UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California	)	
v.	)	**Docket No. EL00-111-___**
California Independent System Operator Corporation	)	

REQUEST FOR REHEARING , MOTION FOR CLARIFICATION, AND PETITION FOR RECONSIDERATION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

The California Independent System Operator Corporation ("ISO")[1] respectfully submits this request for rehearing, motion for clarification and petition for reconsideration of the Commission's Order Granting In Part and Denying In Part Rehearing issued on May 14, 2001 in the above-captioned docket, 95 FERC ¶ 61,197 ("May 14 Order"), pursuant to Section 313(a) of the Federal Power Act, 16 U.S.C. § 825l(a) (1994), and Rules 207, 212 and 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.207, 385.212, 385.713 (2000).

[1] Capitalized terms not otherwise defined herein are used in the sense given the Master Definitions Supplement, Appendix A to the ISO Tariff.

I. SUMMARY

The Commission's May 14 Order presents the ISO with a serious and, we believe, unintended difficulty. In that Order, the Commission acknowledges, as it has many times before, that the ISO is a revenue-neutral not-for-profit entity that only incurs costs on behalf of the participants in its markets and is therefore entitled to pass all costs incurred onto the Scheduling Coordinators representing these parties. The May 14 Order, however, could also be read to complicate substantially the ISO's ability to pass millions of dollars of such costs through to the appropriate parties. The ISO sincerely regrets if confusion was created by its own lack of clarity in prior submissions. Hopefully, based on the further clarification provided herein, the Commission will agree to a resolution that will permit fulfillment by the ISO of its responsibilities consistent with its non-profit status.

There are at least two available options, either of which would resolve the current dilemma while preserving the revenue-neutral characteristic that is a cornerstone of ISO operations. In evaluating each, we urge the Commission to recognize that the problem we seek to address is finite. Because of a Tariff modification effective as of February 27, 2001, the issue will not have recurring significance. Nevertheless, for the "locked-in" period, the dollars are significant and the orderly operations of the ISO warrants that they be dealt with as suggested below.

It would be best if the Commission were to grant rehearing and (1) construe the neutrality limit in Section 11.2.9.1 as it was intended – as an annual

indicator of neutrality charges for budgeting purposes but not as means to limit in any way the collection of prudently incurred costs by the ISO; (2) recognize that the allocation of out-of-market costs complained of by the Southern Cities was approved by the Commission pursuant to a Tariff section (Section 11.2.4.2.1), that is separate from Section 11.2.9 (Neutrality Adjustments); and (3) further recognize that the basis for analyzing, changing, and applying the neutrality indicator or limit was to be an annual, not an hourly basis. This construction is consistent with the Tariff language that pertained during the locked-in period (which did not include a temporal limitation), is consistent with the understanding of all Market Participants, and best accomplishes the goal of revenue neutrality. Moreover, it avoids the anomaly of large swings in *charges* and *credits* that are the inevitable consequence of narrowly constrained settlement periods. The annual approach permits these swings to be moderated and thereby better to accomplish the "netting-out" objective of neutrality. If, however, the Commission is disinclined to grant rehearing as described above, the ISO will be required to pursue a more cumbersome alternative that may leave dollars uncollected in particular hourly segments (i.e., the ISO could "bank" deficiencies in certain hours for collection in subsequent hours to the extent that charges are below the limitation).. In the event that prudently incurred costs are left uncollected, the ISO would seek to recover these costs according to ISO Tariff provisions and processes designed to keep the ISO revenue neutral (e.g., Settlement Re-Runs under Section 11.6.3 of the Tariff).

In complying with the Commission's orders and seeking to determine if there are costs left unrecovered by application of the $0.095/MWh indicator or amount as a hard cap, the ISO will recalculate neutrality charges during the locked-in period by removing items that properly are the subject of separate charges under specific Tariff provisions unrelated to neutrality (e.g., the out-of-market costs referred to above). A word of explanation as to the genesis of the current difficulty might help. The neutrality charge, to which the collection limitation in Section 11.2.9.1, be it annual or hourly, applies, is limited to five cost categories specifically enumerated in Section 11.2.9 of the Tariff. There are other charges, for example, costs incurred under negotiated arrangements to secure Energy and Ancillary Services as described in Section 11.2.10, that are collected pursuant to other, quite distinct Tariff authorizations that themselves contain no limitation. Because, however, these charges, as well as those that are subject to the neutrality limitation, are allocated to Market Participants in precisely the same manner, purely as a matter of administrative convenience, they have been accumulated into a single charge reflected as "neutrality" on the statements issued by the ISO. That is, the charge included cost categories not subject to the Section 11.2.9 limitation. Apart from the fact that this offered a measure of simplicity to an overly complicated billing and settlement process, it was considered a harmless short-cut: the Tariff does not require the specific enumeration of charges, and the cost allocation for each constituent charge was precisely the same. In short, if there was "error," as far as Market Participants are concerned, it was "harmless."

If, therefore, the Commission declines to (1) construe the neutrality limit in Section 11.2.9.1 as an annual indicator of neutrality charges for budgeting purposes but not as a limit on the collection of prudently incurred costs, and (2) recognize that the basis for analyzing, applying, and changing the neutrality indicator or limit is an annual, not an hourly basis, and if discontinuing the practice of billing certain costs under the neutrality charge type still leaves the ISO with unrecovered costs, the ISO will re-run its statements for the applicable period.[2] As noted above, if the Commission does not grant rehearing and prior to engaging in a settlement re-run, the ISO will assess whether the interpretation of the neutrality amount as a hard cap will operate to deny full cost recovery. If this assessment leaves costs unrecovered, the ISO would "bank" any collection deficiency on a Scheduling Coordinator-by-Scheduling Coordinator basis, and to flow the deficiency through in subsequent hours to the extent that there is then room below the limitation. If this banking approach is deemed inconsistent with the May 14 Order, we request rehearing to the extent necessary to allow this approach to be implemented. Because the banking and flow-through would be done on a Scheduling Coordinator-specific basis, there would be no cost-shift. To the contrary, the end result should be as was always intended: each Scheduling Coordinator would pay for the costs of the benefits it received, and the ISO will be revenue neutral. However, if, after doing this, refunds remain due to Scheduling Coordinators, the ISO will meet its obligations under the Tariff and

[2] To the extent that this approach could be construed as inconsistent with the May 14 Order, we urge that the Commission provide clarification or grant rehearing to confirm that under the ISO's "filed rate," the limitations set forth in Section 11.2.9.1 apply only to the five enumerated

attempt to collect the necessary funds by charging the market. The Tariff and Commission orders make clear that the ISO is entitled to recover all properly incurred expenditures, and there is no dispute about the appropriateness of the expenditures here.

