

115 FERC ¶61,237  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeene G. Kelly.

California Independent System Operator Corporation	Docket Nos. ER04-445-011 ER04-445-012 ER04-445-013 ER04-445-014
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Pacific Gas and Electric Company	Docket Nos. ER04-443-009 ER04-443-010 ER04-443-011
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San Diego Gas & Electric Company	Docket Nos. ER04-441-009 ER04-441-010
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Southern California Edison Company	Docket Nos. ER04-435-015 ER04-435-016 ER04-435-018
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(Not Consolidated)

ORDER ACCEPTING IN PART AND REJECTING IN PART WITH  
MODIFICATIONS LARGE GENERATOR INTERCONNECTION COMPLIANCE  
FILINGS, REJECTING OFFER OF SETTLEMENT, AND CLARIFYING PRIOR  
ORDER

(Issued May 24, 2006)

1. In this order, the Commission accepts in part and rejects in part with modifications the Large Generator Interconnection Procedures (LGIP) filed by California Independent System Operator Corporation (CAISO) to comply with Order No. 2003-C<sup>1</sup> and with the

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<sup>1</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005).

Commission's July 1, 2005 Order accepting in part and rejecting in part CAISO's interconnection compliance filings and August 26, 2005 Order granting clarification and denying a request for rehearing.<sup>2</sup> In addition, the Commission accepts in part and rejects in part with modifications the Large Generator Interconnection Agreement (LGIA) jointly filed by CAISO and the three Participating Transmission Owners (PTOs) (collectively, the Filing Parties), also to comply with the July 1, 2005 Order and August 26, 2005 Order.<sup>3</sup> We also reject Pacific Gas and Electric's (PG&E) Offer of Settlement (Settlement).

## **I. Background**

### **A. Prior Filings to Comply with Large Generator Interconnection Orders**

2. In Order No. 2003,<sup>4</sup> the Commission, pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)<sup>5</sup> to remedy undue discrimination and in order to achieve greater standardization of interconnection terms and conditions, directed all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append the Commission's *pro forma* LGIP and LGIA to their open access transmission tariffs (OATTs). In Order Nos. 2003-A, 2003-B, and 2003-C, the Commission reaffirmed the legal and policy conclusions that formed the basis of Order No. 2003 and modified a number of the provisions of the Commission's *pro forma* LGIP and LGIA.

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<sup>2</sup> *California Independent System Operator Corp.*, 112 FERC ¶ 61,009 (July 1, 2005 Order), *clarifications and extension of time granted, reh'd denied*, 112 FERC ¶ 61,231 (2005) (August 26, 2005 Order).

<sup>3</sup> The Filing Parties explain that the typographical corrections to the *pro forma* LGIA directed in Order No. 2003-C have already been adopted by an earlier submittal of their revised LGIA and were not rejected in the July 1, 2005 Order.

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

<sup>5</sup> 16 U.S.C. §§ 824d, 824e (2000).

3. CAISO is the Transmission Provider that exercises operational control over the transmission facilities owned by the Southern California Edison Company (SoCal Edison), PG&E, and San Diego Gas & Electric Company (SDG&E). The Commission has issued several orders that rejected the series of proposed LGIP and LGIA filings submitted in the first quarter of 2004.<sup>6</sup>

4. In the July 1, 2005 Order, the Commission accepted in part and rejected in part proposed revisions to the Commission's *pro forma* LGIP filed by CAISO and proposed revisions to the Commission's *pro forma* Large Generator Interconnection Agreement (LGIA) filed by the Filing Parties. The Commission also accepted Transmission Owner Tariff (TO Tariff) amendments filed by the PTOs to transfer from the PTOs to CAISO procedural control over the substantive provisions for interconnecting Large Generators to the CAISO Controlled Grid.

**B. PTOs' Request for Clarification and Rehearing**

5. On August 1, 2005, the PTOs filed a joint request for clarification and/or rehearing (Joint Request for Rehearing) of two directives in the July 1, 2005 Order. The PTOs requested clarification of the extent to which they would be permitted to participate in the Commission-directed centralized transmission system study process.<sup>7</sup> The PTOs also requested an extension of at least six months to develop and file centralized study procedures with CAISO. Lastly, the PTOs requested rehearing of the Commission's

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<sup>6</sup> *California Independent System Operator Corporation*, 108 FERC ¶ 61,104 at P 24 (2004) (July 30, 2004) (rejecting without prejudice the Filing Parties' proposed LGIP and LGIA, filed on January 20, February 9, and April 26, 2004). *See also California Independent System Operator Corp.*, 108 FERC ¶ 61,315 (2004); and *California Independent System Operator Corp.*, 110 FERC ¶ 61,004 (2004). In these two orders the Commission granted a request for an extension of time, until January 5, 2005, for the Filing Parties to refile their LGIP and LGIA compliance filing, and also granted their request that the effective date of their revised LGIP and LGIA would not precede the Commission's approval of these documents.

<sup>7</sup> *See* July 1, 2005 Order, 112 FERC ¶ 61,009 at P 55-57.

rejection of their proposal to require additional security from Interconnection Customers upon termination of an LGIA.<sup>8</sup>

6. On August 10, 2005, CAISO filed an answer in qualified support of the PTOs' extension request, stating that a six week extension until October 14, 2005, as opposed to the minimum of six months that the PTOs had requested, would be enough time to file the centralized study procedures.

7. On August 26, 2005, the Commission partially granted the PTOs' request for additional time. It extended the centralized studies compliance deadline to October 14, 2005.<sup>9</sup> The Commission clarified that CAISO must collaborate with stakeholders and the PTOs to develop the centralized study procedures.<sup>10</sup> The Commission also clarified that the PTOs may, subject to certain conditions, participate in the centralized study process. Additionally, the Commission denied the PTOs' rehearing request regarding their proposed modification of the LGIA that would have required additional security, finding that it would be unduly burdensome for Interconnection Customers and could discourage construction of new generating capacity.

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<sup>8</sup> *Id.* at P 161 (where the Commission denied the PTOs' proposal to require Interconnection Customers, in LGIA article 11.5, to post an additional four months of security to cover operation and maintenance expenses and estimated costs to remove the PTOs' Interconnection Facilities upon termination of an LGIA).

<sup>9</sup> On October 14, 2005, CAISO was granted an extension of time, until November 1, 2005, to make its compliance filing.

<sup>10</sup> See August 26, 2005 Order, 112 FERC ¶ 61,231 at P 17. See also *Notice of Extension of Time* (Oct. 14, 2005).

## **II. Summary of Revised LGIP, LGIA, and Related Filings**

### **LGIP and LGIA Filings**

8. CAISO filed the first round of revisions to its proposed LGIP on August 30, 2005.<sup>11</sup> The Filing Parties also filed their proposed LGIA on August 30, 2005.<sup>12</sup> CAISO requests that the proposed interconnection system study procedures it filed on February 18, 2005 be used on an interim basis until procedures for centralized studies are accepted by the Commission and implemented in the California market.

9. CAISO filed its proposal for centralized system study procedures on November 1, 2005. It proposes a Roles and Responsibilities Agreement (R&R Agreement) to allocate interconnection study responsibilities, as provided in the proposed LGIP, LGIA, and Interconnection Study Agreements, between CAISO and the PTOs. CAISO requests approval of separate R&R Agreements for itself and for each of the Filing Parties. However, it did not include an R&R Agreement rate schedule for PG&E. It says that PG&E will separately file an R&R Agreement if the Commission accepts the PG&E Offer of Settlement or if PG&E finds the Commission's determinations in this proceeding to be acceptable.

10. On August 30, 2005, PG&E submitted an informational filing to apprise the Commission of ministerial revisions added to section G2.17 of the PG&E Interconnection Handbook (handbook). PG&E revised section G2.17 to comply with the July 1, 2005 Order, which stated that the PTOs must file any handbook section that affects rates, terms, and conditions of interconnection service. In the July 1, 2005 Order, the Commission also directed PG&E to file section G2.17 of its handbook because section G2.17 appeared to include requirements that could affect costs assigned to customers.<sup>13</sup>

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<sup>11</sup> CAISO filed the August 30, 2005 LGIP in Docket No. ER04-445-012. It filed to amend the LGIP on November 1, 2005, in Docket No. ER04-445-013, by adding a proposal for centralized study procedures.

