

109 FERC ¶ 61,391  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

California Independent System Operator Corporation	Docket Nos. ER05-149-000
	ER05-150-000
	ER05-151-000
	ER05-153-000
	ER05-154-000
	ER05-155-000

ORDER ACCEPTING AND SUSPENDING FILINGS AND NOTICES OF  
CANCELLATION, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE  
PROCEDURES

(Issued December 30, 2004)

1. The California Independent System Operator Corporation (CAISO) has submitted a series of filings to effectuate settlements arising from the expiration on December 31, 2004 of contracts with Pacific Gas and Electric Company (PG&E), the entity that serves as Western Area Power Administration's (Western) interface with the CAISO, and to accommodate the transfer of Western's facilities from the CAISO to the Sacramento Municipal Utility District (SMUD) control area.
2. In this order, the Commission accepts for filing (1) the PACI-W Operating Agreement between the CAISO and Western (PACI-W Operating Agreement) and (2) the Interim California-Oregon Transmission Project (COTP) Operations Agreement between the CAISO and the Transmission Agency of Northern California (Interim COTP Agreement), effective January 1, 2005, as requested.

3. In this order, the Commission also accepts for filing, effective January 1, 2005,<sup>1</sup> as requested:

(1) Amendment No. 2 to the Interconnected Control Area Operating Agreement between the CAISO and SMUD (CAISO/SMUD ICA Operating Agreement Amendment No. 2 or Amendment No. 2);

(2) an Operating Agreement between the CAISO and Western (CAISO/Western Operating Agreement or Operating Agreement);

(3) revisions to the Meter Service Agreement for Scheduling Coordinators between the CAISO and Western (Revisions to CAISO/Western MSA);

(4) a Notice of Cancellation of the Metered Subsystem Agreement between the CAISO and the City of Roseville (Notice of Cancellation of CAISO/Roseville MSSA or CAISO/Roseville Notice of Cancellation);

(5) a Dynamic Scheduling Agreement for Scheduling Coordinators between the CAISO and Calpine Energy Services, LP (CAISO/Calpine Energy Dynamic Scheduling Agreement or Dynamic Scheduling Agreement); and

(6) Notices of Cancellation of the Participating Generator Agreement (PGA) and the Meter Service Agreement (MSA) for CAISO Metered Entities between the CAISO and Calpine Construction Finance Company (Notices of Cancellation of CAISO/Calpine PGA and MSA or CAISO/Calpine Notices of Cancellation).

We also accept the proposed CAISO/Trinity UDC Operating Agreement for filing, suspend it for a nominal period, make it effective January 1, 2005, as requested, subject to refund, and set it for hearing and settlement judge procedures.

4. This order benefits customers by addressing the terms and conditions governing access to the California-Oregon Intertie (COI).

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<sup>1</sup> Notwithstanding the January 1, 2005 effective date, the rates may not in fact be applied until a later date due to the requirement that SMUD re-certify its expanded control area footprint with North American Electric Reliability Council (NERC) and Western Electricity Coordinating Council (WECC) before the expanded control area commences operation. *See* CAISO Transmittal Sheet to Amendment No. 2 at 3 (Docket No. ER05-149-000).

## **I. Background**

5. Western currently has contracts with PG&E which will expire on December 31, 2004 under which PG&E acts as Western's interface with the CAISO. Western and PG&E executed these contracts in 1967 in connection with the construction of the Pacific Northwest-Pacific Southwest Intertie (Pacific Intertie), a two-line facility that runs from the Pacific Northwest through California.<sup>2</sup> These long-term contracts form the foundation of the relationship between Western and PG&E.

6. In 1996, California began to restructure its electric industry. As a result of this restructuring, and as required under California Assembly Bill 1890, in 1998, the CAISO officially began operations. As a result, the three investor-owned utilities, PG&E, Southern California Edison Company (SoCal Edison), and San Diego Gas and Electric Company (SDG&E) turned over operational control of their transmission facilities and contractual entitlements to the CAISO. Therefore, the use of Western's facilities under their contracts with PG&E has been determined by the CAISO Open Access Transmission Tariff (CAISO Tariff) since 1998. In a recent order, the Commission conditionally accepted for filing the notices of cancellation and offers of settlement related to the termination of these contracts.<sup>3</sup>

7. On July 13, 2004, Western announced that it had selected SMUD to host sub-control area operations for the Sierra Nevada Region beginning January 1, 2005.<sup>4</sup> As a sub-control area, Western will schedule power deliveries for project use loads and customers directly connected to its transmission system and in other control areas.<sup>5</sup> Western will match generation and load, provide reserves and frequency support to meet reliability criteria and submit generation schedules to the host control area.<sup>6</sup> Western will manage net power flows at the sub-control area interconnection points.<sup>7</sup> Western has

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<sup>2</sup> In northern California, Western owns one of the Pacific Intertie transmission lines from the Malin Substation to the Round Mountain Substation. PG&E controls the other line in the Pacific Intertie.

<sup>3</sup> *Pacific Gas and Elec. Co.*, 109 FERC ¶ 61,255 (2004) (December 3 Order).

<sup>4</sup> Western Press Release at 1 (July 13, 2004).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

decided, however, that its Pacific Intertie line will remain within the CAISO's control area, and Western will implement procedures with Bonneville Power Administration (Bonneville) to enhance transmission system reliability across the California-Oregon border.<sup>8</sup>

8. Pursuant to section 205 of the Federal Power Act (FPA), the CAISO has submitted for filing the following agreements to effectuate two settlements that the Commission approved in its December 3 Order arising from the expiration of Western's contracts with PG&E: (1) the PACI-W Operating Agreement and (2) the Interim COTP Agreement. The CAISO requests an effective date of January 1, 2005 for these filings.

9. Pursuant to section 205 of the FPA, the CAISO has also submitted for filing the following agreements to accommodate the planned change in control area boundaries related to Western's decision to join the SMUD control area beginning January 1, 2005: (1) CAISO/SMUD ICA Operating Agreement Amendment No. 2; (2) the CAISO/Western Operating Agreement and Revisions to CAISO/Western MSA; (3) the CAISO/Trinity UDC Operating Agreement; and (4) the CAISO/Calpine Energy Dynamic Scheduling Agreement. The CAISO requests an effective date of January 1, 2005 for these filings.

