these are vertically integrated municipal utilities that self-supply certain services and follow their own load. To apply these charges on a gross metered demand basis would potentially cause the customers of MSS Operators to bear charges twice, once from the MSS Operator under their customer agreements and then from the California ISO.⁵

47. We find that the proposal allowing the MSS Operator to choose whether to be charged by the California ISO on a gross load basis or net load basis for start-up and emission charges is reasonable as well. Pursuant to Amendment No. 46, if the MSS Operator elects not to charge the California ISO the start-up and emission costs of the MSS Operator's generating units, then the MSS Operator will be responsible for the California ISO's start-up and emission charges allocated on net metered demand. As we have discussed above, this cost allocation is appropriate to avoid double charging the MSS Operator's customers because they pay the MSS Operator's start-up and emission costs in their contracts. Alternatively, if the MSS Operator elects to invoice the California ISO for these costs on the basis that the MSS Operator is not responsible for start-up and emission costs, then the MSS Operator will be allocated and charged by the ISO start-up and emission charges based upon gross load. This cost allocation in the alternative is reasonable as well because in this election there would be no double

⁴These charges include the California ISO's Ancillary Services and Real-Time Energy Operations Charge, Grid Operations Charge, Neutrality Adjustments and Existing Contracts Cash Neutrality Charge/Refund.

⁵For example, if the MSS Operator were to charge the California ISO for emission and start-up costs and then the California ISO billed the MSS Operator on gross load, there would be no recognition of the payment by existing customers of the MSS Operator for such costs in their power service charges.

charges. Further, we have already found that the allocation of start-up and emission costs by the California ISO based upon gross load is appropriate.⁶ Finally, we will not require the California ISO to reduce its charges to other PTOs based upon the MSS Agreements, at this time, as the California DWR has requested. The charges to others are beyond the scope of this proceeding and will be resolved in the proceedings in Docket Nos. ER00-2019-000, et al.

48. However, we do agree with the Water Agencies Association that the 10-year requirement contained in the Amendment No. 46 definition of an MSS is overly restrictive and could be unduly discriminatory to similarly situated entities, such as the various California water agencies. We agree that there needs to be a provision setting forth the basis for an entity to become an MSS. However, there is no operational basis for the 10-year requirement and the California ISO has not supported the 10-year term requirement. Therefore, we will reject the 10-year requirement and require the California ISO to modify Amendment No. 46 accordingly, within 30 days of the date of this order.

2. Regulation Service

49. Vernon seeks clarification that the load following by the MSS Operator constitutes self-supply of Regulation Service. We find that Regulation Service, as defined in the California ISO OATT, is not the same as load following. Regulation Service is defined in the California ISO OATT as the real-time movement of generation, up or down, to match demand and resources.⁷ Load following, although not defined in the California ISO OATT, is typically defined as the use of generation to meet the hour-to-hour and daily variations in system load. Therefore, load following may not be occurring in real-time. The Commission finds that these may in fact be two different services that should be subscribed to separately. Vernon states that its ability to follow load is of value in supplying its overall regulation needs and should be recognized as such. The Commission cannot determine here if the California ISO will allow load following within the MSS to satisfy its Regulation Service requirement. Because this issue is unclear in the OATT and MSS Agreements, we will require the California ISO to

⁶See California Independent System Operator Corporation, 91 FERC ¶ 61,205 (2000); San Diego Gas & Electric Company, et al., 97 FERC ¶ 61,293 (2001).

⁷See Original Sheet No. 342 of the California ISO Tariff, First Replacement

clarify, within 30 days of this order, whether an MSS Operator that follows load internal to the MSS meets the requirement that the MSS Operator has self-supplied Regulation Service.

3. Consistency with Standard Market Design

50. Sempra requests that the Commission determine that the provisions in Amendment No. 46 be approved only to the extent that they are consistent with the Commission's standard market design initiative.

51. The Commission will decline to assess any relationship between Amendment No. 46 and the final outcome of our standard market initiative at this time. However, upon issuance of a final rule in Docket No. RM01-12-000, all transmission owners and transmission service providers will be required to adhere to that rule.

4. Pro Forma MSS Agreements

52. The California ISO is not proposing in this filing a pro forma MSS agreement. The MSS Agreements reflect a negotiated settlement agreement and establish no precedent in the formation of a pro forma MSS agreement. Therefore, we find that the individual MSS Agreements entered into by NCPA, Roseville and Silicon Valley were not intended to and do not establish a pro forma MSS agreement. We further disagree with Turlock that Amendment No. 46 requires the MSS Operator to cede too much control to the California ISO and that it mandates a standard MSS Operator agreement. The California ISO needs oversight control over generation connected to the grid and participating in its markets in order to reliably operate the system for all participants. If Turlock finds that the California ISO inappropriately institutes control over Turlock's resources during a declared system emergency, Turlock may submit a complaint with this Commission.

53. We also find Turlock's concerns regarding the individual MSS Agreements are misplaced. Turlock presumes that the general nature of the Amendment No. 46 provisions allows the California ISO to have greater control over the MSS Operator and does not allow for recognition of the unique nature of one entity over another. The terms of an MSS agreement may reflect the unique nature of differing systems and codify the impact, if necessary, of system emergencies declared by the California ISO. Accordingly, Turlock may negotiate with the California ISO an MSS agreement that addresses its unique nature. To the extent an individually negotiated MSS agreement changes the nature of MSS service, the California ISO may need to make a

corresponding revision to its OATT. We will deny therefore Turlock's request for hearing and consolidation.