II. SPECIFICATIONS OF ERROR

The ISO respectfully submits that the May 14 Order errs in the following respects:

1. The Commission's determination that (a) the neutrality amount in Section 11.2.9.1 of the ISO Tariff was not intended as an "indicator" of neutrality charges for budgeting purposes but is instead a hard cap that can limit the collection of prudently incurred costs, and (2) the neutrality amount under Section 11.2.9.1 of the ISO Tariff should be applied for the benefit of all Scheduling Coordinators on an hourly rather than an annual basis, are contrary to the explicit intent of the provision as previously proposed by the ISO and accepted by the Commission. The vast weight of the evidence indicates that the limitation was not intended as an hourly hard cap on the recovery of prudently incurred costs. Therefore, the Commission's determination was arbitrary, capricious, and an abuse of discretion.

2. The Commission's determinations that the "filed rate doctrine" bars (a) the application of the neutrality amount in Section 11.2.9.1 of

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charges set forth in Section 11.2.9 and not to charges levied under other Tariff provisions but

the ISO Tariff as an indicator of neutrality charges as opposed to a hard cap that limits cost recovery, and (b) the implementation of the neutrality amount or limitation under Section 11.2.9.1 of the ISO Tariff on an annual basis with respect to all Scheduling Coordinators are erroneous.

3. To the extent the Commission determined that charges not levied under Section 11.2.9 of the ISO Tariff, including charges for "out-of-market Dispatch calls," were subject to the limitations in Section 11.2.9.1 of the ISO Tariff, that determination is erroneous.

III. BACKGROUND

A. Application of the Neutrality Adjustment Charge and the Neutrality Adjustment Charge Cap

The ISO is a revenue-neutral entity, authorized under the California electric industry restructuring legislation and Commission precedent to recover from Scheduling Coordinators on whose behalf it acquires Energy and Ancillary Services the amounts it pays to other Scheduling Coordinators to procure those products.[3] In a prior order in this proceeding, the Commission has recognized that "[r]egarding the ISO's contention that there is no basis for requiring it to

which have been generically referred to as "neutrality charges."

[3] *See, e.g.*, Cal. Pub. Util. Code § 365(a) (West 2000); ISO Tariff, Section 2.2.1 ("In contracting for Ancillary Services and Imbalance Energy the ISO will not act as a principal but as agent for and on behalf of the relevant Scheduling Coordinators."); *Pacific Gas & Electric Company, et al.*, 81 FERC ¶ 61,122, at 61,496 (1997) ("The ISO should not be deemed to procure ancillary services on its own behalf since the ISO is not a participant in the market place. The ISO is appropriately securing the necessary ancillary services on behalf of Scheduling Coordinators since it is Scheduling Coordinators who will utilize these services.").

absorb the costs for maintaining system reliability, we agree."[4] Additionally, the Commission has previously recognized that "[t]he ISO is a non-profit entity and there is no basis for requiring the ISO to absorb these neutrality costs on a month-to-month basis when the ISO's charges are designed to collect its revenue requirement on an annual basis."[5]

To enable the ISO to recover from Scheduling Coordinators certain costs whose recovery is not specifically authorized elsewhere in the ISO Tariff (as well as to provide certain credits to Scheduling Coordinators), and thereby to maintain its revenue neutrality, the ISO proposed – and the Commission accepted – Section 11.2.9 to the ISO Tariff.[6] In its current form, Section 11.2.9 provides five categories of "charges or payments" that the ISO is authorized to levy as "special adjustments." The five categories are:

- Amounts needed to round statements to the nearest dollar;
- Penalties;
- Amounts needed to bring the Settlement process to a zero balance;
- Certain payments adjustments for Regulation; and
- Certain awards resulting from arbitration or negotiation over billing disputes.

In almost all cases, these special adjustments, which are referred to in the heading of Section 11.2.9 as "neutrality adjustments," are charged or paid to

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[4] *California Independent System Operator Corporation*, 94 FERC ¶ 61,268, at 61,934 (2001) ("March 14 Order").

[5] *California Independent System Operator Corporation*, 94 FERC ¶ 61,266, at 61,928 (2001) ("Amendment No. 35 Order").

[6] The ISO proposed Section 11.2.9 in Amendment No. 6 to the ISO Tariff, which was filed on March 23, 1998 in Docket Nos. EC96-19-021 and ER96-1663-022. The Commission

Scheduling Coordinators pro rata based on metered Demand during a given interval.[7] As described below, however, certain other charges – which are allocated in a similar manner to the charges authorized by Section 11.2.9 – were billed, as a matter of convenience, under Section 11.2.9 and were referred to in common parlance as "neutrality adjustments" or "neutrality charges," even though they are authorized by other sections of the Tariff and are not covered under the descriptions of "special adjustments" in Section 11.2.9.

1. The Limitation In Amendment No. 27 Only Applied to the Five Categories of Costs In Section 11.2.9

In Amendment No 27 to the ISO Tariff, as part of its proposal to reform its transmission Access Charge methodology and to facilitate participation in the ISO by governmental entities including municipal utilities, state agencies, federal agencies and water agencies, the ISO proposed to modify Section 11.2.9 to impose a flexible ceiling on the amount that could be charged under Section 11.2.9. As filed with the Commission in Amendment No. 27, Section 11.2.9.1 of the ISO Tariff provides that "[t]he total charges levied *under Section 11.2.9* shall not exceed $0.095/MWh, applied to Gross Loads in the ISO Control Area and total exports from the ISO Controlled Grid," (emphasis added) except upon a change in the cap level by the ISO Governing Board and seven days' advance notice from the ISO regarding the change. Due to the Commission-approved

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accepted Amendment No. 6 for filing, to be effective March 30, 1998, the first date of ISO Operations. *California Independent System Operator Corporation*, 82 FERC ¶ 61,327 (1998).

[7] The one exception is for amounts in regard to penalties, which are levied on the Market Participants liable for payment of the penalties. *See* ISO Tariff, Section 11.2.9(b). An example of how this is accomplished is provided in the explanation of the Neutrality Adjustment Charge/Refund (Charge type # 1010) in the ISO's Settlements Guide. The referenced section of the Settlements Guide is included in the present filing as Attachment A, and is available on the ISO Home Page.

provisions that allowed the neutrality amount in Section 11.2.9.1 to be changed by the ISO Governing Board without further review by the Commission, it is clear that the neutrality amount was in Section 11.2.9.1 as it was intended only as an annual indicator of neutrality charges for the budgeting purposes of Market Participants; it was not intended as a limit on the collection of prudently incurred costs by the ISO. Moreover, in all circumstances, whether as a hard cap or merely as an indicator of neutrality costs, the neutrality amount was to apply only to those charge types listed in Section 11.2.9.