10. Pursuant to section 35.15 and 131.53 of the Commission's regulations, the CAISO submits for filing the Notice of Cancellation of CAISO/Roseville MSSA and the Notices of Cancellation of CAISO/Calpine PGA and MSA. The CAISO requests an effective date of January 1, 2005.

## **II. Notice of Filings and Responsive Pleadings**

11. Notice of filing of CAISO/SMUD ICA Operating Agreement Amendment No. 2 in Docket No. ER05-149-000 was published in the *Federal Register*, 69 Fed. Reg. 67,339 (2004), with comments, protests and interventions due on or before November 22, 2004. The California Public Utilities Commission (California commission) filed a notice of intervention. Bonneville; Calpine Corporation (Calpine Corp.) and Calpine Construction Finance Company, L.P. (Calpine Finance) (collectively, Calpine); the City of Redding, California, the City of Santa Clara, California, and the M-S-R Public Power Agency jointly (Cities/M-S-R); the Modesto Irrigation District (Modesto); the Northern California Power Agency (NCPA); PG&E; SMUD; the Transmission Agency of Northern California (TANC); and Western filed timely motions to intervene. PG&E filed comments and a request for clarification or, in the alternative, protest. Calpine filed a

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<sup>8</sup> *Id.*

protest and motion for consolidation and for expedited technical conference. On December 7, 2004, Western and SMUD filed answers. On December 8, 2004, the CAISO filed an answer. On December 13, 2004, Calpine filed an answer to the answers of Western, SMUD and the CAISO. On December 17, 2004, SMUD filed an answer.

12. Notice of filing of the CAISO/Trinity UDC Operating Agreement in Docket No. ER05-150-000 was published in the *Federal Register*, 69 Fed. Reg. 67,339-40 (2004), with comments, protests and interventions due on or before November 22, 2004. PG&E and Western filed timely motions to intervene. Trinity filed a timely motion to intervene and protest. On December 7, 2004, the CAISO filed an answer. On December 9, 2004, Trinity filed an answer to the CAISO's answer.

13. Notice of filing of the CAISO/Western Operating Agreement and Revisions to CAISO/Western MSA in Docket No. ER05-151-000 was published in the *Federal Register*, 69 Fed. Reg. 67,340 (2004), with comments, protests and interventions due on or before November 22, 2004. The California commission filed a notice of intervention. Cities/M-S-R; the Lassen Municipal Utility District (Lassen); Modesto; NCPA; SMUD; and Western filed timely motions to intervene. PG&E filed a timely motion to intervene, comments and request for clarification or, in the alternative, protest. Calpine filed a timely motion to intervene, protest and motion for consolidation and for expedited technical conference. On December 7, 2004, Western filed an answer. On December 8, 2004, the CAISO filed an answer. On December 13, 2004, Calpine filed an answer to the answers of Western and the CAISO.

14. Notice of filing of the Notice of Cancellation of CAISO/Roseville MSSA in Docket No. ER05-153-000 was published in the *Federal Register*, 69 Fed. Reg. 67,340 (2004), with comments, protests and interventions due on or before November 22, 2004. The City of Santa Clara, California; NCPA and PG&E filed timely motions to intervene.

15. Notice of filing of the CAISO/Calpine Energy Dynamic Scheduling Agreement and the Notices of Cancellation of CAISO/Calpine PGA and MSA in Docket No. ER05-154-000 was published in the *Federal Register*, 69 Fed. Reg. 67,340 (2004), with comments, protests and interventions due on or before November 22, 2004. Modesto, NCPA, PG&E and Western filed timely motions to intervene. Calpine Corp., Calpine Finance, and Calpine Energy Services (Calpine Energy) (collectively, Calpine Parties) jointly filed a timely motion to intervene and protest. On December 7, 2004, the CAISO filed an answer. On December 13, 2004, Calpine filed an answer to the CAISO's answer.

16. Notice of filing of the PACI-W Operating Agreement and the Interim COTP Agreement was published in the *Federal Register*, 69 Fed. Reg. 67,340 (2004), with comments, protests and interventions due on or before November 22, 2004. The California commission filed a notice of intervention. Bonneville; Cities/M-S-R; Lassen;

Modesto; NCPA; PG&E; SMUD; SDG&E; SoCal Edison; TANC and Western filed timely motions to intervene. Bonneville; Cities/M-S-R; PG&E and TANC filed comments. SDG&E and SoCal Edison filed protests. On December 1, 2004, TANC filed an answer. On December 8, 2004, the CAISO filed an answer.

### **III. Discussion**

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

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. Except for the acceptance of clarifications provided by Western, SMUD and the CAISO, we are not persuaded to accept the answers filed in Docket Nos. ER05-149-000 and ER05-151-000 and will, therefore, reject them. We are not persuaded to accept the answers filed in Docket Nos. ER05-150-000 and ER05-154-000 and will, therefore, reject them. We will accept the CAISO's and TANC's answers in Docket No. ER05-155-000 because they have provided information that assisted us in our decision-making process.

#### **B. Docket No. ER05-155-000: Agreements Effectuating Settlement Agreements Between Western, PG&E and the CAISO**

19. In Docket No. ER04-693-000, PG&E, Western, and the CAISO filed a notice of cancellation of the Coordinated Operations Agreement between SoCal Edison, SDG&E, and the participants in the COTP (Coordinated Operations Agreement).<sup>9</sup> PG&E stated that the proposed termination of Contract 2947A in Docket No. ER04-688-000 triggered the termination of the Coordinated Operations Agreement.

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<sup>9</sup> The Coordinated Operations Agreement coordinated operation of the COTP, a 500 kV line between southern Oregon and central California with two 500 kV AC lines of the Pacific Intertie in northern and central California. It was designated as PG&E Rate Schedule FERC No. 146. Collectively, the COTP and the Pacific Intertie are referred to as the COI.

20. In an offer of settlement in Docket No. ER04-693-001, PG&E filed a revised Owners Coordinated Operation Agreement (Owners Agreement)<sup>10</sup> and a new COI Path Operating Agreement (Path Operating Agreement) to replace the Coordinated Operations Agreement. In its December 3 Order, the Commission found the settlement just and reasonable.<sup>11</sup> The Commission accepted the proposed notice of cancellation of PG&E Rate Schedule 146 and accepted the proposed Owners Agreement, effective January 1, 2005.<sup>12</sup>

21. In Docket No. ER04-688-000, PG&E requested termination of service under Contract 2947A,<sup>13</sup> which will expire under its own terms on January 1, 2005. In an offer of settlement filed in ER04-688-001, the rate schedules underlying Contract 2947A would be cancelled and replaced by a new contract, the Transmission Exchange Agreement. In the December 3 Order, the Commission found the settlement just and reasonable.<sup>14</sup> The Commission accepted, among other things, the proposed notice of cancellation of PG&E Rate Schedule 35 and related rate schedules and contracts and accepted the settlement, including the proposed Transmission Exchange Agreement, effective January 1, 2005.<sup>15</sup>

22. Thus, according to the CAISO, the PACI-W Operating Agreement and Interim COTP Agreement filed in Docket No. ER05-155-000 effectuate the above settlements.

