UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell

California Independent System Operator Corp. Docket No. ER00-2019-001

ORDER ON REHEARING

(Issued July 10, 2003)

1. On March 31, 2000, the California Independent System Operator Corporation (ISO or Cal ISO) filed Amendment No. 27 to its tariff, proposing a new methodology for determining transmission Access Charges, through which the embedded costs of the transmission facilities comprising the Cal ISO controlled grid are recovered. The filing was required by legislation restructuring the California electric industry, and later by this Commission.[1] The Cal ISO Governing Board approved the Transmission Access Charge (TAC) filing after an extensive stakeholder process. In an order issued May 31, 2000, the Commission accepted for filing, suspended, and set for hearing the proposed Access Charge methodology and related tariff revisions.[2] The Commission also held the hearing in abeyance pending efforts at settlement and established settlement judge procedures. Fourteen parties sought rehearing.

2. In this order, we deny rehearing of several of the issues addressed in the May 2000 Order, grant rehearing in part, and refrain from acting on other issues while they are adjudicated before an Administrative Law Judge. This action benefits customers by clarifying and lending finality to aspects of the TAC and by facilitating the hearing process, allowing for a full record to be developed where warranted.

Cal ISO's TAC Proposal

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[1]Section 9600(a)(2)(A) of California's A.B. 1890 required Cal ISO to recommend a new rate methodology within two years after commencement of operations. See Pacific Gas & Electric Company, et al., 77 FERC ¶ 61,204 at 61,827 (1996).

[2]California Independent System Operator Corp., 91 FERC ¶ 61,205 (2000) (May 2000 Order).

3. The previous Access Charge methodology consisted of three separate zone rates based on the revenue requirement of the Participating Transmission Owners (Participating TOs). Under Amendment No. 27, that methodology was to continue in effect until a new Participating TO joined Cal ISO. Once that occurred, the Access Charge for high voltage transmission facilities[3] would be assessed based on the combined transmission revenue requirements of all the Participating TOs in each "TAC area," which correspond to each of the three control areas that were combined to form the ISO control area. If the Los Angeles Department of Water and Power (LADWP) chooses to become a Participating TO, its control area would become a fourth TAC area.

4. The Cal ISO proposed that, over a ten-year transition period, the high voltage Access Charge (HV Access Charge) for the TAC areas would be combined to form a single ISO grid-wide Access Charge. This would be accomplished by blending the individual TAC area high voltage transmission revenue requirements with the sum of <u>all</u> Participating TOs' high voltage transmission revenue requirements, with the proportion represented by the ISO grid-wide portion increasing by ten percent each year. In addition, capital investments in any new high voltage transmission facilities, or additions to existing facilities, would be included in the ISO grid-wide component of the HV Access Charge. The low voltage transmission Access Charge would continue to be specific to each Participating TO.

5. Cal ISO explained that, as a result of the stakeholder process, the proposed Access Charge methodology "incorporates an integrated set of provisions to balance the costs borne and benefits received by all affected stakeholder classes,"[4] primarily addressing likely cost shifts between current and new Participating TOs, which generally have higher cost transmission facilities. With the advent of the new methodology, customers of current Participating TOs might pay higher transmission rates, but the amount of that increase would be mitigated by a ceiling on cost shifts in any one year during the 10-year transition period. The Cal ISO believed that this potential for cost increases was balanced by certain benefits to the customers of existing Participating TOs, such as a lower Grid Management Charge (GMC), reduced congestion costs, and potentially lower costs for energy and ancillary services.

6. New Participating TOs would bear any increased costs as a result of being subject to the Access Charge and the GMC. So that those increased costs would not deter the

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[3]High voltage transmission facilities are those transmission facilities in the ISO controlled grid that operate at 200 kV and above.