<sup>12</sup> The Filing Parties filed the August 30, 2005 LGIA in Docket Nos. ER04-445-011 (CAISO), ER04-443-009 (PG&E), ER04-441-009 (SDG&E), and ER04-435-015 (SoCal Edison). They revised the LGIA to adopt centralized study procedures and refiled the LGIA on November 1, 2005, in Docket Nos. ER04-445-014 (CAISO), ER04-443-010 (PG&E), ER04-441-010 (SDG&E), and ER04-435-018 (SoCal Edison).

<sup>13</sup> See July 1, 2005 Order, 112 FERC ¶ 61,009 at P 162-169.

11. PG&E states that the mention in section G2.17 of system costs required to interconnect new generation is a cross-reference to the LGIA section 6.1, pre-commercial operation testing and modifications. PG&E further states that it is reviewing other sections of its handbook for similar cross-references and will revise or remove any provisions that affect rates, terms, or conditions of service.

12. On November 1, 2005, PG&E filed a Settlement, which PG&E states would resolve (1) all issues associated with the centralized study process requirement and (2) a pending appeal of these directives that PG&E filed with the U. S. Court of Appeals for the District of Columbia Circuit.<sup>14</sup> Under the Settlement, PG&E requests that the Commission accept without modification the CAISO and PTO November 1, 2005 compliance filings. The Settlement further requests that the Commission vacate certain portions of its orders that mandate a centralized study process and the transfer of study functions from the PTOs to CAISO. If the Commission does this, PG&E will withdraw, with prejudice, its petition for review.

13. On September 23, 2005, SoCal Edison filed to reinstate its pre-Order No. 2003 interconnection procedures to apply to Small Generating Facilities<sup>15</sup> and grandfathered Large Generating Facilities that wish to connect to the SoCal Edison portion of the CAISO Controlled Grid.<sup>16</sup>

### **III. Notices of Filings, Interventions, Protests, and Answers**

14. Notice of the Filing Parties' August 30, 2005 LGIA filing was published in the *Federal Register*, 70 Fed. Reg. 53,789 (2005), with interventions and protests due on or before September 20, 2005. The California Electricity Oversight Board and PPM Energy Inc. filed timely motions to intervene.

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<sup>14</sup> *Pacific Gas and Electric Co. v. FERC*, D.C. Cir. No. 05-1401 (filed Oct.18, 2005) (petition for review).

<sup>15</sup> *See Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 Fed. Reg. 34,100 (Jun. 13, 2005), FERC Stats. & Regs., Regulations Preambles, Vol. III, ¶ 31,180, at 31,406-31,551 (2005) (Order No. 2006), *order on reh'g*, Order No. 2006-A, 70 Fed. Reg. 71,760 (Nov. 30, 2005), FERC Stats. & Regs., Regulations Preambles, Vol. III, ¶ 31,196 (2005), *reh'g pending*.

<sup>16</sup> The SoCal Edison TO Tariff amendment adds an Appendix VII, which includes the previously deleted provisions of sections 8.1.1 through 8.1.6, and section 10 of the SoCal Edison TO Tariff.

15. Notice of the Filing Parties' November 1, 2005 LGIA filing was published in the *Federal Register*, 70 Fed. Reg. 69,332 (2005), with interventions and protests due on or before November 22, 2005. Modesto Irrigation District (Modesto) filed a timely motion to intervene and protest.

16. Notice of CAISO's August 30, 2005 LGIP filing was published in the *Federal Register*, 70 Fed. Reg. 54,037 (2005), with interventions and protests due on or before September 20, 2005. The Cogeneration Association of California and Energy Producers and Users Coalition (together, QF Parties) filed a timely protest.<sup>17</sup> The Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (together, Southern Cities) filed a timely protest. The Northern California Power Agency (NCPA) filed a protest out-of-time. CAISO filed an answer to the protests of Southern Cities and the QF Parties.

17. On November 1, 2005, PG&E filed a Settlement. Transmission Agency of Northern California (TANC) filed a timely protest contesting the Settlement. Modesto filed a motion to intervene out-of-time and protest contesting the Settlement. The PTOs jointly filed a reply and answer to the protests of Modesto and TANC and opposition to a late-filed intervention of Modesto.

#### **IV. Discussion**

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

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will accept NCPA's late protest because it will not disrupt the proceeding or place additional burdens on the other parties. We will also accept Modesto's motion to intervene out-of-time and protest because it has provided us with information that has assisted us in our decision-making process.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer or an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's answer and the PTOs' reply and answer because they have provided information that has assisted us in our decision-making process.

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<sup>17</sup> In their filing, the QF Parties note that they had already intervened in this matter on January 27, 2005.

**B. Proposed Revisions to LGIP and LGIA**

20. In the July 1, 2005 Order, the Commission accepted CAISO's proposal to offer a base-level Interconnection Service for reliable interconnection. The Commission also accepted the proposed Deliverability Assessment Test, which can, at the Interconnection Customer's option, be used to obtain a higher level of Interconnection Service. In addition, the Commission accepted the CAISO proposal to offer an Interconnection Customer a choice between financial transmission rights or cash reimbursement as compensation for funding Network Upgrades. However, each of these provisions is subject to further review by CAISO to ensure that they comport with the rules in place for the broader market when CAISO's Market Redesign and Technology Upgrade is implemented.

21. Also in the July 1, 2005 Order, the Commission rejected certain of CAISO's Large Generator Interconnection compliance proposals and directed modifications. For example, the Commission rejected the proposal to allow the PTOs to perform informational assessments of affected PTOs' transmission facilities.<sup>18</sup> Instead, the Commission directed CAISO to centralize its interconnection system study procedures.

22. The July 1, 2005 Order rejected other CAISO proposals, including the Economic Test,<sup>19</sup> the proposal to withdraw the Maintenance of Encumbrances<sup>20</sup> provision from the CAISO OATT, and the proposal to eliminate, pending issuance of Order No. 2006, the 20 megawatt size distinction between Large and Small Generators.<sup>21</sup> It also rejected the

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<sup>18</sup> See July 1, 2005 Order, 112 FERC ¶ 61,009 at P 58-67. The informational assessment, as proposed by CAISO, would include a power flow analysis of an affected PTO's transmission facilities and short circuit duty calculations at boundaries with an affected PTO.

<sup>19</sup> Economic Test – review of economic viability of Network Upgrades that exceed the lesser of \$20 million or \$200,000 per megawatt of installed capacity to determine whether overall resulting benefit to transmission system exceed cost of upgrade. See July 1, 2005 Order, 112 FERC ¶ 61,009 at P 102-115.

<sup>20</sup> Maintenance of Encumbrances – CAISO OATT section 5.7.3 provides for the identification and mitigation of a new interconnection's adverse effect on the ability of the interconnecting PTO to honor its encumbrances existing when the interconnection is requested. See July 1, 2005 Order, 112 FERC ¶ 61,009 at P 124-130.

<sup>21</sup> July 1, 2005 Order, 112 FERC ¶ 61,009 at P 144-147.



Filing Parties' proposal to change the indemnification obligation in LGIA article 5.17.3 and their proposal to remove the 10-year limit on the occurrence of a subsequent taxable event in LGIA article 5.17.6.

23. In reviewing the August and November 2005 compliance filings, we find that the Filing Parties have, for the most part, complied with Order No. 2003 and with the Commission's findings in the July 1, 2005 and August 26, 2005 Orders. We accept the tariff sheets that include the proposed LGIP, LGIA, Interconnection Studies, and the R&R Agreement, with certain modifications, as discussed below. In addition, the Commission will also accept the PG&E informational filing regarding section G2.17 of its handbook. Lastly, we will accept SoCal Edison's adoption of its pre-Order No. 2003 interconnection procedures, effective July 1, 2005, to be applied to Small Generating Facilities and "grandfathered" Large Generating Facilities that are in the process of interconnecting to SoCal Edison's portion of the CAISO Controlled Grid during the transition to Large and Small Generation Interconnection Procedures.

24. However, the Commission directs the Filing Parties to remove all references, including the reference in the definition of Feasibility Study, to informational assessments, since this provision was rejected by the Commission in the July 1, 2005 Order. A discussion of certain of the proposed compliance filing provisions that warrant additional consideration and modification follows.

#### **1. LGIP Section 11.4: Commencement of Interconnection Activities**

25. Section 11 of the Commission's *pro forma* LGIP contains procedures for the development, proffer, necessary negotiation, execution or non-execution, and filing of an interconnection agreement. It also includes procedures for the commencement of interconnection activities.