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<sup>10</sup> The Owners Agreement governs the coordinated operation of the Pacific Intertie and COTP and maintains the system as coordinated facilities to benefit transfer capability.

<sup>11</sup> December 3 Order, 109 FERC at P 118.

<sup>12</sup> *Id.*

<sup>13</sup> Contract 2947A was a transmission exchange contract that provided Western with 400 MW of bi-directional transmission service between Round Mountain and Western's Tracy substation. In turn, Western provided the Companies with bi-directional transmission service between Malin and Round Mountain at the full capability of Western's 500 kV line, less the amount (up to 400 MW) reserved for Western's use.

<sup>14</sup> December 3 Order, 109 FERC at P 48.

<sup>15</sup> *Id.*

**1. PACI-W Operating Agreement**

23. The Pacific Intertie consists of two 500 kV lines; one owned by Western which is between the Malin and Round Mountain substations in the northern part of California and the other owned by PG&E which is between the California border at the Malin substation and PG&E's Tracy substation in central California. Under the Transmission Exchange Agreement, Western receives 400 MW of transmission rights over the portion of the Pacific Intertie that is owned by PG&E between the Round Mountain and Tracy substations (PACI-P). In exchange, Western provides the CAISO with rights to use 1,200 MW of the total 1,600 MW capability of the portion of the Pacific Intertie that is owned by Western between the Malin and Round Mountain substations (PACI-W). Western has retained the remaining 400 MW for its load service on the PACI-W.

24. According to the CAISO, the PACI-W Operating Agreement provides a mechanism by which the CAISO can ensure that Western's use of its Pacific Intertie facilities is consistent with the CAISO's reliability and scheduling requirements as embodied in the CAISO Tariff. The PACI-W Operating Agreement addresses issues such as operating requirements, maintenance, outages, emergency response, studies, COI schedules, COI emergencies, voltage control and reactive support, and removal from and restoration of service.

25. The PACI-W Operating Agreement is necessary for the implementation of the Transmission Exchange Agreement accepted by the Commission. Accordingly, we will accept the PACI-W Operating Agreement.

**a. Scope of Agreement**

26. The CAISO states that it will be the control area operator for the PACI-W. The CAISO states, that because the PACI-W is not technically part of the CAISO-controlled grid, separate settlement procedures set forth in the Transmission Exchange Agreement apply to the PACI-W.

27. SDG&E argues that the PACI-W Operating Agreement violates the CAISO Tariff and the Commission's open access policy because it removes the PACI-W from the CAISO-controlled grid. It contends that neither the Transmission Exchange Agreement nor the CAISO Tariff gives the CAISO the right to offer transmission service outside the CAISO Tariff and that the CAISO cannot provide itself such a right by entering into subsequent agreements such as the Transmission Exchange Agreement.

28. In its answer, the CAISO states that, to the contrary, without the Transmission Exchange Agreement and the PACI-W Operating Agreement that 1,200 MW of capacity would be removed from the CAISO's control and would be subject to rate pancaking.<sup>16</sup>

29. The PACI-W Operating Agreement is a separate agreement that details the operational control over the 1,200 MW of the PACI-W that is included in the Transmission Exchange Agreement, as well as the 400 MW that Western retains on the PACI-W. The Commission has previously accepted the Transmission Exchange Agreement and here finds that the PACI-W Operating Agreement that sets forth the operating parameters is necessary to effectuate the Transmission Exchange Agreement and is accepted. In the December 3 Order, the Commission found that the Transmission Exchange Agreement provides substantial benefits to the CAISO, Western, PG&E and their respective customers.<sup>17</sup>

**b. Charges Paid by Western**

30. Section 2 of the PACI-W Operating Agreement states that the agreement governs the CAISO's operational requirements with respect to Western. Section 6.2 states that nothing in the agreement is intended to affect the rates and charges paid by CAISO transmission service customers for use of the CAISO-controlled grid. It adds that the CAISO customers using the CAISO markets or the CAISO-controlled grid will pay the rates and charges pursuant to the CAISO Tariff. Section 6.3 states that charges for Western will be in accordance with the Transmission Exchange Agreement.

31. SoCal Edison argues that section 6.2 conflicts with the Transmission Exchange Agreement because section 7.3 of the Transmission Exchange Agreement exempts Western from CAISO Tariff charges when Western uses the "Western Capacity" (*i.e.*, the 400 MW of capacity on the PACI-P that is owned by PG&E and exchanged to Western under the Transmission Exchange Agreement). SoCal Edison also states that it does not understand what or how Western or any CAISO Market Participant will be charged by the CAISO for use of the capacity Western has retained on the PACI-W because this issue is not addressed by the Transmission Exchange Agreement as section 6.3 implies.

32. SDG&E and SoCal Edison also claim that the PACI-W Operating Agreement is unduly discriminatory because section 6.3 absolves Western from CAISO Tariff charges paid by other similarly-situated Scheduling Coordinators, such as grid management,

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<sup>16</sup> CAISO Answer at 6 (*citing* December 3 Order, 109 FERC at P 49).

<sup>17</sup> December 3 Order, 109 FERC at P 49-50, 53-55.

wheeling, intra-zonal congestion, emissions, start-up, and minimum load charges. SoCal Edison argues that, if the CAISO wishes to exempt Scheduling Coordinators from CAISO Tariff charges, the CAISO should modify the CAISO Tariff directly to include such exemptions. SoCal Edison also raises concerns about the potential cost impact of the proposed agreement.