54. Modesto's and Redding's reference to Atlantic City for the proposition that the Commission lacks authority to require all participants in the electricity markets to conform to a singular, uniform business model is inapposite. Atlantic City addresses the Commission's authority to require utilities to cede their statutory rights under Section 205 of the FPA. Here, the Commission is not acting to limit those statutory rights.

55. Modesto's and Redding's reliance upon California Independent System Operator Corporation is also misplaced. Modesto and Redding argue that in California Independent System Operator the Commission unambiguously demonstrated that the California ISO had been attempting to forcibly impose its business model upon market participants and that the Commission rejected the blatant attempt to do so. Modesto and Redding conclude that the Commission should likewise reject the current somewhat less blatant attempt to impose a standard business model on all market participants and reject Amendment No. 46.

56. In California Independent System Operator, the Commission rejected the California ISO's filing of an unexecuted Participating Generator Agreement (PGA) and an unexecuted Meter Service Agreement (MSA) between the California ISO and the City of Riverside (Riverside) for Riverside's Springs Generation Project (Spring Project). The Commission held that Riverside was not obligated to execute a PGA with the California ISO for the Springs Project because the project was not interconnected to the California ISO grid and Riverside had no intention of using this generation to participate in the California ISO grid operations. The Commission found that Riverside was not obligated to execute a MSA with the California ISO because the Springs Project did not qualify as an "ISO Metered Entity." The decision does not discuss the California ISO's imposition of its business model upon market participants, as Modesto and Redding allege.

5. The NCPA MSSA Agreement

57. Turlock takes issue with specific aspects of the NCPA MSSA Agreement. Turlock states that the agreement should be modified to reflect that Turlock's portion of generating resources jointly owned by NCPA and Turlock remain in Turlock's control and are not subject to the provisions of the NCPA MSSA Agreement.

58. NCPA has committed to entering into appropriate arrangements to preserve Turlock's control over its entitlements at NCPA facilities. The Commission finds that Section 3.1 of the NCPA MSSA Agreement sufficiently reflects that third party rights to

NCPA generating units will not be affected by the instant agreement. However, NCPA has committed to ensuring resolution between itself and Turlock. We will require NCPA to report back to the Commission within 30 days on the progress of its negotiations. Accordingly, Turlock's request that the Commission summarily order modifications or, in the alternative, set the NCPA MSSA Agreement for hearing is denied.

6. Other Issues

59. We find that parties that have raised specific concerns with respect to implementation of MSS arrangements and specific ISO charges in the proceedings in Docket Nos. ER00-2019-000, et al., are not prejudiced by findings the Commission has made in this proceeding and that they may continue to raise their specific concerns in Docket Nos. ER00-2019-000, et al., or to directly negotiate with the California ISO an agreement of their own. To address those concerns here would be premature. Amendment No. 46 is intended to implement the MSS Agreements that have been negotiated by the parties. Modesto's and Redding's request that the Commission reject or establish a hearing in this proceeding is denied.

60. We will grant waiver of the Commission's 60-day prior notice requirement and accept the California ISO's filings to become effective September 1, 2002, as requested.⁸

61. We note that the California ISO has not included proposed designations for the MSS Agreements, as filed. We will require the California ISO to designate the MSS Agreements, in compliance with Order No. 614,⁹ and submit the corrected MSS Agreements within 30 days of the date of this order.

The Commission orders:

(A) The request for consolidation is denied.

(B) The California ISO is hereby directed to file with the Commission modifications to and clarifications of Amendment No. 46, as discussed in the body of this order, within 30 days of the date of this order.

⁸See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

⁹Designation of Electric Rate Schedule Sheets, Order No. 614, 65 Fed. Reg. 18221, FERC Stats. & Regs. ¶ 31,096 (2000).

(C) The MSSA Agreement between the California ISO and NCPA and the MSS Agreements between the California ISO and Roseville and the California ISO and Silicon Valley are hereby conditionally accepted, subject to clarification within 30 days of the date of this order, as discussed in the body of this order.

(D) Vernon's request for clarification is hereby granted, as discussed in the body of this order.

(E) NCPA is hereby directed to file a report with the Commission on the results of its informal negotiations with Turlock within 30 days of the date of this order, as discussed in the body of this order.

(F) The California ISO's request for waiver of the 60-day prior notice requirement is hereby granted, to permit an effective date of September 1, 2002.

(G) The California ISO is hereby directed to file with the Commission the MSS Agreements with designations, comporting with Order No. 614, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

20020830-3017 Received by FERC OSEC 08/30/2002 in Docket#: ER02-2321-000

Appendix A

California Independent System Operator Corporation

Docket Nos. ER02-2321-000 and ER02-2321-001

Rate Schedule Designations

Effective Date: September 1, 2002

	<u>Designation</u>	<u>Description</u>
(1)	First Revised Sheet Nos. 37, 150 through 161, 164, 297, and 333-A. (Supersedes Original Sheets)	Revised Tariff Provisions
(2)	Original Sheet Nos. 164-A, and 297-A through 297-Q.	Revised Tariff Provisions
(3)	Substitute Original Sheet Nos. 297-H and 297-I. (Supersedes Original Sheets)	Revised Tariff Provisions