26. The Commission's *pro forma* LGIP section 11.3, pertains to the execution and filing of an interconnection agreement. It states in relevant part that: (1) "not later than ten (10) Business Days after receiving...the request to file an unexecuted LGIA, the Transmission Provider shall file the LGIA with FERC, together with its explanation of any matters as to which the Interconnection Customer and Transmission Provider disagree, and support for the costs that the Transmission Provider proposes to charge to Interconnection Customer under the LGIA"; (2) "[a]n unexecuted LGIA should contain terms and conditions deemed appropriate by the Transmission Provider for the Interconnection Request"; (3) "[i]f the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed-upon terms of the unexecuted LGIA, they may proceed, pending Commission action."

27. The Commission's *pro forma* LGIP section 11.4 pertains to the commencement of interconnection activities under the LGIA: "If the Interconnection Customer executes the final LGIA, Transmission Provider and Interconnection Customer shall perform their respective obligations in accordance with the terms of the LGIA, subject to modification by FERC. Upon submission of an unexecuted LGIA, Interconnection Customer and Transmission Provider shall promptly comply with the unexecuted LGIA, subject to modification by FERC."

### **CAISO Proposal**

28. In its January 20, 2005 compliance filing, which the Commission accepted in the July 1, 2005 Order,<sup>22</sup> CAISO proposed a revision to the second sentence of the Commission's *pro forma* LGIP section 11.4, quoted above, so that it would read, as follows, "Upon submission of an unexecuted LGIA, the Interconnection Customer, Participating TO and ISO may proceed to comply with the unexecuted LGIA, pending FERC action." CAISO stated that the revision acknowledged that the parties to the LGIA may move forward with its terms and conditions while awaiting action by the Commission.

### **Protests: Southern Cities and NCPA**

29. Southern Cities filed a protest of CAISO's August 30, 2005 LGIP compliance filing, taking issue with the already accepted change described above. Southern Cities is concerned that allowing CAISO or a PTO to decline to begin Interconnection Service under an unexecuted interconnection agreement until after Commission action could block or delay Interconnection Service. It requests that the Commission reject the modification.<sup>23</sup>

30. Southern Cities adds that to allow this delay changes the balance of rights and obligations between CAISO and the Interconnection Customer. It also says that the modification is inconsistent with the Commission's requirement in Order No. 888<sup>24</sup> that a

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<sup>22</sup> July 1, 2005 Order, 112 FERC ¶ 61,009.

<sup>23</sup> Southern Cities states that it previously protested, on January 26, 2005, all CAISO revisions to the *pro forma* LGIP that altered the balance of rights and obligations between CAISO and the Interconnection Customer, although the protest did not focus specifically on LGIP section 11.4.

<sup>24</sup> Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities (continued)

Transmission Provider begin to provide transmission service under an unexecuted transmission service agreement as long as the transmission customer agrees to abide by the terms and conditions ultimately found by the Commission to be just and reasonable.

31. NCPA filed an out-of-time protest, on October 5, 2005, to agree with Southern Cities. It adds that requiring the service provider to provide service under an unexecuted agreement has long been recognized as an important curb on market power, as it prevents the service provider from denying service until the customer agrees to whatever terms the service provider dictates.

### **CAISO Answer**

32. CAISO objects on procedural grounds, arguing that these protests are beyond the scope of the compliance filing. CAISO also argues that the protests lack merit. It says that the revision is consistent with the Commission's *pro forma* LGIP procedures for filing a customer-specific LGIA and that these procedures allow the Transmission Provider to delay Interconnection Service in many, if not most, circumstances, by requiring the Transmission Provider's consent on the design, procurement, and construction of facilities and upgrades before parties proceed with service obligations under an unexecuted LGIA that is pending before the Commission.

33. CAISO adds that, under Order No. 2003, where the Transmission Provider and Transmission Owner are one in the same, there is less potential for disagreement over the terms of an unexecuted LGIA than in the California market where the Transmission Provider and Owner are separate entities. CAISO asserts that it would be problematic to require the Transmission Owner to begin procurement and construction activities with unresolved issues pending before the Commission in the unexecuted LGIA.

34. CAISO further points out that the Interconnection Customer has recourse if a dispute between CAISO and a PTO affects the timing or implementation of Interconnection Service. The Interconnection Customer could request expedited Commission review of the unexecuted LGIA.

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and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. □ 31,036 at 31,679-84 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. □ 31,048 at 30,209-10 (1997), *order on reh'g*, Order No. 888-B, 81 FERC □ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC □ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

### **Commission Determination**

35. The CAISO revision to the Commission's *pro forma* LGIP section 11.4 is consistent with the Commission's *pro forma* LGIP section 11.3,<sup>25</sup> which CAISO did not revise, and therefore is consistent with the Commission's *pro forma* LGIP section 11 procedures for promptly filing an unexecuted LGIA. The July 1, 2005 Order approved this provision as part of the revisions accepted, if not otherwise discussed under the independent entity variation standard. Under this standard of review, CAISO, as the independent Transmission Provider, must be flexible and impartial while the parties negotiate disputed issues pending the Commission's ultimate findings.<sup>26</sup>

36. Southern Cities failed to request rehearing of the July 1, 2005 Order. The protest at this stage is beyond the scope of the compliance filing and constitutes a collateral attack on the July 1, 2005 Order, and we therefore reject it. However, we will discuss the balance of rights and obligations that Southern Cities and NCPA raise, and the comparability requirement that must exist among CAISO, the PTO(s), and the Interconnection Customer under an unexecuted interconnection agreement as relevant to the role and responsibilities, discussed later on in this order, that each party has to the others in the interconnection process.

37. Order No. 2003 provides that where LGIA obligations include such matters as facilities construction that may be undertaken by the Transmission Owner or the Interconnection Customer, disputed issues must be negotiated by all three Parties

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<sup>25</sup> In relevant part, LGIP section 11.3 states, "If the Parties agree to proceed with the design, procurement, and construction of facilities and upgrades under the agreed-upon terms of the unexecuted LFIA, they may proceed pending FERC action."

<sup>26</sup> Southern Cities filed a timely protest on January 26, 2005, requesting the rejection of many of CAISO's January 5, 2005 proposed revisions to the *pro forma* LGIP as unacceptable alterations of the balance of rights and obligations between Interconnection Customers and the Transmission Provider/Owner(s), as the Commission had adopted these rights in Order No. 2003. The Commission rejected some of the proposed revisions to which Southern Cities objected. However, the Commission found that other CAISO proposed revisions which establish procedures for system operations and contact between Generators and CAISO, to which Southern Cities objected, were reasonable and consistent with previously accepted provisions of the CAISO OATT. See July 1, 2005 Order, 112 FERC ¶ 61,009 at P 154.

(Provider, Owner, and Customer).<sup>27</sup> With this type of obligation, the parties need more flexibility to determine whether to proceed with service commitments for those terms and conditions that are not under dispute, once the unexecuted agreement is filed and while they await Commission resolution.<sup>28</sup> The independent oversight exercised by CAISO in this process will guard against the concern that a Transmission Owner could receive preferential treatment.<sup>29</sup> Further, if the Interconnection Customer believes that it has been treated unfairly, it may invoke Dispute Resolution or bring the matter to the attention of the Commission.

38. We further point out that the CAISO LGIP section 11.4 revision is consistent with the LGIP section 11 procedures, which require prompt action, where the Interconnection Customer requests that an unexecuted agreement be filed. With regard to the Parties' attempts to reach agreement while waiting for Commission resolution of the unresolved issues, no one party's consent may be unreasonably withheld, and each party's efforts toward resolution must be substantially equivalent to those the party would use to protect its own interests. Therefore, we find that the revision will not create an opportunity to delay or prevent interconnection service, and we deny the intervenors' requests that the revision be rejected.

## **2. Proposal to Centralize the Interconnection System Study Process**

39. In its January 2005 interconnection compliance filing, CAISO said that it did not have the staff resources to conduct interconnection studies for the entire CAISO Controlled Grid, and proposed to have the PTOs, with historical and technical knowledge of their respective systems, continue to conduct the studies. However, the Commission found that CAISO must manage its interconnection policy and procedures, including its system study process.<sup>30</sup> The Commission clarified that the PTOs could participate in the centralized study process, including conducting certain studies under the direction and oversight of CAISO, but that the participation should generally be limited to areas where the PTOs have very specific and non-transferable expertise or data and where it is more efficient and cost effective for the PTOs rather than CAISO to conduct those studies.<sup>31</sup>

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<sup>27</sup> See Order No. 2003 at P 240.