33. In its answer, the CAISO states that the PACI-W Operating Agreement clarifies how charges will be assessed through the Transmission Exchange Agreement to Western for its use of its 400 MW. To remedy any confusion, the CAISO proposes amending section 6.3 of the PACI-W Operating Agreement as follows: “Charges for Western’s PACI, including its ownership right of 400 MW, shall be in accordance with the Transmission Exchange Agreement.”<sup>18</sup>

34. We find that the CAISO’s proposed modification to section 6.3 is acceptable. We reject the arguments made by SoCal Edison and SDG&E that treatment of the CAISO’s charges under the PACI-W Operating Agreement is preferential and discriminatory. In accepting the Transmission Exchange Agreement, the Commission recognized that Western would only be charged specific costs when it scheduled its rights over the PACI. SoCal Edison’s and SDG&E’s arguments mirror arguments addressed by the Commission in the December 3 Order and therefore are denied for the same reason: the substantial benefits to the CAISO, Western and PG&E from the reliable operation of the PACI-W.

## **2. Interim COTP Agreement**

35. The COTP is a 500 kV line from the Captain Jack substation in Oregon to a terminus near PG&E’s Tesla substation in central California. The COTP created a parallel third-circuit to the two existing 500 kV lines of the Pacific Intertie. The combined three 500 kV lines are referred to as the COI.<sup>19</sup> As a result of the cancellation of the Coordinated Operation Agreement and the transfer of Western’s facilities to the SMUD control area, the operation of the COTP will be transferred to the SMUD control area by mid to late 2005. The COTP, as a third line connecting the CAISO control area to the northwest, serves a beneficial role by enhancing the reliability of the western grid. Notably, the COTP, under the control of the CAISO pursuant to previous agreements, is used to coordinate curtailments and reallocate scheduling capability among the three 500

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<sup>18</sup> CAISO Answer at 9.

<sup>19</sup> Parties with ownership interest in the COTP include PG&E, Western and TANC.

kV lines of the COI and their owners in order to avoid disruption of the northwest connection. As a result of the settlement accepted by the Commission in the December 3 Order, the CAISO will continue to be the path operator for the COI, including the COTP, in order to ensure the reliable operation of the COI.<sup>20</sup>

36. The CAISO states that the Owners Agreement requires each party, individually or collectively, to make arrangements with the system control area operator and that the CAISO is currently the control area operator for the COTP. The CAISO states that the Interim COTP Agreement governs the operational relationship between the CAISO and COTP Participants that are not Participating Transmission Owners (non-PTO COTP Participants)<sup>21</sup> with respect to their ownership rights in the COTP. The CAISO states that the Interim COTP Agreement is interim in nature because the parties intend to move the COTP to a different control area in 2005.

37. The Interim COTP Agreement addresses issues such as operating requests, maintenance, outages, emergency response, studies, COI schedules, COI emergencies, voltage control and reactive support, and removal from and restoration of service. The Interim COTP Agreement recognizes the desire of the COTP owners and the CAISO to ensure that the COTP is operated and scheduled in a reliable manner and that charges are settled with the CAISO. As a result, it allows the CAISO to ensure that the transactions on the COTP are consistent with the operations of the CAISO for the interim period when the COTP remains in the CAISO control area. Accordingly, we accept the Interim COTP Agreement. The CAISO's oversight of the COI and COTP through the Owners Agreement and the Path Operating Agreement as well as the Interim COTP Agreement will allow the line to be operated in a reliable manner.

#### **Creation of a Scheduling Entity**

38. The CAISO states that, under the Interim COTP Agreement, non-PTO COTP Participants are required to designate a Scheduling Entity (SE) to provide schedules to the CAISO. The CAISO states that an SE differs from a Scheduling Coordinator because

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<sup>20</sup> The Path Operating Agreement and the Owners Agreement, accepted by the Commission in the December 3 Order, establish this responsibility for the CAISO.

<sup>21</sup> The non-PTO COTP Participants are Western, City of Shasta Lake, Carmichael Water District, San Juan Suburban Water District and TANC. TANC represents the Cities of Alameda, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville, Santa Clara, and Ukiah; the Plumas-Sierra Rural Electric Cooperative; SMUD; Modesto; and the Turlock Irrigation District (Turlock).

the SE is assessed different charges and the final time for schedule changes is 20 minutes before the operating hour.

39. SDG&E and SoCal Edison argue that it is unduly discriminatory to allow COTP Participants to use an SE to schedule over its non-CAISO controlled grid facilities when the CAISO has compelled SDG&E and SoCal Edison to schedule over non-CAISO controlled grid facilities as Scheduling Coordinators. SDG&E states that, under the Southwest Power Line's (SWPL) ownership arrangement, since the beginning of CAISO operations, SDG&E has implemented non-PTO SWPL co-owners' schedules by giving them to the CAISO. It adds that the CAISO has billed SDG&E as a Scheduling Coordinator for these schedules. SDG&E claims that the CAISO has rejected arguments that it may accept schedules from entities that are not Scheduling Coordinators or that SDG&E is something other than a Scheduling Coordinator for SWPL.

40. SDG&E asserts that the Interim COTP Agreement is unduly discriminatory because it absolves non-PTO COTP Participants from CAISO Tariff charges paid by other similarly situated Scheduling Coordinators, except to the extent that non-PTO COTP Participants face grid management charges. SoCal Edison also objects to the appearance that the SE has been created to avoid the assessment of charges under the CAISO Tariff. SoCal Edison bases its concern on the fact that, pursuant to section 7.1 of the Interim COTP Agreement, the SE is not subject to the same charges that a Scheduling Coordinator is subject to under the CAISO Tariff and the Interim COTP Agreement does not list any charges that will be assessed against an SE. SDG&E and SoCal Edison also contend that language in section 6.3 that states that the CAISO will charge the SE grid management charges pursuant to the CAISO Tariff "unless the [CAISO] has agreed to alternative treatment in a binding settlement" is unclear because the applicable settlement is not identified.

41. In its answer, the CAISO states that the SDG&E's argument is without merit because SWPL is not analogous to the COTP and the Commission is already considering the reasonableness of the CAISO's charges for SWPL in Docket Nos. EL04-24 and ER04-115. In its answer, TANC also notes that, since the commencement of CAISO operations, the CAISO has accepted schedules for non-PTOs that did not strictly involve Scheduling Coordinators (*e.g.*, PG&E serving as the proxy or scheduling entity for non-PTOs in northern California for the purpose of submitting schedules to the CAISO). TANC sets forth the benefits of the SE arrangement and argues that the interim nature of the arrangement distinguishes it and disproves the claim of discrimination. TANC also clarifies that the reference to "a binding settlement" in section 6.3 refers to the grid management charge settlement that the non-PTO COTP Participants negotiated in Docket No. ER01-313.

