

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System Operator Corporation)	Docket No.	ER02-1656-000
)		ER03-1046-000
)		
Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design)	Docket No.	RM01-12-000
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**Prepared Remarks of Tony Braun
On Behalf of the
California Municipal Utilities Association**

On behalf of the California Municipal Utilities Association (“CMUA”), I would like to extend the California municipal community’s appreciation for the opportunity to participate in today’s Technical Conference.

I plan to direct my brief prepared remarks to the issue of Existing Contracts, or “ETCs” as the terminology is used in the Commission’s agenda. While somewhat hesitant to make this admission, I have been involved in the wrangling surrounding ETCs since before ISO start-up. That this issue has been around that long may be cause for pessimism regarding its potential resolution. However, I am encouraged by two developments: first, the Commission’s Order, which can be interpreted as taking a fresh look at the operational and financial impacts of ETCs, and second, the fact that customers under ETCs and the Participating TOs appear to share more in common on this issue now than in 1997.

To answer the Commission’s question posed to this panel directly, CMUA does not believe that the ISO’s proposal as we understand it properly incorporates rights held by transmission customers under ETCs into the overall market. This is because the ISO’s proposal fundamentally alters the terms of service as well as the rates paid under the ETCs. Specifically,

the ISO proposes to make available to others in forward markets firm rights held and paid for by the customers under ETCs, and then further charges a host of costs for service under those contracts, including congestion costs, that are nowhere to be found in the contract itself. Given that the ISO proposes to settle the load served under the ETC on a nodal basis (the only load that pays an unaggregated nodal price under MD02 is load served under ETCs and demand response), those costs could be substantial. This is particularly troubling since the ISO is not a party to the ETCs, and further that certain of the ETCs have Mobile-Sierra protections.

In the spirit of attempting to move forward, however, there are a few points on ETCs that I would like the Commission to take away from this Technical Conference as discussions on this issue commence in earnest:

The White Paper Criteria Are Good Guideposts

The Wholesale Power Market Platform White Paper expressed the Commission's position that "existing customers retain their existing transmission rights and retain rights for future load growth." The Commission's questions posed to the earlier panel are the right ones:

- Does the ISO's proposal properly maintain existing rights and obligations for transmission service in the transition to the full network model?
- Does the ISO's proposal adequately protect customers from congestion charges consistent with existing implicit and explicit transmission rights?
- Does the ISO's proposal affect scheduling or other rights under existing contracts?

As stated above, CMUA believes that the ISO's proposal for ETCs fails to meet any of these criteria. The ISO's proposal does not maintain the nature and character of service under ETCs; it does not hold existing customers harmless in the transition to a full network model; and it significantly affects scheduling and other rights under the contracts. CMUA is convinced that

if the Commission uses these principles to guide discussion on ETCs, an appropriate resolution will be reached.

Don't Prescribe Surgery to Cure the Common Cold

The ISO's most recent implementation plan for MD02 merges the proposed Day-Ahead Market (Phase II) and LMP (Phase III), and does not commence until 2005. Between now and that date, significant ETCs will expire, including the complex integration agreement that governs operation of the Bureau of Reclamation's Central Valley Project with the transmission system in Northern California. Other agreements expire on Path 15 and on the California-Oregon Intertie, thus removing Encumbrances from paths that have historically experienced some congestion. It makes little sense to implement a contentious proposal, one that both transmission customers and transmission providers under the ETCs oppose, if the passage of time will significantly ameliorate the adverse impacts to grid efficiency that the ISO alleges. CMUA notes that the Commission has in the record of this proceeding evidence of the number and significance of those expiring ETCs.

Approach ETCs Not as a California Problem, But As a Seams Issue.