<sup>28</sup> *Id.*

<sup>29</sup> See Order No. 2003-A at P 786.

<sup>30</sup> See July 1, 2005 Order, 112 FERC ¶ 61,009 at P 55-57.

<sup>31</sup> See August 26, 2005 Order, 112 FERC ¶ 61,231 at P 3, 21-22.

40. The PTOs requested clarification that they would have review and consent rights where CAISO physically conducts interconnection studies. They said that where there is a dispute, they should be able to use CAISO's dispute resolution process. The Commission clarified that if CAISO physically conducts interconnection studies, the PTOs have a right to make recommendations, but that granting the PTOs consent rights would allow them to control the study process. Lastly, the Commission clarified that in the event of a dispute, any party may use CAISO's dispute resolution process.<sup>32</sup>

### **CAISO Proposal**

41. In its November 1, 2005 transmittal letter, CAISO states that its proposed centralized study process would strike an appropriate balance between CAISO's primary and independent role in conducting Interconnection Studies and evaluating grid-wide effects and solutions, and the PTOs' ownership interest, specialized knowledge, experience, and engineering expertise, thus ensuring the safety and reliability of the CAISO Controlled Grid.

42. CAISO proposes to revise the LGIP Roles and Responsibilities service provision to state that CAISO will conduct or cause to be performed the required Interconnection Studies, and will direct the PTOs to perform portions of studies where CAISO and the PTOs conclude in advance that the PTOs have specific and non-transferable expertise or data, and can conduct those portions of the studies more efficiently and cost effectively than CAISO.<sup>33</sup> In section 3.1 of the R&R Agreement, the Filing Parties recognize that CAISO, as the Transmission Provider under the CAISO OATT, is responsible for the reliable operation of the CAISO Controlled Grid, but that it does not own any transmission facilities. Section 3.1 of the R&R Agreement also states that the PTOs own, construct, maintain, and may construct or modify the transmission facilities to which Large Generating Facilities are to be interconnected. Lastly, R&R Agreement section 3.1 includes a statement that all Interconnection Studies, whether performed by CAISO, a PTO, and/or a third-party contractor, are under the direction and oversight of and must be approved by CAISO.

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<sup>32</sup> *Id.* at P 22.

<sup>33</sup> In its January 5, 2005 LGIP filing, CAISO proposed to add a section 3.2, Roles and Responsibilities, to the LGIP to clarify roles and responsibilities among the parties. The Commission accepted this proposal as part of the revisions accepted if not otherwise discussed. July 1, 2005 Order, 112 FERC ¶ 61,009.

**Protests by Modesto Irrigation District and TANC**

43. Modesto states that it owns and operates transmission facilities which are interconnected to the CAISO Controlled Grid. Modesto adds that it is a member of several municipal power agencies that have transmission service entitlements purchased from PG&E, the Department of Water and Power of the City of Los Angeles, and SoCal Edison. For example, Modesto, as a member of TANC, has a share of TANC's entitlement to capacity on the California-Oregon Transmission Project and a share of TANC's transmission service entitlement on the PG&E transmission system under the South of Tesla Principles.

44. Modesto argues that the Filing Parties' centralized study proposal does not comport with the Commission's directive that CAISO exercise its independent status in the Interconnection Study process. Modesto believes that CAISO has relinquished its responsibility for conducting the studies, allowing the PTOs to either take a primary role in or to retain consent authority over the study process. It cites to LGIP and LGIA language regarding CAISO's revised definitions of interconnection studies. Each definition of a particular study states that CAISO will "cause" a study to be performed, instead of stating that CAISO will perform the study. Additionally, Modesto says that CAISO has modified the LGIP/LGIA to state that CAISO will cause studies to be performed "in coordination with" the applicable PTO instead of indicating that CAISO has primary consent authority. Modesto concludes that with these revisions CAISO is undermining its independent entity status and circumventing the Commission's directives.

45. Similarly, TANC argues that the Filing Parties have developed a decentralized study process that gives the PTOs control by allowing them to perform the short circuit analyses and the detailed engineering design, assessments of costs, and construction scheduling, as well as allowing the PTOs to review CAISO's recommendations concerning the various study functions performed by CAISO.

**PTOs' Answer**

46. The PTOs say that Modesto and TANC neither claim to own or operate any large generators connected to the CAISO Controlled Grid nor to have such projects in development. They also note that Modesto and TANC have publicly announced plans to turn over control of their primary transmission assets to the Sacramento Municipal Utility District control area. This suggests that they do not have a compelling interest in the interconnection studies for new Large Generators on the CAISO Controlled Grid. Finally, the PTOs state that the compliance filings were the product of a Commission-

directed stakeholder process where no other party objected to the centralized study proposal.

### **CAISO Answer**

47. CAISO states that neither entity provided any comments to CAISO.

### **Commission Determination**

48. In California, ownership and operation of transmission facilities is bifurcated. Generators interconnect to transmission facilities that are constructed, owned, maintained, and modified to allow interconnection service by a PTO while the entity which provides transmission service is CAISO. Order No. 2003 states that an ISO's compliance filing may propose modified interconnection service arrangements that provide different respective rights and obligations in the region.<sup>34</sup>

49. We find that the centralized study proposal complies with the Commission's prior orders and meets the independent entity variation standard. It strikes the appropriate balance between CAISO, as an independent Transmission Provider with grid-wide responsibilities, and the PTOs, as Transmission Owners with specialized knowledge of their respective systems. It is an efficient, cost-effective, and reasonable basis on which to facilitate Generator interconnection under Order No. 2003.

50. In Order No. 2003-A, the Commission found that while Interconnection Studies and transmission planning must be controlled by the Transmission Provider, construction scheduling and other construction-related matters must involve and be negotiated by the Transmission Provider, the Transmission Owner, and the Interconnection Customer. The Commission added that the independent oversight exercised by the regional transmission organization (RTO) or independent system operator (ISO) will guard against any one party receiving preferential treatment.<sup>35</sup>

51. In compliance with the July 1, 2005 Order and as clarified in the August 26, 2005 Order, CAISO proposes a centralized study procedure under which it will execute the interconnection study agreements, collect funds, and coordinate, oversee, and approve all aspects of the interconnection studies for the entire CAISO Controlled Grid. CAISO will examine each interconnection to determine if it will affect more than one PTO's service

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<sup>34</sup> See Order No. 2003 at P 909.

<sup>35</sup> See Order No. 2003-A at P 785-786.



territory, and, if it does, CAISO will ensure that the Interconnection Study will examine the entire CAISO Controlled Grid.<sup>36</sup> In the July 1, 2005 Order, the Commission said that a decentralized study process would unduly burden interconnecting generators by forcing them to coordinate multiple studies with multiple PTOs.<sup>37</sup> We find that CAISO's proposal will prevent this kind of duplication of interconnection studies making the study procedures more cost-efficient and less burdensome on Interconnection Customers. We also find that CAISO's proposed centralized study process ensures its primary and independent role in conducting interconnection studies, and evaluating grid-wide impacts and solutions while making use of the PTOs' specialized knowledge of their respective portions of the CAISO Controlled Grid.

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<sup>36</sup> Attachment A of the R&R Agreement describes in detail the roles and responsibilities of CAISO and the PTOs with respect to each step of the new centralized study process. Specifically, CAISO will: (1) receive, assess, and process all Interconnection Requests; (2) manage the Interconnection queue; (3) receive payments from Interconnection Customers for interconnection study functions; (4) disburse payments, as appropriate, to the PTOs, to reimburse the PTOs and other third-party contractors for study services that they provide; (5) facilitate Scoping Meetings; (6) provide oversight, direction, and approval of all Interconnection Feasibility, System Impact, and Facilities Studies; (7) approve all Base Cases and study plans for all interconnection studies, including contingency lists to be studied; (8) ensure that all potential effects on the CAISO Controlled Grid will be studied; (9) perform the power flow, stability, and post-transient analysis associated with the Interconnection System Impact Study and recommend solutions where the ISO determines that effects on the CAISO Controlled Grid are probable; (10) finalize and approve all interconnection studies; and (11) deliver all interconnection studies to the Interconnection Customer, PTO, and any affected systems; and (12) be responsible to the Interconnection Customer for all cost inquiries and account reconciliations. The PTOs will: (1) perform the short circuit analyses associated with the Interconnection Studies, review the results of power flow, stability, and post-transient studies, perform the detailed engineering design, perform assessments of costs and construction scheduling, and review CAISO's recommendations concerning the various study functions performed by CAISO and (2) if no effects on the ISO Controlled Grid or congestion issues are identified by CAISO, the PTOs will perform, under the direction and oversight of CAISO, the Interconnection System Impact and Facilities Studies, and deliver these studies to CAISO.