2. The ISO Tariff Allocates Certain Other Charges to All Scheduling Coordinators Based on Metered Demand That Are Not Part of the Section 11.2.9 Neutrality Adjustment

The ISO Tariff includes other provisions that authorize the ISO to impose various charges on Scheduling Coordinators to recover amounts that are due to other Scheduling Coordinators as a result of the ISO's operation of its markets and other steps it takes in fulfillment of its obligation to maintain reliability. These charges and their allocation to Scheduling Coordinators are authorized under Tariff sections other than Section 11.2.9 and are *not* subject to the cap in Section 11.2.9.1. The ISO's authorizations to charge these amounts are found in other Tariff provisions. Relevant examples, for purposes of this proceeding, include:

- Costs incurred when Generating Units in the ISO Control Area are dispatched out-of-market to avert or manage System Emergencies, which are recovered under Section 11.2.4.2.1 of the ISO Tariff,
- Costs incurred under negotiated arrangements to secure Energy or Ancillary Services from other resources for the same purposes, which

are recovered under Section 11.2.10 of the ISO Tariff (which in turn references Section 2.3.5.1); and

- Costs incurred with respect to Instructed Imbalance Energy procured to address real-time Zonal requirements, which are recovered under Section 11.2.4.1.1 of the ISO Tariff (which in turn references Section 2.5.23).

Although the ISO's charges for recovery of these costs were authorized and approved by the Commission under distinct sections of the ISO Tariff (i.e., not pursuant to Section 11.2.9) during the period relevant for the Southern Cities Complaint, the charges levied under these provisions were allocated to Scheduling Coordinators in the same manner as the charges specified in Section 11.2.9 (i.e., they were allocated to Scheduling Coordinators pro rata based on metered Demand in a given interval).[8] Although these charges are not authorized for collection under Section 11.2.9, the ISO has previously included these charges within the shorthand reference "neutrality charges" because, like most of the charges provided for in Section 11.2.9, they were also allocated to Scheduling Coordinators on the basis of metered Demand. For the same

[8] From January 1, 2000 through December 12, 2000, costs incurred when Generating Units in the ISO Control Area were dispatched out-of-market to avert or manage System Emergencies were allocated to "Scheduling Coordinators in proportion to their metered Demand" unless such costs were incurred due to a transmission outage or location-specific requirement, in which case the costs were (and are) allocated to the applicable Participating TO. On December 8, 2000, the ISO filed Amendment No. 33 to the ISO Tariff in Docket No. ER01-607-000. Amendment No. 33 modified Section 11.2.4.2.1 to provide that, effective December 12, 2000, in-Control Area "out-of-market" costs (which are not to be allocated to Participating TOs) will be allocated to "each Scheduling Coordinator pro rata based upon the ratio of each Scheduling Coordinator's Net Negative Uninstructed Deviations [i.e., unscheduled Load] to the total Net Negative Uninstructed Deviations in each settlement interval." The Commission issued an order accepting these revisions to become effective as of December 12, 2000. *California Independent System Operator Corporation*, 93 FERC ¶ 61,239 (2000).

reason, all of these similarly allocated charges were included in a single line item on Scheduling Coordinators' bills, for administrative convenience.

In the May 14 Order, the Commission apparently failed to recognize the distinction between charges levied pursuant to Section 11.2.9, and therefore subject to the cap under Section 11.2.9.1, and other charges which may be referred to as "neutrality charges" but which are levied under other provisions of the ISO Tariff and therefore are not subject to the limitations set forth in Section 11.2.9.1. The May 11 Order states:

> In order to meet real-time energy needs, the ISO administers an imbalance energy market. If this market produces insufficient resources, the ISO must purchase the necessary energy through out-of-market (OOM) dispatch calls. Under the relevant provisions of the ISO Tariff in effect at the time Southern Cities filed its complaint, costs for such dispatch calls were charged to all Scheduling Coordinators through a mechanism known as the neutrality adjustment charge, which allocated OOM costs to all Scheduling Coordinators in proportion to their metered demand.[9]

The Commission further concludes that charges for out-of-market Dispatch orders levied under Section 11.2.4.2.1 are subject to the ISO Tariff's "stated neutrality adjustment charge limit."[10] As is clear from the previous discussion, these conclusions reflect an overbroad reading of the scope of Section 11.2.9, and therefore of Section 11.2.9.1.

The ISO acknowledges thatin the Commission may have been relying on the ISO's prior pleadings in this proceeding, in which the ISO has sometimes referred to all costs allocated to Scheduling Coordinators on the basis of metered

[9] May 14 Order at 61,685. In a footnote accompanying this text, the Commission apparently concludes that the "neutrality adjustment charge" refers to charges levied under Section 11.2.4.2.1 of the ISO Tariff: "The neutrality adjustment charge (Section 11.2.4.2.1 of the

Demand as "neutrality costs," even though the charges were levied under different provisions of the ISO Tariff. Prior to the Commission's Orders in these dockets, the use of this shorthand had no practical effect. If, however, the Commission requires that the limitation on charges in Section 11.2.9.1 be applied on an hourly rather than an annual basis, the Commission must also rigorously recognize the distinction between costs recoverable under Section 11.2.9 (which are subject to the limitation) and costs recoverable under other Tariff provisions that are allocated to Scheduling Coordinators in a similar manner (and which are not subject to the limitation).

As explained below, if the Commission does not modify its directives on rehearing, the ISO must and will review its charges to Scheduling Coordinators during the relevant period to determine whether charges levied under Section 11.2.9 (but not other charges that were allocated in the same manner) exceed the cap applicable under Section 11.2.9.1 in any hour. If they do, the ISO will treat the excess for any given hour as described in Section IV.D, below.

B. Background Concerning the Neutrality Charge Adjustment Cap

As part of the development of the ISO's transmission Access Charge and the effort to encourage the participation of governmental entities as Participating TOs, the ISO considered proposals to establish a flexible limit on neutrality adjustment charges under Section 11.2.9. The purpose was to address what had been identified as one of the concerns that was impeding participation in the

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ISO Tariff) was previously accepted by the Commission as part of ISO Tariff Amendment No. 23." *Id.* at 61,685 n.2.

[10] *Id.* at 61,686.