42. In its answer, the CAISO also states that the ability to change schedules up to 20 minutes before the operating hour is a critical requirement for the non-PTO COTP Participants and, therefore, the proposed SE's 20-minute scheduling right is appropriate. The CAISO adds that this mechanism was available in the terminated agreements and is grandfathered here for the short period in which the COTP will remain in the CAISO control area.

43. The creation of an SE is but one piece of the overall package designed to continue service at non-pancaked rates. As such, the Interim COTP Agreement contributes to the continued reliability and scheduling efficiency benefits achieved by the totality of the settlements and agreements filed. Accordingly, we accept the Interim COTP as filed.

44. Additionally, we reject the parties' argument that the use of an SE is inappropriate. The Interim COTP Agreement is not part of the CAISO Tariff. While the Interim COTP Agreement calls for the COTP to be scheduled and operated consistent with the terms of the CAISO Tariff, the Interim COTP Agreement is not for service under the CAISO Tariff. The Interim COTP Agreement provides for the reliable operation of the non-PTO's portion of the COTP, consistent with the CAISO's control area requirements.

**C. Agreements and Notices of Cancellation Related to Western's Transfer to SMUD Control Area**

**1. Motion to Consolidate**

45. Calpine requests that the Commission consolidate Docket No. ER05-149-000 with Docket No. ER05-151-000. It contends that the filings in both those dockets are intended to address the revised relationship between the CAISO, SMUD and Western and thus raise common issues of law and fact. Calpine adds that it has requested the same relief in both proceedings. We deny the request to consolidate Docket No. ER05-149-000 with Docket No. ER05-151-000. The Commission typically consolidates proceedings only for purposes of hearing and decision.<sup>22</sup> As we have not set Docket No. ER05-149-000 or ER05-151-000 for hearing, there is no need to consolidate Docket Nos. ER05-149-000 and ER05-151-000.

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<sup>22</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, 105 FERC ¶ 61,108 at P 14 (2003).

**2. Docket No. ER05-149-000: CAISO/SMUD ICA Operating Agreement Amendment No. 2**

46. The CAISO/SMUD ICA Operating Agreement<sup>23</sup> is designed to assist the CAISO and SMUD in coordinating the operation and maintenance of their interconnected control areas consistent with NERC and WECC criteria. The CAISO states that, to ensure that all reliability issues are addressed in the transfer of Western from the CAISO control area to the SMUD control area, Amendment No. 2 provides that SMUD and the CAISO shall coordinate with all entities with ownership rights to the interconnection facilities in advance of implementation of the CAISO-SMUD control area boundary change.

47. Amendment No. 2 addresses the change in relationship between the CAISO and SMUD as a result of Western joining the SMUD control area and transferring certain Western loads, generation and transmission facilities at 230 kV and below that are directly connected to the Western system into the SMUD control area. Specifically, Amendment No. 2 expands the interconnection points between SMUD and the CAISO from four to ten; requires SMUD to recertify its expanded control area with NERC and the WECC; provides for dynamically scheduled energy and non-regulation ancillary services between the CAISO and SMUD; and recognizes that, although Western will have operational control over its facilities, SMUD will have the ultimate authority as the control area operator.

**a. Interconnection Points**

48. PG&E argues that proposed Service Schedule 1 of the CAISO/SMUD ICA Operating Agreement must be revised to more accurately calculate losses at three CAISO-SMUD interconnections. With respect to the Tracy-Westley Interconnection, PG&E asserts that the filed meter data adjustment which accounts for the remote location of the point of control area change from the meter must be modified to reflect that the Tracy-Westley 230 kV line operates in parallel with other lines on the CAISO-controlled grid. PG&E also contends that Amendment No. 2 should be revised to apply appropriate meter data compensation to reflect the losses through the 500-230 kV transformers at the

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<sup>23</sup> On April 26, 2002, the CAISO filed the original ICA Operating Agreement in Docket No. ER02-1641-000. On June 24, 2002, pursuant to delegated authority, the Commission's Director of Division of Tariffs and Rates – West accepted that filing. It is designated as Original FERC Rate Schedule No. 42, Original Sheet Nos. 1-50. On September 26, 2003, in Docket No. ER03-1155-000, pursuant to delegated authority, the Commission's Director of the Division of Tariffs and Market Development - West accepted Amendment No. 1 to the ICA Operating Agreement.

Olinda and Tracy 230 Interconnections. PG&E argues that these adjustments are required because the meters for the Olinda and Tracy 230 Interconnections are on the low side of their respective transformer banks and the CAISO's loss model does not calculate transformer resistance loss. PG&E claims that, if these corrections are not made, CAISO customers will absorb losses that should be charged to the SMUD control area.

49. PG&E also notes a misstatement in the location of a metering point in proposed Service Schedule 4 for the Herdlyn 69 kV Interconnection. It requests that the Common Point of Tie Line Metering for that interconnection be changed from the Herdlyn Substation to the Tracy Substation.

50. In its answer, SMUD states that PG&E and SMUD agree that only the treatment of losses on the Tracy-Westley line requires adjustment. It states that SMUD, PG&E and the CAISO are "in agreement that real time metered data should be used to compensate losses until the meters are located at the control area boundary at Westley or it is decided that the Westley Bus is in the SMUD control area."<sup>24</sup> In its answer, the CAISO states that SMUD, PG&E and the CAISO have agreed that the losses will be dynamically adjusted in the meter based on the actual flows across the transmission line.

51. In its answer, SMUD also states that SMUD explained, and PG&E agreed, that the 500-230 kV transformers at the Olinda and Tracy substations have lower losses than what can be accurately measured by revenue metering and that no further action is needed. SMUD states that it has discussed these clarifications with the CAISO, which has not raised concerns with SMUD's proposed resolution. In its answer, the CAISO confirms that the issue has been resolved.

52. In its answer, SMUD acknowledges the misstatement in the location of a metering point in proposed Service Schedule 4 for the Herdlyn 69 kV Interconnection. In its answer, the CAISO commits to making this revision. SMUD adds that, based upon their mutual agreement, PG&E has agreed to withdraw its protest conditioned upon SMUD's implementation of the changes described above.

53. Our review indicates that SMUD and the CAISO have attempted to address PG&E's request for clarification, and it appears that they have addressed all of PG&E's concerns regarding the interconnection points. Therefore, we direct the CAISO to make a compliance filing within 30 days of the date of this order with the revisions described above.