<sup>37</sup> July 1, 2005 Order, 112 FERC ¶ 61, 009 at P 56.

52. We find that CAISO's management of Interconnection Services, including direction and oversight of all aspects of the centralized study process, with participation from the PTOs, is reasonable, will facilitate the interconnection process, and will thereby support the reliable transmission of electric energy in the California market. We also find that allowing the PTOs to participate and conduct certain studies under the direction and oversight of CAISO is consistent with our directive that CAISO adopt a centralized study process. Further, we find that CAISO's proposal is consistent with the study procedures in other RTOs and ISOs that allow PTOs to conduct certain studies. As with other RTOs and ISOs, the CAISO will oversee and resolve any disputes involving: study methods; assumptions; weighing pre-existing grid problems; demand parameters; generation dispatch; or other inputs necessary for just and fair interconnection study evaluation. We therefore reject Modesto's and TANC's arguments that the PTOs' participation in the Interconnection Study process will decentralize it and compromise CAISO's role as independent service provider.

53. Finally, we note that Attachment A of the R&R Agreement allocates interconnection study responsibilities, and clarifies how CAISO will conduct the interconnection study process and assign portions of the Interconnection Studies to the relevant PTOs, under the direction, oversight, and approval of CAISO. CAISO states that where it performs the System Study Load Flow, Post Transient, and Stability analyses to determine grid impacts and evaluate mitigation solutions, the potentially affected PTOs may perform these studies as part of the review process and recommend alternative solutions.

54. We find that while, under the CAISO LGIP study procedures,<sup>38</sup> the PTOs have the right to review applicable study results, they are not permitted to duplicate studies performed by CAISO or a third party contractor, at the Interconnection Customer's expense. We direct CAISO to clarify that where a study is performed, that study may not be duplicated at the Interconnection Customer's expense.

### **3. R&R Agreement**

55. The Commission's *pro forma* LGIP sets forth procedures that Interconnection Customers and Transmission Providers must follow during the interconnection process, while the Commission's *pro forma* LGIA enumerates the legal rights and obligations of each of the parties, addresses cost responsibility issues, and establishes a process for

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<sup>38</sup> See LGIP sections 6.3, 7.4, and 8.3 (Interconnection Feasibility, System Impact, and Facilities Study Procedures).

resolving disputes.<sup>39</sup> In Order Nos. 2003 and 2003-A, the Commission required that when the Transmission Owner and Transmission Provider are separate, they both must sign the LGIA, to allow one-stop shopping for Interconnection Customers where the interconnection is to a facility that is under the operational control of an RTO or ISO. The Commission further found, in *Southwest Power Pool, Inc.*, that when the Transmission Provider and Transmission Owner are separate entities, interconnection service roles and responsibilities in the Commission's *pro forma* LGIP, LGIA, and Interconnection Study Agreements can be clarified in a separate agreement between the Transmission Provider and Transmission Owner.<sup>40</sup> Therefore, we find that CAISO's proposed R&R Agreement is consistent with Order No. 2003 and with Commission orders recognizing that the parties may wish to allocate interconnection service responsibilities.

56. CAISO proposes to separately designate the R&R Agreement as a rate schedule for itself and for each of the PTOs. We reject the proposed designation because it is inconsistent with the Order No. 2003 requirement that interconnection procedures must be appended to the Transmission Provider's OATT.<sup>41</sup> We direct CAISO to append the R&R Agreement to its OATT in the same manner as the LGIP, LGIA, and Interconnection Study Agreements.

57. These findings are consistent with our July 1, 2005 Order where we rejected the Filing Parties' request to designate their proposed LGIA and Interconnection Study Agreements as stand-alone documents.<sup>42</sup> The Commission found that Order No. 2003 is explicit in requiring "public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised [OATTs] to add" the Commission's *pro forma* LGIP and LGIA.<sup>43</sup> The Commission further found that since the study agreements directly affect customer rates and services and are part of the LGIP, they must also be appended to the CAISO OATT.

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<sup>39</sup> See Order No. 2003 at P 3.

<sup>40</sup> See *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,254 at 61,925 (2004).

<sup>41</sup> See Order No. 2003-A at P 1.

<sup>42</sup> See July 1, 2005 Order, 112 FERC ¶ 61,009 at P 176-186 (discussing the LGIA and Study Agreements as stand-alone documents).

<sup>43</sup> See *Id.* at P 2.

58. CAISO also proposes, in section 3.2 of the R&R Agreement, that if there is a conflict between provisions of the R&R Agreement and a customer-specific Interconnection Study Agreement, or between the R&R Agreement and the CAISO OATT, the R&R Agreement would control. We reject CAISO's proposal to have the R&R Agreement govern, in the event of a conflict.

59. The Commission's July 1, 2005 Order found that where a proposed LGIA provision that dictates rights and obligations between CAISO and the PTO, or between CAISO and the Interconnection Customer, is inconsistent with the OATT, the OATT would govern.<sup>44</sup> The Commission further stated that a service agreement must be consistent with its governing tariff. The Commission added that in order to further the goal of standardization, the LGIA should be interpreted under a single tariff, in this case the CAISO OATT, even though it would also be a service agreement under the PTO's tariff.

**C. Joint Request for Rehearing and PG&E Offer of Settlement Regarding Centralized Study Process**

60. The August 26, 2005 Order granted the clarifications requested regarding the centralized study process, with modifications, and therefore denied rehearing. The Commission denied the Joint Request for Rehearing on the issue of consent rights, clarifying that granting the PTOs consent rights would allow the PTOs to control the study process. The August 26, 2005 Order clarified that, if CAISO does physically conduct interconnection studies, the PTOs should have adequate review and recommendation rights. However, granting the PTOs consent rights would be equivalent to allowing the PTOs to control the study process.

61. The August 26, 2005 Order also clarified that CAISO should collaborate with interested stakeholders, including the PTOs, to develop a proposal for a centralized system study process. The Commission stated that, during the interim period, before the Commission accepts a full proposal for system study centralization, the PTOs may continue to physically conduct the studies, under the direction and oversight of CAISO.

62. On November 1, 2005, PG&E filed the Settlement, stating that it would resolve all issues associated with the centralized study process requirements of the Commission's July 1, 2005 and August 26, 2005 Orders. PG&E: (1) requests that the Commission

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<sup>44</sup> See *Id.* at P 170-173 (discussing inconsistencies between the LGIA and the CAISO OATT).

approve, without modification, the November 1, 2005 compliance filings submitted by CAISO and CAISO/PTOs in Docket No. ER04-445, *et al.*; (2) requests that the Commission vacate certain specified portions of the July 1, 2005 and August 26, 2005 Orders; and (3) states that upon issuance of a final Commission order taking the above-described actions, PG&E will file with the Court of Appeals a request to withdraw, with prejudice, its petition for review of the Commission's July 1, 2005 and August 26, 2005 orders.

63. PG&E asserts that the Commission should approve, without modification, the November 1, 2005 compliance filings submitted by CAISO and the PTOs. PG&E states that these compliance filings are the product of an extensive stakeholder process and achieve the Commission's goal of a centralized, more streamlined interconnection study function, while also preserving an important role for the PTOs in the study process.

64. PG&E requests vacatur of certain portions of the July 1, 2005 Order and August 26, 2005 Order that require transfer of responsibility for the study function from the PTOs to CAISO. Specifically, PG&E requests that certain language be stricken from paragraphs 55 and 56 of the July 1, 2005 Order. PG&E also requests that the Commission strike paragraph 57 of the July 1, 2005 Order in its entirety. The portions of the July 1, 2005 Order that PG&E requested be vacated are the following:

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

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

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

65. Further, PG&E requests that certain language be stricken from paragraphs 21 and 22, and also from paragraph 3 of the August 26, 2005 Order which reaffirmed the Commission's directive that CAISO must adopt a centralized study process and stating that the PTOs should not be granted consent rights where CAISO physically conducts the interconnection studies.