ISO by some government-owned utilities: the difficulty of budgeting for the portion of the ISO's charges collected through the neutrality mechanism. In fact, the costs that must be recovered through neutrality adjustments under Section 11.2.9 can vary greatly from hour to hour. In some hours, the charges to Scheduling Coordinators can be substantial, but these charges are offset by substantial credits to Scheduling Coordinators in other hours. Indeed, during the period relevant to the instant proceeding, the Section 11.2.9 neutrality mechanisms resulted in credits in a significant number of hours of as much as $15.17/MWh. In considering how to address the desire for a limitation on neutrality that would permit the governmental entities to budget for this amount, the ISO used an annual rate to minimize this volatility. The only means available to the ISO to do this, and remain revenue neutral, was to establish a cap by dividing the anticipated annual neutrality charge of $24 million by the total annual MWh of Demand in the Control Area. This then allowed each utility to multiply its annual Demand times the $/MWh cap and determine the appropriate amount for that utility to budget for the neutrality charge. Only by basing an estimated cap on the largest practicable sample size, or time period, could the ISO and Scheduling Coordinators have statistical assurance of the reasonable accuracy of the estimate. Thus, Section 11.2.9.1, as approved by the ISO Governing Board, provided that "the total annual charges levied under Section 11.2.9 shall not exceed $0.095/MWh, applied to Gross Loads in the ISO Control Area and total exports from the ISO Controlled Grid," unless the ISO Governing Board

approved collection of charges above that level "for a defined period" and upon seven days' advance notice to Scheduling Coordinators.[11]

As part of Amendment No. 27 to the ISO Tariff, which was submitted on March 31, 2000 and proposed a new method for the determination of transmission Access Charges, the ISO filed Section 11.2.9.1 to the ISO Tariff to cap the level of the neutrality adjustment charge. Due to an administrative error, the word "annual" was inadvertently omitted from the version of Section 11.2.9.1 as submitted in Amendment No. 27.

On December 29, 2000, as part of Amendment No. 35 to the ISO Tariff, the ISO proposed to clarify the wording of Section 11.2.9.1. In the Amendment No. 35 Order, the Commission accepted the ISO's clarification, noting that "it is clear from the draft language approved by the ISO Board, that the Board intended to cap the neutrality charge on an annual basis."[12] This is absolutely correct; the intent of the annual cap was always to permit Scheduling Coordinators to estimate the total dollars they will pay annually through the neutrality charge; it was never intended to limit the recovery of prudently incurred costs.

C. The Southern Cities Complaint and Subsequent Commission Orders

On September 15, 2000, the Southern Cities filed their complaint in the above-captioned docket. In the March 14 Order, the Commission held that the application of Section 11.2.9.1 on an annual rather than an hourly basis would

[11] *See* ISO's September 25, 2000 Answer at Attachment A, which contains the attachment to the March 9, 2000, Board memorandum with the version of Section 11.2.9 presented to the ISO Governing Board.

represent "a substantive change" to that section that should not be applied retroactively.[13] The Commission directed the ISO to "recalculate the neutrality adjustment charges assessed to Riverside for the period of June 1, 2000, to September 15, 2000."[14] The Commission also held, however, that "[r]egarding the ISO's contention that there is no basis for requiring it to absorb the costs for maintaining system reliability, we agree."[15] The Commission stated its belief that the March 14 Order would still leave the ISO with a mechanism to allocate those costs:

> [T]o the extent that the ISO must recalculate the neutrality adjustment charges as discussed above, we will allow the ISO to reallocate any credited charges to the remaining Scheduling Coordinators in proportion to their relevant metered demands (with the proviso that such reallocated charges may not exceed on an individual basis the limit stated in Section 11.2.9.1 of the ISO Tariff).[16]

The May 14 Order granted in part and denied in part the requests for rehearing concerning the March 14 Order. In the May 14 Order, the Commission found, in relevant part, that "the ISO's alleged administrative error is not an excuse for limiting the neutrality adjustment charge on an annual as opposed to on an hourly basis, and charging greater than $0.095/MWh during the period June 1, 2000 through September 15, 2000."[17] The sole rationale for reaching this conclusion was that "[r]egardless of what the ISO intended the tariff language to be, the filed rate doctrine mandates that the ISO charge its customers the

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12 Amendment No. 35 Order at 61,928.

13 *Id.*

14 *Id.* (citation omitted).

15 *Id.*

16 *Id.* The ISO agrees with the sentiment. The remaining issue is implementation so that revenue neutrality can be achieved.

17 May 14 Order at 61,687.

actual rate specified in its tariff."[18] The Commission also stated that the hourly neutrality adjustment charge cap should be applied to all Scheduling Coordinators, and thus that it was "broaden[ing] the directive in the March 14 Order for the ISO to recalculate the neutrality adjustment charges assessed to all Scheduling Coordinators for the period of June 1, 2000 to September 15, 2000."[19] In so concluding, the Commission failed to note that the Tariff provision specified only a rate, *not* a recovery period.

IV. ARGUMENT

A. The Section 11.2.9.1 Cap Applies Only to Costs Recoverable Under Section 11.2.9, and the ISO Will Implement the Commission's Orders on That Basis, If Necessary

As explained above, Section 11.2.9 of the ISO Tariff – the only provision to which the $0.095 cap in Section 11.2.9.1 applies (whether it is applied on an annual basis or an hourly basis) – is the Tariff provision which authorizes the ISO to levy "neutrality adjustment charges" with respect to enumerated categories of costs. Other provisions of the ISO Tariff authorize the ISO to collect certain other charges that, like most of the charge types specified in Section 11.2.9, are assessed against Scheduling Coordinators in proportion to their metered Demands. Because these charges are levied under Tariff provisions other than Section 11.2.9, by the explicit terms of Section 11.2.9.1, the $0.095/MWh cap does not apply to them.

For billing purposes and administrative convenience, the ISO grouped together on Scheduling Coordinators' monthly invoices all of the ISO Tariff

[18] *Id.*

charges that are assessed on the basis of Scheduling Coordinators' metered Demands, and did sometime use the shorthand "neutrality costs" to refer to all of the costs recoverable through the various charges. The aggregated billing line item, which was labeled as a "neutrality charge," included items recoverable under Section 11.2.9 as well as items recoverable under other Tariff provisions. Grouping all similarly allocated charges under this one line item is permissible under the Tariff, because the Tariff does not require that the invoices contain separate line items for each type of charge it authorizes, e.g., there is no requirement that a given invoice include a line item entitled "costs incurred through in-state out-of-market calls."