The Commission can only fully appreciate the issue presented by ETCs if it understands the commercial arrangements and investments that have led to current practices. In total, CMUA members have invested several billion dollars in generation and transmission that spans much of the Western region. It is no coincidence that the transmission rights they have secured, both through contracts over facilities that are now part of the ISO Controlled Grid, and over their own lines both within and without the ISO Control Area, comport with prevailing regional practices that allow schedule changes close to real time in order to balance loads and resources. As the ISO describes its concern regarding ETCs, "phantom congestion" is caused by the fact that ETC

rightholders possess the ability to change schedules closer to real time than is provided by the ISO's Hour Ahead market, which precludes schedule changes a little over 2 hours before real time. When ETC holders do not use that transfer capability, paper congestion in forward markets may be created. But as with most issues, how you view this issue depends on from which side you are viewing it. ETC customers question the reasons for the so-called "phantom congestion," including how the ISO's Capacity Benefit Margin practices fit into the equation, among other things. Further, ETC customers cannot fathom how a scheduling practice that is prevalent throughout the West can be a problem for the ISO newer and more advanced scheduling systems. Learning from their municipal brethren that no longer have ETCs, they fear that increasing portions of their load will be forced into the real time market by the inability to make schedule changes, rendering paid-for generation unable to serve their load. Losing the scheduling flexibility under the ETCs makes it more difficult for them to integrate loads and resources.

Absent a Consensus Resolution, Reforming ETCs Would be Complex and Contentious

ETCs can be complex arrangements that settled long-standing disputes over transmission access. Often, they are not simply sales of transmission rights in return for payment. For example, the ETCs to which Los Angeles Department of Water and Power ("LADWP") is a party involved, *inter alia*, swaps of rights in which LADWP received rights on the Pacific AC Intertie in return for providing access on the LADWP-owned DC Tie. If that ETC was abrogated, how would the loss of access to the DC Tie affect ISO operations and markets? Other ETCs involve the load and resources of the State Water Project. Those ETCs were crafted to reflect the off-peak nature of that pumping load and the support the generation provides to the

transmission system in that area. Reforming these ETCs would be a challenging endeavor, and it would not be clear whether or not the ISO's markets would be better or worse off after-the-fact.

The Unfinished Business of the Market Design Makes Resolution More Difficult.

A common reaction when one hears the debate over ETCs is “why can't this issue be solved with allocation of Congestion Revenue Rights.” As the Commission recognized in its Order, there is significant work left to be done with respect to both CRR design and allocation. It is an open question as to whether there will be sufficient CRRs to provide a full hedge against congestion risk. Allocation of CRRs has not been determined. Further, the CRR product itself is fairly limited. The maximum term is for one year. It does take into account seasonal diversity. In short, it is not as flexible an instrument as has been created in other ISOs. The CRR issue has somewhat been thrown open by the Commission, and that is a helpful development.

The Commission Must Fully Examine All Alternatives

Alternatives have been suggested to alleviate congestion while leaving ETCs intact. The Commission should examine all of these alternatives on an equal footing. Some of those alternatives include:

- A non-firm recallable transmission product. Non-firm products are common in the West. Further, it is CMUA's understanding that they are available in other ISO's. This proposal has been put forth by Southern California Edison in its pleadings;
- Moving the ISO's timelines closer to real time. This would have several advantages, including getting load out of the imbalance market, and reducing seams at Intertie points with other control areas; and
- Better accommodating secondary markets for transmission not part of the ISO Controlled Grid. There is significant capacity in the ISO Control Area that has not been transferred

to the ISO Operational Control. There have been increased efforts to remarket excess capacity over these lines, including WestTrans, which is a West-wide common OASIS proposal now joined in by seventeen public and private transmission providers, scheduled to be operational in the first quarter of next year. If transmission included in the WestTrans proposal can be effectively marketed in secondary markets, this would have the effect of relieving congestion at certain tie points in California. Currently, ISO software is one hindrance to this effort.

All of these efforts should be fully explored by the Commission.

Again, CMUA appreciates the opportunity to participate in today's Technical Conference. We look forward to answering any questions the Commission may have, and to discussions on this issue as contemplated in the Commission's October Order.