66. PG&E claims that the Commission's August 26, 2005 Order did not address PG&E's argument that until now the PTOs have had primary responsibility for performing all interconnection studies under the CAISO and PTO Commission-approved tariffs, and because the PTOs did not propose in their filings in this case to transfer that function to CAISO, the Commission cannot require such a transfer without satisfying the requirements of FPA section 206. PG&E states that, in essence, this would require the Commission to find, on the basis of substantial record evidence, that the PTOs have not been performing this function adequately. It asserts that there is no basis in the record of this case for such a finding.

67. PG&E asserts that the Joint Request for Rehearing explained that when CAISO was first established, the Commission rejected a proposal to transfer the study function from the PTOs to CAISO.<sup>45</sup> PG&E asserts that, under FPA section 206 and the filed rate doctrine, the Commission cannot require a change in a Commission-approved tariff, unless it first finds, based on substantial record evidence, that the existing tariff provision for some reason has become unjust, unreasonable, or otherwise unlawful. PG&E asserts that the Joint Request for Rehearing demonstrated that these legal requirements were not

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<sup>45</sup> See *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122 at 61,489 (1997).

satisfied here. Instead, PG&E states that CAISO has performed hundreds of interconnection studies under the Commission-approved tariffs heretofore in effect, in a timely, even-handed, and professionally competent manner. Therefore, the PTOs argued that the Commission lacked a legitimate basis for imposing the contested changes to the approved tariff provisions governing interconnection studies in California.

68. PG&E states that the Commission, in paragraphs 55-57 of the July 1, 2005 Order, failed to cite any prior case in which the Commission, exercising its powers under FPA section 206, has purported to overrule an existing, Commission-approved tariff, in mandating a centralized study function to an ISO, against the wishes of the participating utilities. PG&E further argues that prior cases in which electric utilities may have voluntarily yielded to their ISO the responsibility for the interconnection study function are not a precedent for imposing such a structure on PTOs currently operating under Commission-approved tariffs giving them primary responsibility for the study function. It asserts that Commission decisions on governance issues, such as independence criteria applied to ISOs, are not pertinent to a technical and operational issue regarding the study function.

69. PG&E states that it understands that vacatur is an equitable remedy, and that the Commission does not ordinarily vacate its orders absent a showing of exceptional circumstances.<sup>46</sup> However, PG&E believes that vacating portions of the July 1, 2005 and August 26, 2005 Orders is appropriate in the circumstances here. First, this case can be distinguished from the *Panhandle Eastern* ruling that vacatur should not be granted to a party who causes a case to become moot before the issuance of a Commission order on rehearing petitions, by agreeing to a settlement. PG&E claims that there is no mootness here because the Commission denied the PTOs' Joint Request for Rehearing and now the case is on appeal. Second, unlike in *Panhandle Eastern*, here the subject language at issue does not represent a Commission policy and is not the result of extensive hearings and Commission deliberations. Instead, PG&E states that the Settlement preserves the Commission's directive for a centralized study process, and simply focuses on procedural matters associated with FPA section 206. Third, vacatur of discrete portions of the July 1 and August 26, 2005 Orders would not be disruptive to the proceedings.

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<sup>46</sup> See *Panhandle Eastern Pipe Line Co.*, 83 FERC ¶ 61,008, reh'g denied, 83 FERC ¶ 61,353 (1998), *affirmed sub nom. Panhandle Eastern Co. v. FERC*, 198 F.3d 266 (D.C. Cir. 1999) (*Panhandle Eastern*).

70. PG&E states that its request is modest in scope because it only seeks to vacate certain portions of the two orders.<sup>47</sup> PG&E states that to its knowledge its request for vacatur is unopposed. No party requested that the Commission issue the original directive mandating centralization of the study function. PG&E further asserts that if any party does emerge unexpectedly at this late hour to oppose the Settlement, any such opposition should be given little weight in light of its lateness.

71. In response to the *Notice to the Public – Information to be Provided with Settlement Agreements*<sup>48</sup> issued by Chief Administrative Law Judge Curtis L. Wagner, Jr. on October 15, 2003, requesting information to be submitted with settlement agreements, PG&E states that the Settlement does not raise policy issues or have implications beyond this case, nor does it raise any issues of first impression. As specified in the R&R Agreement filed as part of the November 1 compliance filings, PG&E states that the applicable standard of review for future changes regarding responsibility for the study function will be the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*,<sup>49</sup> and *Federal Power Commission v. Sierra Pacific Power Co.*<sup>50</sup>

### **TANC Protest**

72. TANC protests the November 1 compliance filing and contests the Settlement. It states that the compliance filing gives the PTOs approval rights regarding the studies and actual interconnection procedures. CAISO would have the PTOs, including PG&E, perform the short-circuit analyses associated with the Interconnection Studies, do the detailed engineering design, assessments of costs, and construction scheduling, and have the PTOs review CAISO’s recommendations concerning the various study functions performed by CAISO. Therefore, TANC states that this is still a decentralized study

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<sup>47</sup> See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 107 FERC ¶ 61, 295 at P 11 (2004) (stating that the order did not depart from the intent of *Panhandle Eastern* or *Cascade Power Co.*, 74 FERC ¶ 61,240 (1996)). PG&E notes that, in those cases, parties sought vacatur of entire orders, not a discrete portion of an order, as is the case here.

<sup>48</sup> Notice to the Public – Information to be Provided with Settlement Agreements (Oct. 15, 2003).

<sup>49</sup> *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

<sup>50</sup> *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).



process that the PTOs would control. TANC states that the filing thus does not comply with the July 1 and the August 26, 2005 Orders. For these reasons, TANC also requests that the Commission reject PG&E's Settlement.

### **Modesto Protest**

73. Modesto states that PG&E's Settlement could result in CAISO losing its status as an independent entity, which would require evaluation of CAISO's LGIP and LGIA filings under the "consistent with or superior to" standard instead of the independent entity standard. Modesto says that PG&E is seeking veto authority over CAISO's centralized interconnection study process. Modesto states that because the Commission has already denied rehearing on this exact issue, PG&E's Settlement is a collateral attack on the Commission's July 1 and August 26, 2005 Orders.

74. Modesto notes the fact that PG&E requested the Commission to accept the CAISO and PTO filings submitted on November 1, 2005 without modification. PG&E is urging the Commission to accept these compliance filings without modification in the same pleading in which it is collaterally attacking the July 1 and August 26, 2005 Orders. Modesto says this suggests that the compliance filings are not in compliance with the Commission's orders as they purport to be.

### **Commission Determination**

75. Under Rule 602 of the Commission's Rules of Practice and Procedure, where an offer of settlement is contested by any party, the Commission may rule on the merits of the settlement if the record contains substantial evidence upon which to base a reasoned decision or there is no genuine issue of material fact.<sup>51</sup> If the Commission finds that the record lacks substantial evidence or that the contesting parties or contested issues cannot be severed from the offer of settlement, the Commission may establish procedures for the purpose of receiving additional evidence before a presiding officer upon which a decision on the contested issues may reasonably be based, or take other action which the Commission determines is appropriate.<sup>52</sup> Here, TANC and Modesto have contested the PG&E Settlement and, therefore, we will rule on the merits of the Settlement because the record contains substantial evidence upon which we can base a reasoned decision.

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<sup>51</sup> 18 C.F.R. § 385.602(h)(1)(i) (2005). *See also Mobil Oil Corp. v. FERC*, 417 U.S. 283, 314 (1974).

<sup>52</sup> 18 C.F.R. § 385.602(h)(1)(ii) (2005).

**Section 206 of the Federal Power Act**

76. As noted above, PG&E asserts that the Commission's August 26, 2005 Order failed to address the PTOs' claim that, under FPA section 206 and the filed rate doctrine, the Commission cannot require a change in a Commission-approved tariff, unless the Commission first finds, based on substantial record evidence, that the existing tariff provision for some reason has become unjust, unreasonable, or otherwise unlawful.