During the period relevant to the Southern Cities complaint, i.e., June 1, 2000 through September 15, 2000, the costs listed under the "neutrality charge" line item were of a significant magnitude for many hours. This was the case, in part, because, as the Commission is well aware, a shortage of bids in the ISO's markets last summer required the ISO either to Dispatch Generating Units in the ISO Control Areas "out-of-market" in order to avert or manage System Emergencies, or to enter into negotiated arrangements to secure Energy or Ancillary Services from other resources for the same purposes. As noted above, the costs for such transactions, while not levied under Section 11.2.9, were allocated to Scheduling Coordinators based on metered Demand.

If the Commission declines to grant rehearing and to modify the May 14 Order as described in Sections IV.B and IV.C, below, the ISO will issue revised billing statements for the relevant period to identify separately (items that may

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[19] *Id.*

properly be charged under Tariff sections other than Section 11.2.9. The Commission and the Scheduling Coordinators should be aware that the recalculation of the billing statements is certain to be an extremely time-intensive process, which will necessarily affect the time-table for issuing the billing statements. Moreover, the process will be expensive.[20]

The ISO believes that the approach described above is consistent with the terms of the ISO Tariff and with the Commission's Orders in these dockets. If the Commission considers the approach described above to be inconsistent with the May 14 Order, the Commission should provide clarification or grant rehearing to confirm that under the ISO's "filed rate," the limitations set forth in Section 11.2.9.1 apply only to the five enumerated charges set forth in Section 11.2.9 and not charges levied under other ISO Tariff provisions, including Sections 11.2.4.1.1, 11.2.4.2.1 and 11.2.10.

B. The May 14 Order Erroneously Required the ISO To Apply An Hourly Cap to Neutrality Charges As to All Scheduling Coordinators

In the May 14 Order, the Commission for the first time required the ISO to apply the $0.095/MWh limit on an hourly basis to "the neutrality adjustment charges assessed to all Scheduling Coordinators for the period of June 1, 2000 to September 15, 2000."

The Commission based this requirement upon its finding that the language of the ISO Tariff required this result. This conclusion is erroneous. The language

[20] Descriptions of the ISO's settlement process relevant to the present proceeding are provided in the declaration of Spence Gerber, Director of Billing and Settlements for the ISO, which is attached to the present filing as Attachment B.

merely sets a rate of $0.095/MWh – a rate based on volume of Demand – and says nothing about the period over which the rate is to be measured.

The Commission is obligated to interpret jurisdictional tariffs and contracts, the language of which is to any degree ambiguous, to give effect to the parties' intent.[21] *Cajun Elec. Power Coop., Inc. v. FERC*, 924 F.2d 1132, 1137 (D.C. Cir. 1991); *Southwest Power Pool*, 90 FERC ¶ 61,038, at 61,186-87 (2000); *Transcontinental Gas Pipe Line Corporation*, 70 FERC ¶ 61,123, at 61,335-37 (1995); *Oglethorpe Power Corp. v. Georgia Power Co.*, 69 FERC ¶ 61,208, at 61,825 (1994).

The ISO's intention of having a neutrality amount that would act as an annual indicator of neutrality charges, and which could be changed based on an annual assessment and action of the ISO Governing Board, was well understood by Southern Cities and other parties. This is clear from the briefs filed in Docket No. ER98-3760-000, *et al.* (the "Unresolved Issues" case). In their initial brief in that proceeding (which was a joint brief among 10 entities), the only argument made by Southern Cities and the other entities as to a cap was that "if formula treatment is allowed, a cap of two mills per kWh should be placed on the amounts that can be collected under the Neutrality Adjustment."[22] In its Answering Brief, filed with the Commission on April 10, 2000 – 10 days after the

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[21] *See* Answer of the California Independent System Operator Corporation to the Complaint of the Cities of Anaheim, Banning, Colton, and Riverside, California, Docket No. EL00-111-000 (Sept. 25, 2000), at 7-12; Request for Rehearing of the California Independent System Operator Corporation, Docket No. EL00-111-001 (Apr. 13, 2001). As discussed below, the relevant court and Commission precedent clearly establish the obligation of the Commission to interpret jurisdictional rate schedules to implement the intent of the parties.

[22] Joint Initial Brief On Issue L.3 of the Cities of Redding, Santa Clara, Vernon, Anaheim, Azusa, Banning, Colton, and Riverside, California, the M-S-R Public Power Agency, and Dynegy

ISO filed proposed Section 11.2.9 in Amendment No. 27 in the form in which it was in effect during the period relevant to Southern Cities complaint – the ISO explained that a hard cap on neutrality charges was not appropriate for a cash-neutral entity but informed the Commission that in Amendment No. 27:

> the ISO is proposing that *total annual charges levied under the neutrality adjustment*, as described in Section 11.2.9 of the ISO Tariff, will not exceed $0.095/MWh, applied to gross Loads in the ISO Control Area and total exports from the ISO Controlled Grid unless approved by the ISO Governing Board.[23]

In their reply brief, the Southern Cities and the other entities *did not dispute* the annual nature of the Section 11.2.9.1 cap proposed in Amendment No. 27. Instead, Southern Cities and others acknowledged that the neutrality adjustment applies only to the five factors delineated in Section 11.2.9 and argued that any cap on neutrality charges should be "firm," i.e., subject to adjustment only through a filing with the Commission.[24] These pleadings, made immediately after the filing of Amendment No. 27, thus confirm both the ISO's intention as to the neutrality amount proposed in Amendment No. 27 and the fact that the *Southern Cities and other parties well understood this limitation*.[25]

Power Marketing, Inc., Docket Nos. ER98-3760-000, *et al.* (Feb. 14, 2000), at 3. This pleading is attached to the present filing as Attachment C.

[23] Answering Brief of the California Independent System Operator Corporation, Docket Nos. ER98-3760-000, *et al.* (Apr. 10, 2000), at 294-95 (emphasis added). The relevant pages of the pleading are attached to the present filing as Attachment D. The ISO had filed Amendment No. 27 with the Commission on March 31, 2000, but the Commission had not yet acted upon the proposed amendment by April 10.

[24] *See* Joint Reply Brief On Issue L.3 of the Cities of Redding, Santa Clara, Vernon, Anaheim, Azusa, Banning, Colton, and Riverside, California, and the M-S-R Public Power Agency, Docket Nos. ER98-3760-000, *et al.* (May 8, 2000), at 5-6. This pleading is attached to the present filing as Attachment E.

[25] While the ISO believes that these facts establish that the parties always intended any limitation to be annual, if the Commission entertains any doubts as to this conclusion, the ISO requests that the Commission defer further consideration and permit discovery and a limited hearing. The stakes are too great to proceed otherwise.