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<sup>24</sup> SMUD Answer at 3.

**b. Movement of Sutter Power Plant to SMUD control area**

54. The Sutter Power Plant (Sutter)<sup>25</sup> is a new large scale generating facility that came on-line to help supply shortfalls experienced during the California energy crisis. While Sutter is connected to Western's 230 kV transmission line near Yuba City, California, Sutter is currently within the CAISO control area. As a result of Western's decision to join the SMUD control area, Sutter will also no longer be within the CAISO control area.

55. Calpine argues that Amendment No. 2 fails to meet the FPA's just and reasonable standard because of the failure of SMUD and Western to establish fair and nondiscriminatory procedures governing their respective revised relationship with Sutter.

56. Calpine contends that the change in control areas will impose direct and substantial financial costs on Sutter. It also claims that the change will negatively impact Sutter's ability to provide ancillary services, even after dynamic scheduling is implemented, and Sutter's operation generally due to the lack of agreed-upon scheduling and operating parameters. Calpine also argues that, contrary to Commission policy, the new SMUD control area arrangement creates a new seam between Sutter and its primary markets in the CAISO.

57. Calpine requests that the Commission require SMUD to enter into a control area service agreement with Calpine as a condition to accepting Amendment No. 2. Calpine also requests that the Commission require SMUD and Western to hold Calpine harmless from the adverse effects of the voluntary, control area restructuring, as the Commission has required in analogous situations.<sup>26</sup> In order to accomplish this result, Calpine requests that the Commission direct the CAISO, SMUD, Western and Calpine to enter into arrangements for dynamic transfer beyond the dynamic scheduling procedures the CAISO has recently adopted. Calpine also requests that the Commission establish, on an expedited basis, a technical conference to address Sutter's operational and scheduling requirements and develop appropriate contractual provisions.

58. The Commission recognizes that the decision by Western has the potential to create seams and that the best option would likely have been for Western to become a

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<sup>25</sup> Sutter is owned by Calpine Finance.

<sup>26</sup> *Citing Alliance Co.*, 100 FERC P 61,137 at P 53 (2002); *PJM Interconnection, L.L.C.*, 107 FERC P 61,087 (2004); *PJM Interconnection, L.L.C.*, 107 FERC P 61,090 at P 28 (2004); *California Indep. Sys. Operator Corp.*, 108 FERC P 61,254 at P 66 (2004); *PP&L Resources, Inc.*, 90 FERC P 61,203 at 61,651 (2000).

PTO under the CAISO's Transmission Control Agreement.<sup>27</sup> However, Western considered that alternative and rejected it in favor of joining the SMUD control area.<sup>28</sup> The decision to transfer control areas was made by Western using a public process and Commission approval for that decision was not required.<sup>29</sup> The Commission has approved standards in the CAISO Tariff that apply to the dynamic scheduling of imports of energy and ancillary services from resources external to the CAISO control area,<sup>30</sup> and the Commission encourages the CAISO, Western and SMUD to continue to develop dynamic scheduling programs which will benefit generators, including Calpine, and customers. Amendment No. 2 merely ensures the proper functioning of the CAISO-controlled grid given Western's decision. Moreover, as neither SMUD nor Western is a public utility, we cannot direct them to hold Calpine harmless<sup>31</sup> or direct them to enter into arrangements for dynamic scheduling under section 205 of the FPA. We note that the CAISO has filed the CAISO/Calpine Energy Dynamic Scheduling Agreement in Docket No. ER05-154-000, which we accept below.

**3. Docket No. ER05-151-000: CAISO/Western Operating Agreement and Revisions to CAISO/Western MSA**

59. The CAISO states that the proposed CAISO/Western Operating Agreement is based on the *pro forma* Utility Distribution Company (UDC) operating agreement.<sup>32</sup> The Operating Agreement would govern the physical and operational interface between Western and the CAISO-controlled grid. The CAISO states that the Operating

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<sup>27</sup> See December 3 Order, 109 FERC at P 55.

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

<sup>29</sup> *Id.* at P 120.

<sup>30</sup> *California Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,329 (2004).

<sup>31</sup> This proceeding is distinguishable from the cases cited by Calpine in which the Commission required that customers be held harmless from the effects of the restructuring by transmission providers because the parties that were required to hold others harmless in those cases were public utilities.

<sup>32</sup> The *pro forma* UDC operating agreement applies to utilities that own or operate their distribution systems within the CAISO control area and participate in the California market by transmitting energy or ancillary services to or from the CAISO-controlled grid or are directly connected to the CAISO-controlled grid.

Agreement would: (1) set access, testing and emergency procedures for meters and similar equipment; (2) govern system emergencies consistent with the CAISO Tariff; (3) provide that the CAISO will adopt a non-discriminatory approach to load shedding in the event of a system emergency; and (4) supplement provisions of the CAISO Tariff regarding the electrical emergency plan, load restoration, record keeping, and the gathering and sharing of information. The CAISO states that for information purposes only it has also filed revised Schedules 1 and 2 of the CAISO/Western MSA.<sup>33</sup>

**a. Clarification of PG&E's Obligations**

60. PG&E seeks clarification that, since PG&E is not a party to the CAISO/Western Operating Agreement, it does not have any obligations under the Operating Agreement, particularly under Schedules 6 through 10 and section 3.1.1, which concern load shedding and load restoration. PG&E states that this clarification is necessary to ensure that PG&E does not incur any obligation under the contract and that Western, as the load serving entity that is party to the Operating Agreement, accepts and performs the obligations set forth under the CAISO Tariff for all load serving entities. PG&E also notes that it is willing to discuss with Western any issues related to shedding and restoration of Western's customer loads.

61. In its answer, the CAISO clarifies that nothing in the CAISO/Western Operating Agreement alters PG&E's existing obligations (*e.g.*, with regard to load shedding and restoration). The CAISO notes, however, that a contractual arrangement is needed to address load shedding and restoration obligations associated with Western's customers after the Operating Agreement and other agreements go into effect on January 1, 2005. Western agrees with these statements. Western adds that it is working with PG&E to reach agreement on such a contractual arrangement.

62. Our review indicates that, in its answer, the CAISO and Western have clarified that PG&E does not have any obligations under the CAISO/Western Operating Agreement. Therefore, PG&E's request for clarification of this issue has been resolved. However, to the extent that PG&E and Western reach an agreement on a contractual arrangement on load shedding and restoration obligations and to the extent that that agreement needs to be filed with the Commission, we would expect PG&E to timely file that agreement.