77. The Commission, in Order No. 888, found that public utilities owning or controlling jurisdictional transmission facilities had the incentive to engage in, and had engaged in, unduly discriminatory transmission practices.<sup>53</sup> The Commission, in Order No. 888, also thoroughly discussed the legislative history and case law involving sections 205 and 206, concluding that it had the authority and responsibility to remedy the undue discrimination it had found by requiring open access, and decided to do so through a rulemaking on a generic, industry-wide basis.<sup>54</sup> The United States Court of Appeals for the District of Columbia Circuit found that "the Commission has the authority under FPA [sections] 205 and 206 to require open access as a generic remedy to prevent undue discrimination."<sup>55</sup> The Supreme Court affirmed the Commission's decision to exercise this authority by requiring non-discriminatory (comparable) open access as a remedy for undue discrimination.<sup>56</sup>

78. Interconnection is an element of transmission service that must be provided under the OATT.<sup>57</sup> Thus, the Commission may order generic interconnection terms and procedures pursuant to its authority to remedy undue discrimination and preferences under FPA sections 205 and 206. As a result, the Commission does not need to also

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<sup>53</sup> Order No. 888, FERC Stats. & Regs. □ 31,036 at 31,679-84, *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. □ 31,048 at 30,209-10.

<sup>54</sup> Order No. 888, FERC Stats. & Regs □ 31,036 at 31,668-73, 31,676-79; *order on reh'g*, Order No. 888-A, FERC Stats. & Regs □ 31,048 at 30,201-12; *TAPS v. FERC*, 225 F.3d 667, at 687-88.

<sup>55</sup> *TAPS v. FERC*, 225 F.3d 667, at 687.

<sup>56</sup> *New York v. FERC*, 535 U.S. 1 (2002).

<sup>57</sup> See *Tennessee Power Co.*, 90 FERC □ 61,238 at 61,761, *reh'g denied*, 91 FERC □ 61,271 (2000).

make a specific determination that CAISO's existing interconnection study provisions have become unjust, unreasonable, or otherwise unlawful.

79. In requiring CAISO to centralize its interconnection study function, the Commission relied upon Order No. 2003.<sup>58</sup> Order No. 2003 found that, in fulfilling its responsibilities under FPA sections 205 and 206,<sup>59</sup> the Commission is required to address, and has the authority to remedy, undue discrimination. It based its finding of undue discrimination on the record underlying Order No. 888 which found undue discrimination in transmission practices.<sup>60</sup> Order No. 2003 concluded that, because interconnection is an essential element of Transmission Service that is required to be provided under the OATT, the Commission may order generic interconnection terms and procedures under its authority to remedy undue discrimination and preferences under FPA sections 205 and 206.<sup>61</sup> The Commission must ensure that the rates, contracts, and practices affecting jurisdictional transmission do not reflect an undue preference or advantage for non-independent Transmission Providers and are just and reasonable.

80. Further, PG&E's claim that the Commission cannot require a change in a Commission-approved tariff, without a case-specific finding that the existing tariff provision has become unjust, unreasonable, or otherwise unlawful, is an impermissible and unwarranted collateral attack on Order No. 2003. Fundamental principles settled in orders cannot be attacked in subsequent proceedings before the Commission.<sup>62</sup>

### **Precedent Regarding Vacatur**

81. We disagree with PG&E that vacating portions of the July 1, 2005 Order and August 26, 2005 Order is appropriate. The Commission reviewed the merits of CAISO's proposed interconnection study procedures in the July 1 and August 26, 2005 Orders and directed CAISO to make modifications to these procedures in order to ensure a

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<sup>58</sup> Order No. 2003 at P 18-20.

<sup>59</sup> 16 U.S.C. §§ 824d, 824e (2000).

<sup>60</sup> See Order No. 888, FERC Stats. & Regs. □ 31,036 at 31,679-84, *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. □ 31,048 at 30,209-10.

<sup>61</sup> Order No. 2003 at P 18-20. See also Order No. 2003-A at P 698.

<sup>62</sup> See *Southwest Gas Corp. v. FERC*, 145 F.3d 365, 370 ("The Commission need not revisit the reasoning of a general order every time it applies to a specific circumstance.").

centralized study process. The Commission has reviewed the Filing Parties' November 1 compliance filings regarding the study procedures. Based upon this review and prior Commission orders, we hereby direct certain modifications to the R&R Agreement in order to meet the requirements of Order No. 2003.

82. As Modesto pointed out, the PG&E Settlement requests that the Commission accept the centralized study proposal without modification. However, the Settlement also requests vacatur of portions of the July 1 and August 26, 2005 Order that direct CAISO to develop procedures for centralized interconnection studies. We note that PG&E is requesting that the Commission vacate language from these orders that the Filing Parties have adopted in their centralized interconnection studies proposal. Therefore, it would not be reasonable to grant PG&E's requested vacatur while accepting without modification the centralized studies proposal, especially since we find, as previously stated, that the Filing Parties have complied with the intent of the centralized studies directive.

83. We disagree with PG&E's assertion that, unlike in *Panhandle Eastern*, this is not a case where the subject language to be vacated represents a Commission policy or is otherwise the result of extensive hearings and Commission deliberations. Agreeing to PG&E's proposed vacatur would open the door to the possibility that the interconnection study process will once again become decentralized, with each PTO analyzing the effect of interconnection to its service territory instead of an analysis of the effect on the CAISO-Controlled Grid as a whole. Further, as noted above, accepting PG&E's Settlement would amount to the Commission allowing a collateral attack on Order No. 2003, in direct contradiction of Commission-precedent. We reaffirm our findings in the July 1 and August 26, 2005 Orders and therefore we reject PG&E's proposed Settlement.

84. Finally, we disagree with PG&E's assertion that this case can be distinguished from the *Panhandle Eastern* ruling that vacatur should not be granted to a party who causes a case to become moot, prior to the issuance of a Commission order on rehearing petitions, by agreeing to a settlement. Here, PG&E has participated in the development of and agreed to the interconnection study process that the Filing Parties jointly filed with the Commission. The Commission is accepting those interconnection study procedures in this order, thereby making PG&E's case moot.

### **TANC and Modesto Protests**

85. We agree with TANC and Modesto that PG&E's Settlement should be rejected. The Settlement rehashes the same issues already raised in the Joint Request for Rehearing and answered by the Commission in the August 26, 2005 Order. Therefore, PG&E's

Settlement is simply a collateral attack on the Commission's July 1 and August 26, 2005 Orders.

86. With respect to TANC and Modesto's protests regarding the compliance filings, we have addressed those concerns in our prior discussion in this order.

**D. Generating Facility Capacity**

87. The Commission's *pro forma* LGIP defines Generating Facility Capacity as the *net* capacity of the Generating Facility, and the aggregate *net* capacity of the Generating Facility where it includes multiple energy production devices.<sup>63</sup>

**CAISO Proposal**

88. CAISO proposes to adopt a different definition of Generating Facility Capacity by eliminating the two references to "net." In its transmittal letter, CAISO states that for a consistent determination of whether to use Large or Small Generator interconnection procedures, a Generating Facility's ability to affect the grid is based on its gross rather than net capacity. The latter, CAISO states, may easily be adjusted by a Generating Facility by varying on-site loads to avoid using the proper interconnection procedures.<sup>64</sup> CAISO adds that basing the value for gross capacity on the nameplate or maximum capacity rating of Generating Units being evaluated is consistent with the Commission's determinations for evaluating Small Generating Facilities in Order No. 2006.<sup>65</sup>

**Protest: OF Parties**

89. The QF Parties request that the Commission deny the proposal to measure the effect that a Generator would have on transmission facilities on the basis of gross capacity. They argue that, since some station power load is essential to operate the Generator, it would be mechanically impossible to turn off the pumps and other auxiliary equipment and send gross capacity to the grid.

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<sup>63</sup> See *pro forma* LGIP section 1, Definitions (defining both Large Generating Facility and Small Generating Facility).

<sup>64</sup> CAISO Aug. 30, 2005 LGIP Transmittal Letter at 14.

<sup>65</sup> See Order No. 2006 at P 79-86 (concluding that the maximum rated capacity of a Small Generating Facility should be used to evaluate a request to interconnect or to increase the Small Generating Facility's capacity).

90. The QF Parties also contend that in the case of a cogeneration facility, a Generator is prohibited from supplying its nameplate capacity to the grid to the extent it is physically limited in the amount of electricity it can produce by its obligations to the utility to which it is interconnected. The QF Parties suggest that if there is a facility-specific question of what station power load is essential to operating the Generator, a technical conference or some other informal process to develop a mechanism for measuring a Generator's true effect on the grid may be appropriate.