Additionally, as discussed above, the ISO Governing Board approved of an "indicator" of neutrality charges which could be changed based on an annual assessment because such an indicator needs to be based on the largest practicable sample size, or time period, and thus provides the ISO and Scheduling Coordinators with statistical assurance of the reasonable accuracy of the ISO's estimate of the anticipated neutrality charge amount, while at the same time permitting the ISO to remain revenue neutral. And indeed, the ISO's data concerning costs under Section 11.2.9 bear out the Board's reasons for approving an indicator of neutrality charges that did not operate as a hard cap and which was assessed based on an annual analysis.. The data indicate that there are massive credits in a significant number of hours and massive debits in a significant number of hours. Not having a hard cap and assessing whether to change the neutrality amount based on annual analyses permits the amount of the credits to be averaged with and thus to counterbalance the amount of the debits: the ISO estimates that, measured on an annual basis, this counterbalancing resulted in a net credit of approximately $0.17/MWh for the period June 1, 2000 through September 15, 2000. However, if the neutrality amount is applied as a hard cap on an hourly basis, the amounts of credits and debits will vary widely over the course of hours, and will be of great magnitude during some hours. Thus, the application of an hourly cap – which applies only to the charges and not to the debits! – is in complete contradiction of the intent of the Board, the purpose of the neutrality cap, and the status of the ISO as a

revenue-neutral entity. These facts make it all the more clear that the cap should be applied as an annual cap.

The Commission should accordingly grant rehearing and reverse its determinations in the May 14 Order that the neutrality amount in Section 11.2.9.1 should be applied as a hard cap and that the cap should be applied on an hourly basis to all Scheduling Coordinators.

C. Implementing Section 11.2.9.1 as an Annual Cap, In Accordance With the Intention of the ISO, Does Not Violate the Filed Rate Doctrine

In the May 14 Order, the sole rationale provided by the Commission for imposing an hourly cap on neutrality charges to all Scheduling Coordinators was a statement that application of an annual cap would violate the filed rate doctrine.[26] This statement presumes that the actual language of Section 11.2.9.1, as in effect during the relevant period, *required* the application of the $0.095/MWh cap on an hourly basis and *precluded* its application on an annual basis. As the Commission acknowledged in the March 14 Order, however, the language of Section 11.2.9.1 in effect at the time *did not* require this result.Indeed, while noting that the language failed to reference an *annual* limitation, the Commission was candid to point out that it also did not specify an *hourly* limitation[27] At most, the language was ambiguous, neither precluding application of the neutrality cap on an annual basis, nor unambiguously requiring its application on an hourly basis. The provision simply did not specify the interval over which the cap will be applied. In fact, there is no way one could

[26] May 14 Order at 61,687.
[27] March 14 Order at 61,934.

contend that the language of Section 11.2.9.1 allowed *only* a reading that the cap was to be applied as an hourly cap. Because the language of the provision, as originally filed, was not intended to establish a hard cap on the recovery of neutrality costs, permitted changes to the neutrality amount based on action by the ISO Governing Board, and permitted the analysis or calculation of whether the amount had been exceeded based on an annual analysis, the Commission erred in concluding that the filed rate doctrine precluded that result. As the courts have held, the filed rate doctrine operates as a prohibition against a jurisdictional entity's charging rates for its services "*other than* those properly filed with the appropriate federal regulatory authority."[28] In this case, an annual neutrality charge cap does not constitute a rate "other than [that] properly filed with the [Commission]"; rather, it represents a permissible and reasonable interpretation of the Tariff provision that was filed.[29]

Given the absence of explicit language specifying the interval over which the neutrality cap would be calculated, the Commission could not conclude in the May 14 Order that an annual cap was precluded unless the pertinent evidence other than the words of Section 11.2.9.1 compelled that result. In fact, the evidence demonstrates that an annual cap is consistent with the intent of Section 11.2.9.1, as well as with the language of the provision. The Commission's paramount objective in interpreting a jurisdictional contract or tariff is to give

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[28] *Western Resources, Inc. v. FERC*, 72 F.3d 147, 149 (D.C. Cir. 1995) (emphasis added).

[29] The filed rate doctrine also "requires that customers receive adequate notice of a rate in advance of the service to which it relates." *Id.* at 150. Indeed, "[p]roviding the necessary predictability is the whole purpose of the well established 'filed rate' doctrine." *Electrical District No. 1 v. FERC*, 774 F.2d 490, 493 (D.C. Cir. 1985). As explained below, the Scheduling Coordinators in the instant case received adequate and timely notice that the neutrality cap was going to be applied on an annual basis.

effect to the intent of the parties. For example, in *Chevron Pipe Line Company*, the Commission dismissed the "overly technical position" taken by a party with regard to a tariff filing, stating as follows:

> The Commission concludes that to reject the filing on the overly technical position urged by Big West is inconsistent with the approach to this type of situation taken by the court and the Commission. As the court stated:
>
> > the courts have expressed a preference for tariff interpretations which 'conforms to the intentions of the framers of the tariff, avoids possible violations of the law, and accords with the practical application given by shippers and carriers alike.' In other words, the Court will consider the practical application given to the tariff by the parties themselves in determining the meaning of the tariff . . . .

Chevron Pipe Line Company, 95 FERC ¶ 61,260, at 61,922 (2001) (quoting *Illinois Central Gulf R. Co. v. Tabor Grain Co.*, 488 F. Supp. 110, 117 (N.D. Ill. 1980) (emphasis added)).[30] Here, there can be no doubt that "the framers of the tariff" intended an *annual* limitation, and that this was "the practical application given to the tariff by the parties themselves."

Recognizing that the language is ambiguous does not at all change the result. Where the language of a contract or tariff does not unambiguously supply the answer, the Commission must look to extrinsic evidence. In *Cajun Electric Power Cooperative, Inc. v. FERC*, the Court of Appeals for the District of Columbia Circuit remanded the case to the Commission because the Commission had erroneously found that a contract was unambiguous, which had led the Commission to disregard extrinsic evidence concerning the negotiating

background of the contract. In reaching this conclusion, the Court stated as follows:

> The Commission rests on its assertion that the contract is free of ambiguity so it is wholly unnecessary to take that step [of considering the negotiating background]. For reasons discussed above; we think the agency was in error; the contract language is ambiguous and the Commission should have inquired further by permitting petitioner to put in evidence of the negotiating background. If after these proceedings it still can be said that the parties never meant squarely to address the issue raised by this dispute, then the Commission is entitled to place its own construction on the resultant ambiguity – so long as it is reasonable.[31]

The same rule is applicable to the Commission's evaluation of tariff provisions. The Commission has approved the clarification of ambiguous tariff language through reference to "extrinsic evidence of interpretation or intent."[32] Further, the Commission has recognized its "*obligation* to resort to extrinsic evidence . . . when the contract at issue contains ambiguous language."[33] It is immaterial whether the Commission is interpreting a tariff provision or a contract provision – in both cases the Commission must determine the parties' intent by reference to extrinsic evidence unless the provision is unambiguous.[34]

In the present case, the Commission indeed *agreed* that the ISO always intended the limit to apply on an annual basis and that this intention was communicated to Scheduling Coordinators: "it is clear from the draft language

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[30] *See also Panhandle Eastern Pipe Line Company*, 40 FERC ¶ 61,189, at 61,599 (1987) (interpreting provision of settlement agreement such that "[w]e believe our interpretation best reflects the intent of the parties.").