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<sup>33</sup> The MSA establishes the terms and conditions by which a Scheduling Coordinator provides settlement quality meter data for the metered entities that it represents to the CAISO revenue meter data acquisition and processing system.

**b. Schedule 1 and Section 3.1.1**

63. PG&E states that the list of customers in Schedule 1 is incomplete. PG&E also states that Schedule 1 is inconsistent with section 3.1.1 and that the restriction on entities that qualify for inclusion in Schedule 1 is inappropriate.

64. In its answer, in order to harmonize Schedule 1 with section 3.1.1, as PG&E requests, the CAISO proposes to expand Schedule 1. With respect to PG&E's concern regarding the restriction on inclusion in Schedule 1, the CAISO states that customers not listed in Schedule 1 are (1) the customers served by Western but for whom Western is not a Scheduling Coordinator and (2) the dual supply customers that are served by both PG&E and Western. To clarify these points, the CAISO proposes to modify Schedule 1 by adding language that lists Western's customers that are in the CAISO control area and the Power and Water Resource Pooling Authority and have made Scheduling Coordinator arrangements with Western but for whom Western is not the primary supplier. The CAISO also proposes to add language that states that Western believes that the remaining dual-supply customers serve their load as PG&E customers and therefore PG&E is responsible for ensuring that its UDC operating agreement covers these entities. In its answer, Western proposes similar language.

65. Our review indicates that the CAISO has attempted to address PG&E's request for clarification, and it appears that the CAISO has addressed all of PG&E's concerns regarding Schedule 1 and section 3.1.1. Therefore, we direct the CAISO to make a compliance filing, within 30 days of the date of this order, to amend Schedule 1 of the CAISO/Western Operating Agreement as the CAISO has proposed.

**c. Movement of Sutter to SMUD control area**

66. Calpine requests that the Commission accept, subject to refund, and nominally suspend the Operating Agreement conditioned upon: (1) Western, SMUD and Calpine executing an acceptable control area service agreement; (2) the CAISO, SMUD and Western entering into arrangements with Calpine, including dynamic transfer protocols; and (3) SMUD's and Western's providing assurance that they are able and willing to fulfill their new control area responsibilities with respect to generators who will become part of the SMUD control area.<sup>34</sup>

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<sup>34</sup> Calpine incorporates by reference the arguments that it raised with respect to Amendment No. 2 which are set forth above.

67. We deny Calpine's protest for the reasons discussed above.<sup>35</sup>

**4. Docket No. ER05-150-000: CAISO/Trinity UDC Operating Agreement**

68. Under section 4.1.1 of the CAISO Tariff, the CAISO is not obligated to accept schedules, adjustment bids or bids for ancillary services which would require energy to be transmitted to or from the distribution system of a UDC directly connected to the CAISO-controlled grid unless that UDC has entered into a UDC operating agreement. Pursuant to this provision, the CAISO has filed the unexecuted CAISO/Trinity UDC Operating Agreement. The CAISO states that Trinity is directly connected to the CAISO-controlled grid at PG&E's 115 kV and 60 kV transmission facilities. The CAISO concedes that Trinity's peak load of approximately 17 MW is not a substantial concern in comparison to CAISO system's entire peak load of approximately 45,000 MW; however, the CAISO believes that numerous entities of Trinity's size could in the aggregate represent a reliability issue. Therefore, it states that the CAISO Tariff requires it to obtain contractual commitments from Trinity. The CAISO states that Trinity has elected not to sign its own UDC operating agreement or to be included in the CAISO/Western Operating Agreement, thus creating the need for this unilateral filing.

69. Trinity asserts that the UDC Operating Agreement is not necessary to accommodate Western's inclusion in the SMUD control area because Trinity's distribution system is not directly connected to either Western's or SMUD's transmission system. It adds that, unless the CAISO allows dynamic scheduling, Trinity will remain in the CAISO-controlled grid regardless of whether Western joins SMUD's control area.

70. Trinity also claims that it does not qualify as a UDC because it fails to meet the requirements of a UDC, given the definition of that term in the CAISO Tariff and because it has not executed a UDC operating agreement.<sup>36</sup> Therefore, Trinity concludes that section 4.1.1 of the CAISO Tariff does not apply to it and the CAISO cannot rely on that provision as a basis for unilateral action.

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<sup>35</sup> *See supra* paragraph 58.

<sup>36</sup> *Citing* CAISO Reply Comments at 9 (Docket No. ER98-899-000); CAISO Answer Brief at 312 (Docket No. ER98-3760-000); CAISO Motion for Clarification and Request for Reconsideration at 3 (Docket No. ER98-3760-006); *California Indep. Sys. Operator Corp.*, 103 FERC ¶ 61,042 at 61,169 (2003).

71. Trinity adds that the CAISO's application of section 4.1.1 of the CAISO Tariff to Trinity is unduly discriminatory because: (1) the CAISO Tariff and Commission precedent require the CAISO to honor the Electric Transmission and Distribution Operating Agreement (Existing Operating Agreement) entered into by Trinity and PG&E prior to the date that the CAISO assumed control of PG&E's transmission facilities and (2) the CAISO has chosen not to apply section 4.1.1 to two similarly situated entities, Turlock and Modesto, instead honoring their existing interconnection agreements with PG&E.

72. Trinity also argues that there is no need for it to execute an agreement directly with the CAISO because: (1) Trinity poses no real reliability threat to the CAISO-controlled grid due to the small size of its load and operations and because few entities of Trinity's size are directly connected to the CAISO-controlled grid and (2) the Existing Operating Agreement governs coordinated operations between the Trinity and PG&E systems. Trinity states that it is also concerned that conflicts exist between the UDC Operating Agreement and the Existing Operating Agreement.

73. Notwithstanding Trinity's belief that the UDC Operating Agreement is unnecessary, Trinity and the CAISO have attempted to find a workable solution for both parties. Trinity states that the CAISO's premature termination of good faith negotiations resulted in the filing of an unworkable agreement. If it must abide by the UDC Operating Agreement, Trinity requests that the Commission direct staff to convene a technical conference to ensure that the terms and conditions of the UDC Operating Agreement are just, reasonable and nondiscriminatory.

74. The proposed CAISO/Trinity UDC Operating Agreement raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

75. Our preliminary analysis indicates that the proposed CAISO/Trinity UDC Operating Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept the proposed CAISO/Trinity UDC Operating Agreement for filing, suspend it for a nominal period, make it effective January 1, 2005, as requested, subject to refund, and set this matter for hearing and settlement judge procedures.

76. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the

Commission's Rules of Practice and Procedure.<sup>37</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>38</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

77. We recognize that we have also set Docket No. ER05-130-000 for hearing in a concurrently issued order in Docket No. ER05-116-000, *et al.* Given the variety of issues involved, we will not consolidate these proceeding. On the other hand, however, we recognize that some efficiencies could be gained from consolidation. Accordingly, the parties may file motions for consolidation, and we will leave to the Chief Administrative Law Judge's discretion whether to consolidate some or all of these proceedings, in whole or in part, and, if he chooses to consolidate any or all of the proceedings, in whole or in part, how the consolidation should occur.<sup>39</sup>

**5. Docket No. ER05-153-000: Notice of Cancellation of CAISO/Roseville MSSA**

78. The CAISO/Roseville MSSA sets forth the terms and conditions by which Roseville operates its electric resources within the CAISO control area; schedules transactions that use the CAISO-controlled grid and participates in the CAISO's markets; and meets the CAISO Tariff's operational requirements.<sup>40</sup> The CAISO filed the proposed

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<sup>37</sup> 18 C.F.R. § 385.603 (2004).

<sup>38</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

<sup>39</sup> 18 C.F.R. § 385.503 (2004).

<sup>40</sup> On July 15, 2002, as amended on July 30, 2002, the CAISO/Roseville MSSA in Docket No. ER02-2321. On August 30, 2002, the Commission accepted the MSSA. *California Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,234 (2002). On January 3, 2003, in Docket No. ER02-2321-003, pursuant to delegated authority, the Commission's Director of the Division of Tariffs and Market Development – West accepted the

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CAISO/Roseville Notice of Cancellation because Roseville will no longer be in the CAISO control area after Western joins the SMUD control area on January 1, 2005 and the MSSA will not be applicable after that date. No comments or protests were filed.

79. Because the CAISO/Roseville MSSA will no longer be applicable after Western joins the SMUD control area on January 1, 2005, we accept the CAISO/Roseville Notice of Cancellation, to become effective on January 1, 2005, as requested.

6. **Docket No. ER05-154-000: CAISO/Calpine Energy Dynamic Scheduling Agreement and Notices of Cancellation of CAISO/Calpine PGA and MSA**

80. The CAISO states that the CAISO/Calpine Energy Dynamic Scheduling Agreement implements the CAISO Tariff provisions relating to dynamic imports of energy, supplemental energy and energy associated with non-regulation ancillary services (spinning reserves and non-spinning reserves) by Scheduling Coordinators from system resources. The CAISO also states that the Dynamic Scheduling Agreement will allow Calpine Energy to dynamically schedule with the CAISO once Calpine is not part of the CAISO control area effective January 1, 2005. The CAISO states that the Dynamic Scheduling Agreement satisfies the requirements established by the Commission with respect to Amendment No. 59 to the CAISO Tariff.<sup>41</sup>

81. With a few exceptions, the PGA is applicable to all generators whose generating units are interconnected to the electric grid in the CAISO control area and wish to participate in the California market by scheduling energy or by submitting bids through a Scheduling Coordinator to the CAISO. The CAISO states that, because Calpine Finance's generating units that are included in the PGA will no longer be interconnected to the electric grid in the CAISO control area after January 1, 2005, the CAISO/Calpine PGA will no longer be necessary and Calpine Finance has consented to its cancellation as of that date.

82. The MSA establishes the terms and conditions by which a generating unit and the CAISO collect and transfer meter data. The CAISO states that, because Calpine Finance

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(continued)

currently effective CAISO/Roseville MSSA. It is designated as Service Agreement No. 458.

<sup>41</sup> *Citing California Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,329.

will no longer be a generator in the CAISO control area after January 1, 2005, the CAISO/Calpine MSA will no longer be necessary and Calpine Finance has consented to its cancellation as of that date.

83. The Calpine Parties support the Commission's acceptance of the Dynamic Scheduling Agreement, but they protest the CAISO/Calpine Notices of Cancellation for the limited purpose of requesting a delay of their effective date until the issues raised in Docket Nos. ER05-149-000 and ER05-151-000 have been resolved.

84. We find that the CAISO/Calpine Energy Dynamic Scheduling Agreement is just and reasonable and accept it for filing, to become effective on January 1, 2005, as requested. We have resolved the issues that Calpine has raised in Docket Nos. ER05-149-000 and ER05-151-000, as discussed above; therefore, Calpine's request is moot. Therefore, we accept the CAISO/Calpine Notices of Cancellation, to become effective on January 1, 2005, as requested.

The Commission orders:

(A) The PACI-W Operating Agreement and the Interim COTP Agreement are hereby accepted for filing, to become effective on January 1, 2005, as designated, as discussed in the body of this order.

(B) The CAISO/SMUD ICA Operating Agreement Amendment No. 2; CAISO/Western Operating Agreement and Revisions to CAISO/Western MSA; Notice of Cancellation of CAISO/Roseville MSSA; and CAISO/Calpine Energy Dynamic Scheduling Agreement and Notices of Cancellation of CAISO/Calpine PGA and MSA are hereby accepted for filing, to become effective January 1, 2005, as designated, as discussed in the body of this order.

(C) The CAISO is hereby directed to submit, within 30 days of the date of this order, compliance filings in Docket Nos. ER05-149-000 and ER05-151-000, as discussed in the body of this order.

(D) The CAISO/Trinity UDC Operating Agreement is hereby accepted for filing, suspended for a nominal period, to become effective on January 1, 2005, subject to refund, and set for hearing and settlement judge procedures, as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA

(18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the CAISO/Trinity UDC Operating Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(G) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall within fifteen (15) days of the date of the presiding judge's designation, convene a conference in these proceedings, in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Kelliher concurring with a separate statement attached.

( S E A L ) Chairman Wood concurring with a separate statement to be issued later.

Magalie R. Salas,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation      Docket Nos. ER05-149-000  
ER05-150-000  
ER05-151-000  
ER05-153-000  
ER05-154-000  
ER05-155-000

(Issued December 30, 2004)

Joseph T. KELLIHER, Commission *concurring*:

I note that there is no support in the record for the statement in paragraph 58 that “the best option would likely have been for Western to become a PTO under the CAISO’s Transmission Control Agreement.”

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Joseph T. Kelliher