### **CAISO Answer**

91. CAISO argues that although its justification for use of gross load to measure a Generating Facility's effect on the grid was imprecise, it disagrees that the use of net capacity is more appropriate. It asserts that under the LGIP, a detailed evaluation of the effect of a Generator on the grid of interconnecting Generating Facilities includes load flow, short-circuit duty, stability, and post-transient analyses. And that, with the exception of load flow, each of these studies is primarily affected by the *gross* capacity of a Generating Facility, whether or not it is a Qualifying Facility (QF).

### **Commission Determination**

92. We disagree with CAISO and find that revising the definition of Generating Facility Capacity to measure gross instead of net load is not necessary to accurately determine which set of interconnection procedures, Large or Small, to use. Instead, as further discussed below, Order No. 2006 contemplates numerous situations where a question of which set of interconnection procedures would apply. It further considers the implications of those procedures within a given set of interconnection circumstances. We further find that the proposed revision does not meet the independent entity variation standard defined in Order No. 2003 for an ISO.<sup>66</sup> We also find that the proposed revision is beyond the scope of the compliance filings, and therefore we reject it.

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<sup>66</sup> See Order No. 2003 at P 822 (stating that the Commission will allow an RTO or ISO greater flexibility than that allowed under the regional differences rationale to propose variations from the Final Rule provisions). We note that under the independent entity variation standard the provision must still be shown to be just and reasonable. *New York ISO*, 114 FERC ¶ 61,271 at 27 (2006). See also *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 at P 7 (2004).

93. In Order No. 2006, the Commission determined that the total size of a Generating Facility would be determined by the sum of the existing capacity and the proposed incremental increase in an Interconnection Request.<sup>67</sup> This would ensure that the proper protective equipment is designed and installed and the safety and reliability of the Transmission Provider's electric system can be maintained.<sup>68</sup> Similarly, an existing Large Generator, seeking to increase its capacity by less than 20 megawatts would still be evaluated under the Large Generator rule because the *total* capacity of the expanded facility would be more than 20 megawatts.<sup>69</sup>

94. Also, in Order No. 2006, the Commission discussed whether Small Generating Facilities with multiple Points of Interconnection (such as a wind farm or an industrial cogeneration project serving multiple facilities) should be treated as separate projects or as a single project for queuing and interconnection study purposes. The Commission concluded that each proposed Point of Interconnection presents numerous technical, operational, and reliability issues. Whether they are treated separately by the Transmission Provider, for queuing and interconnection study purposes, or as a single Point of Interconnection, the evaluation of such a project should be performed using Good Utility Practice based on the unique engineering and geographic needs of the project.<sup>70</sup>

95. In Order No. 2006, the Commission stated that it will exercise jurisdiction over all QFs in the same manner, regardless of the size of the QF(s), under Order No. 2003.<sup>71</sup> Order No. 2003 applies: (1) when the owner of a QF seeks interconnection to sell *any* of the output of the QF to a third party; (2) to a new QF that plans to sell its output to a third party; and (3) to an existing QF that historically sold its total output to an interconnected utility or on-site customer and now plans to sell the output to a third party. Lastly, under Order No. 2003, the owner of a former QF that sells electric energy at wholesale in interstate commerce, need not submit an Interconnection Request if the former QF owner

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<sup>67</sup> See Order No. 2006 at P 70-86.

<sup>68</sup> *Id.* at P 85.

<sup>69</sup> *Id.* at P 78.

<sup>70</sup> *Id.* at P 87-92.

<sup>71</sup> See Order No. 2006-A at P 100. See also Order No. 2006 at P 516-518.

represents that the output of the generating facility will be substantially the same as before.<sup>72</sup>

96. Regarding the definition of Generating Facility Capacity, we further note that historically the practice of vertically-integrated utilities has been to record the energy output of a generation facility as its gross output less station power, *i.e.*, the power consumed at the facility.<sup>73</sup> Similarly, the Commission has considered the net output of a facility to be its send out after subtraction of the power used to operate auxiliary equipment in the facility that is necessary for power generation (such as pumps, blowers, fuel preparation machinery, and exciters), and for other essential electricity uses in the facility, from the gross generator output.<sup>74</sup>

97. In Order No. 2003, the Commission has adopted the method of measuring Generating Facility Capacity on the basis of net rather than gross output. We believe, as discussed above, that Order No. 2006 includes sufficient safeguards to inhibit, during the interconnection process, the type of manipulation of a Generating Facility's capacity to which CAISO refers. In addition, an evaluation of the effect of a facility's capacity on the grid, would be reviewed in the context of the facility's technical and operational characteristics, as well as the type of interconnection requested, when determining which set of procedures and/or studies to apply. We find that it is not necessary to revise the definition of Generating Facility Capacity to determine which set of interconnection procedures to apply and therefore CAISO's proposal does not meet the independent entity variation standard. Therefore, we reject CAISO's proposal.

**E. Clarification of July 1, 2005 Order Regarding Grandfathering**

98. Paragraph 143 of the July 1, 2005 Order stated:

143. As stated earlier, the proposed revisions to the LGIP and LGIA will become effective on the date of issuance of this order. Regarding the

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<sup>72</sup> See Order No. 2003 at P 814.

<sup>73</sup> *PJM Interconnection, L.L.C.*, 94 FERC ¶ 61,251 at 61,889, *reh'g denied* 95 FERC ¶ 61,333 (2001) (defining station power as electric energy used for the heating, lighting, air-conditioning, and office equipment needs of the buildings on a generating facility's site, and for operating the electric equipment that is on the generating facility's site).

<sup>74</sup> *Occidental Geothermal, Inc.*, 17 FERC ¶ 61,231 at 61,445 (1981).



transition from existing interconnection provisions to the provisions at issue here, the Commission's *pro forma* LGIP section on interconnection requests submitted prior to the effective date of the LGIP Procedures,<sup>68</sup> provides that if an Interconnection Agreement has been executed prior to the effective date of the LGIP, the agreement would be grandfathered. Further, if an Interconnection Customer has signed an Interconnection Study Agreement as of the LGIP effective date, the Interconnection Customer will have the option to either continue with the rest of its Interconnection Studies under the Transmission Provider's existing study process or to complete those remaining studies for which it does not have a signed Interconnection Study Agreement under the *pro forma* LGIP. . . .

99. We clarify that paragraph 143 incorrectly suggested that the date an LGIA is *executed* determines whether an agreement is grandfathered. Instead, under the Commission's *pro forma* LGIA and CAISO's LGIA accepted by the Commission in the July 1, 2005 Order, if a customer-specific LGIA was filed with the Commission prior to the effective date of the Commission's *pro forma* LGIP, then it is grandfathered.

The Commission orders:

(A) The Commission hereby accepts, effective March 1, 2006, CAISO's centralized Interconnection Study procedures in the OATT, LGIP, Interconnection Studies, and R&R Agreement, with the modifications discussed in the body of this order. The Commission hereby directs the CAISO to make a compliance filing within 30 days of the date of issuance of this order revising its centralized procedures as discussed in the body of this order.

(B) The Commission hereby accepts, effective July 1, 2005, the CAISO's revised LGIP compliance filings, including the accompanying OATT amendments with the modifications discussed in the body of this order. The Commission hereby directs the CAISO to make a compliance filing within 30 days of the date of issuance of this order revising its LGIP as discussed in the body of this order.<sup>75</sup>

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<sup>75</sup> CAISO requested that the centralized study procedures become effective no sooner than March 1, 2006. Revisions to documents that were filed on November 1, 2005 will be effective as of March 1, 2006. All other revisions filed to comply with the July 1, 2005 Order are effective as of July 1, 2005.

(C) The Commission hereby accepts the Filing Parties' LGIA compliance filing, with the modifications discussed in the body of this order. The Commission hereby directs the Filing Parties to make a compliance filing within 30 days of the date of issuance of this order revising its LGIA as discussed in the body of this order.

(D) The Commission accepts PG&E's informational filing of section G2.17 of its handbook, and the SoCal Edison pre-Order No. 2003 interconnection procedures, effective July 1, 2005, as discussed in the body of this order.

(E) The Commission rejects PG&E's offer of settlement, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.