[31] *Cajun Elec. Power Coop., Inc. v. FERC*, 924 F.2d at 1137 (footnote omitted).

[32] *Southwest Power Pool*, 90 FERC at 61,186. *See also Transcontinental Gas Pipe Line Corporation*, 70 FERC at 61,335-37.

[33] *Oglethorpe Power Corp. v. Georgia Power Co.*, 69 FERC at 61,825 (emphasis added).

[34] *See Southwest Power Pool*, 90 FERC at 61,186-87 (indicating that same standard applies to both tariffs and contracts).

approved by the ISO Board, that the Board intended to cap the neutrality charge on an annual basis."[35] Moreover, other evidence of the actual intent includes the answering and reply briefs in the Unresolved Issues case (discussed above), which show that the Southern Cities and the other parties all knew that the intent of the just-filed Amendment No. 27 was to cap the neutrality adjustment charge annually, not hourly. Therefore, aside from the fact that the neutrality amount was not intended as a hard cap at all, the *only* reasonable conclusion the Commission can reach on the issue of whether the provision was to be implemented on an annual or hourly basis is that the cap expressed in Section 11.2.9.1, as originally filed, was to be implemented on an annual basis. *There is not a scintilla of evidence, on the face of the Tariff section or elsewhere, that would support reading the limit as an hourly one.*

Given the clear evidence, acknowledged by the Commission, that Section 11.2.9.1 was not intended as a hard cap and was not to be implemented on an hourly basis, and the absence of language in the provision precluding that result, the Commission erred in interpreting that provision in a manner that failed to give effect to the ISO's intention. Moreover, authorizing the ISO to apply Section 11.2.9.1 in the intended manner, which was not prohibited by the language of the provision, would in no way violate the filed rate doctrine. It would not subject Scheduling Coordinators, after the fact, to charges that were not authorized by the rate schedule on file. Rather, because the rate schedule on file does permit the recovery of all prudently incurred neutrality costs and does permit the application of the neutrality charge ceiling on an annual basis, use of the former

[35] Amendment No. 35 Order at 61,928.

method would not deprive Scheduling Coordinators of the notice to which the filed rate doctrine entitles them.[36]

Any claim that Scheduling Coordinators were not notified that the ISO intended (a) the neutrality amount in Section 11.2.9.1 to be an indicator of neutrality costs and not a hard cap that would limit recovery of prudently incurred costs, or that (b) the analysis or implementation of the neutrality amount was to be on an annual basis, is belied by the fact that they received explicit notice of that approach. In particular, the memorandum prepared for the ISO Governing Board, which was publicly posted on the ISO Home Page throughout the relevant period, makes clear that Section 11.2.9.1 establishes only an annual amount that can be modified at the discretion of the ISO Governing Board. Additionally, Southern Cities and Vernon had representatives on the transmission Access Charge Working Group that received various versions of the draft ISO Tariff language directly, including a copy of the final Board memorandum. Therefore, all affected parties were on notice that the neutrality cap would be implemented as an annual cap.[37] Where the affected parties all have actual notice of a tariff filing, the requirements of the filed rate doctrine are adequately served.[38] Permitting the ISO to implement the neutrality cap in the manner that the cap was designed therefore cannot violate the filed rate doctrine. As a result, the rationale provided by the Commission in the May 14 Order does not support the conclusion reached in the Order.

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[36] *See Western Resources*, 72 F.3d at 149-50; *Electrical District No. 1*, 774 F.2d at 493.

[37] The ISO includes as Attachment F to the present filing the signed declaration of Deborah A. Le Vine, Director of Contracts for the ISO, in which Ms. Le Vine attests to the facts described above.

D. If the Commission Continues to Require An Hourly Ceiling to Be In Place, the ISO Plans to Meet Its Obligations With Respect to Any Amounts That May Have Been Collected Under Section 11.2.9 of the Tariff in Excess of the Hourly Ceiling Consistent With Its Revenue Neutrality

For the reasons discussed above, the Commission should determine on rehearing of the May 14 Order that the neutrality amount in Section 11.2.9.1 does not function as a hard cap and is to be implemented for the benefit of all Scheduling Coordinators on an annual basis. However, if the Commission continues to require the application of an hourly cap, the ISO plans to implement the actions described below with regard to amounts that may have been collected in excess of that hourly cap, unless the Commission informs the ISO that the ISO's actions are impermissible. The ISO notes that these actions will be necessary to the extent that the breaking out of the billing amounts described in Section IV.A, above, does not result in the total amount of charges under Section 11.2.9 being lower than the hourly cap.

Neither the May 14 Order nor the March 14 Order addresses explicitly how the ISO is to implement the Section 11.2.9.1 limitations (once the amount attributable to neutrality costs recoverable under Section 11.2.9 is separately determined) on an hourly basis, if the Commission decides not to grant rehearing of that determination, except in general terms. The March 14 Order states that the Commission "will allow the ISO to reallocate any credited charges to the remaining Scheduling Coordinators in proportion to their relevant metered demands (with the proviso that such reallocated charges may not exceed on an

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[38] *See Consolidated Edison Co. of New York v. FERC*, 958 F.2d 429, 434 (D.C. Cir. 1992).

individual basis the limit stated in Section 11.2.9.1 of the ISO Tariff)."[39] The ISO appreciates this statement and believes that the methods proposed below would appropriately implement the Commission's Orders.

1. The ISO Can Defer Collection of Any Portion of the Neutrality Charge That Exceeds $0.095/MWh In Any Hour to An Hour In Which the Neutrality Charge Is Less Than $0.095/MWh

The March 14 and May 14 Orders direct the ISO to apply the ceiling on neutrality charges recoverable under Section 11.2.9 on an hourly basis. The Orders do not, however, address how the ISO should treat any excess amounts that may have been charged during the relevant period. The ISO believes that the requirement of the Commission's Orders can be satisfied by the ISO's recording of any amount in excess of the hourly ceiling in a memorandum account, for inclusion in the amounts to be recovered in the next succeeding hour or hours in which the amounts collected were less than $0.095/MWh. The amount included in the memorandum account will be allocated forward based on each Scheduling Coordinator's liability. If any amounts remain after this process, they will be treated as described in the next section.

This approach ensures that the total amount charged pursuant to Section 11.2.9 of the Tariff during the period June 1, 2000 through September 15, 2000 do not exceed the amount chargeable under a $0.095/MWh ceiling, applied hourly.[40] It therefore implements the hourly cap prescribed by the Commission (if that determination is not revised). It does so in a manner that is consistent both

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[39] *See* March 14 Order at 61,934.

[40] This amount is $[ ] million, the product of [ ], the total number of MWh of gross Demand on and exports from the ISO Control Area during this period, and $0.095.

with the Section 11.2.9's specification that one of the purposes of the neutrality charge is to enable the ISO "to reach an accounting balance of zero," and with the not-for-profit nature of the ISO.[41] It will also minimize the extent to which the ISO will have to resort to the laborious process described in the next section. This approach thus represents an administratively workable approach for the ISO to comply with the prohibition contained in the May 14 Order against "charging greater than $0.095/MWh during the period June 1, 2000 through September 15, 2000."[42]

2. To the Extent That Refunds are Due to Scheduling Coordinators, the ISO Will Attempt to Collect the Necessary Funds From Scheduling Coordinators Who Received the Benefit of the Higher Neutrality Charges

In the event that, after ensuring that neutrality charges are limited to $0.095/MWh during every hour of the relevant period, as described above, an amount remains to be refunded to certain Scheduling Coordinators, the ISO Tariff is clear that the ISO's obligation is solely to seek to obtain this amount from other Scheduling Coordinators. Limitation of the ISO's obligation in this way is consistent with the fundamental structure of the ISO markets, in which the ISO purchases products on behalf of Scheduling Coordinators and not for its own account.[43] In recognition that the ISO is intended to operate as a revenue-neutral, pass-through entity, Section 11.6.3.3 of the Tariff provides that:

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[41] Amounts above the cap in a given hour must be carried over as described in the text in order to accomplish the overall purpose of the ISO Tariff, recognized by the Commission in this proceeding and on many other occasions: to enable the ISO to recover, on behalf of parties providing the services necessary to maintain the reliability of the grid, the costs of providing those services.

[42] *See* May 14 Order at 61,687.

[43] *See* ISO Tariff, Section 2.2.1 ("In contracting for Ancillary Services and Imbalance Energy the ISO will not act as a principal but as agent for and on behalf of the relevant Scheduling

> Where a Settlement Statement re-run indicates that the accounts of Scheduling Coordinators should be debited or credited to reflect alterations to Settlements previously made under this ISO Tariff, for those Scheduling Coordinators affected by the statement re-run, the ISO shall reflect the amounts to be debited or credited in the next Preliminary Settlement Statements that it issues following the Settlement Statement re-run to which the provisions of this Section 11 apply.

Further, Section 11.16.1 provides that:

> If it is not possible to clear the ISO Clearing Account on a Payment Date because of an insufficiency of funds available in the ISO Reserve Account or by enforcing any guarantee, letter of credit or other credit support provided by a defaulting Scheduling Coordinator, the ISO shall reduce payments to all ISO Creditors proportionately to the net amounts payable to them on the relevant Payment Date to the extent necessary to clear the ISO Clearing Account. The ISO shall account for such reduction in the ISO ledger accounts as amounts due and owing by the non-paying ISO debtor to each ISO Creditor whose payment was so reduced.

These provisions provide a means of implementing the Commission's statement, quoted above, that any amounts credited to Scheduling Coordinators for neutrality charges collected during the relevant period in excess of the $0.095/MWh ceiling may be "reallocate[d] . . . to the remaining Scheduling Coordinators."[44]

Accordingly, if it turns out that the ISO in fact collected amounts during the June 1 to September 15 period that exceeded the amount chargeable under an

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Coordinators."); *Pacific Gas & Electric Company, et al*., 81 FERC ¶ 61,122, at 61,496 (1997) ("The ISO should not be deemed to procure ancillary services on its own behalf since the ISO is not a participant in the market place. The ISO is appropriately securing the necessary ancillary services on behalf of Scheduling Coordinators since it is Scheduling Coordinators who will utilize these services.").

[44] *See* March 14 Order at 61,934.The Commission's statement could be read, in the context of the March 14 Order, to envision amounts credited to Southern Cities being recovered through increased neutrality charges *to* other Scheduling Coordinators. That reallocation method is not possible under the May 14 Order, however, as the Commission has now directed that all Scheduling Coordinators receive the benefit of these credits. The Tariff provisions quoted above provide the appropriate solution: the ISO would obtain amounts it is required to credit to

hourly $0.095/MWh cap, the ISO will accordingly prepare revised settlement statements that will seek to recoup the excess from those Scheduling Coordinators who received it.[45] To the extent the ISO receives the amounts due from those Scheduling Coordinators, it will remit the amounts to those Scheduling Coordinators to which refunds are due. If it is not paid in full, the amounts remitted will be reduced accordingly.

V. CONCLUSION

WHEREFORE, for the above-stated reasons, the ISO respectfully requests that the Commission grant rehearing of its May 14, 2001 Order Granting In Part and Denying In Part Rehearing, and that the Commission further find, determine, and order:

(1) That the neutrality adjustment charge amount under Section 11.2.9.1 of the ISO Tariff is properly interpreted as an *indicator* of annual neutrality charges for budgeting purposes but is not meant to establish a hard cap on those charges.

(2) That the neutrality adjustment charge amount as described above is to be applied for the benefit of all Scheduling Coordinators from the time that Section 11.2.9.1 went into effect.

Scheduling Coordinators from those Scheduling Coordinators who received the revenues the ISO received through the neutrality charges.

[45] Market Participants from which the ISO would seek repayment of any amounts necessary to make refunds would be required to pay those amounts because the ISO would be acting under the Tariff as interpreted by the Commission. That is, the Commission would have held that Market Participants were providing services during a period when the filed rate (Section 11.2.9.1) included an hourly limit on certain amounts that the ISO could recover in order to pay those Market Participants. Since all Market Participants were charged with knowledge of the filed rate, this means that Market Participants are charged with knowledge that any amounts billed and recovered by the ISO above those limits to enable it to pay them at certain levels were subject to

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being refunded and thus the Market Participants are charged with knowing that they might have to repay some amount to the ISO to enable it to make those refunds.