[4]Transmittal Letter at 7.

entry of new Participating TOs, the proposed methodology included a "hold harmless" provision whereby the existing Participating TOs would compensate the new Participating TOs for any net increase in these costs for the 10 year transition period. The proposal included a ceiling on the amount by which the TAC for each original Participating TO can increase during each year of the transition period ("cost shift cap") incurred as a result of the Access Charge methodology or the hold harmless provision. In addition, Cal ISO proposed a "buy-down" provision that would require new Participating TOs to use any cost-shifting benefits they received solely to reduce their transmission plant investment, thereby lowering their transmission revenue requirements.

7. Other significant features of the proposal, intended to encourage new Participating TOs to join Cal ISO, included:

> any new Participating TO would receive firm transmission rights (FTRs) associated with the transmission facilities or entitlements it turned over to Cal ISO's operational control, without having to purchase them in an auction;
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> establishment of a Revenue Review Panel (RRP) independent of the Commission that would have the authority to review transmission revenue requirements of entities that are not subject to FERC's jurisdiction; and
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> permitting the systems of new Participating TOs to qualify as Metered Subsystems[5] to facilitate their continued operation as vertically integrated utility systems while enabling them to participate in Cal ISO.

8. Numerous entities protested the proposal. Municipal utilities and other entities not subject to FERC jurisdiction (Governmental Entities, or GEs) were nearly unanimous in their opposition to the TAC filing, urging some combination of rejection, suspension, and establishment of hearing or settlement judge proceedings. Specific elements of concern included the use of the RRP, the ceiling on cost increases for existing Participating TOs, the use of gross load rather than net load as the appropriate billing unit, and the fact that FTRs would be made available to GEs outside of the auction process for no longer than the ten-year transition period. Many also objected to aspects of the Metered Subsystems

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[5]Cal ISO defines a MSS as a geographically contiguous system of a new Participating TO, located within a single zone which has been operating for a number of years prior to the ISO Operations Date subsumed within the ISO Control Area and encompassed by ISO certified revenue quality meters at each interface point with ISO grid and ISO certified revenue quality meters on all generating units internal to the system which is operated in accordance with a MSS agreement.

provisions, and they sought rejection of the buy-down provision. Others asserted that the proposal unduly discriminates in favor of GEs in order to induce their participation in the Cal ISO.

May 2000 Order and Related Proceedings

9. The May 2000 Order accepted the proposed tariff amendment, suspended it for a nominal period, subject to refund, set it for hearing, and established settlement judge procedures. To assist settlement efforts, the Commission provided guidance on major issues of contention. The Commission specifically set for hearing or found the record inadequate to determine: (1) whether a 10-year transition period and proposed limits on cost shifts are the proper ones to mitigate cost shifts; (2) whether Cal ISO's exception from gross load billing for existing QF facilities are applied on a non-discriminatory basis; and (3) the details of Cal ISO's plans for FTR conversion. The Commission chose not to address other remaining issues in order to afford the parties and the settlement judge flexibility to reach in an overall settlement. Fourteen parties filed requests for rehearing touching on most aspects of the May 2000 Order. The City of Vernon (Vernon) and the Los Angeles Department of Water and Power (LADWP) filed limited answers. LADWP subsequently withdrew both its protest and its answer.

10. The parties engaged in extensive settlement discussions over the course of two and a half years. Finally, on December 9, 2002, the Chief Administrative Law Judge terminated settlement procedures, and initiated hearing procedures shortly thereafter. Parties recently submitted testimony to the presiding judge, trial staff's testimony is due shortly, and the hearing is scheduled to commence in September of this year.

11. In response to dysfunctions in the California wholesale electricity market, Cal ISO proposed in the spring of 2002 a comprehensive market redesign. This market redesign proposed revisions which, among other things, would address the congestion management within the ISO-controlled grid. A number of Commission orders have ruled on various aspects of the market redesign.[6]

12. In July 2002, Cal ISO filed Tariff Amendment No. 46 and related Agreements to revise the requirements for Metered Subsystems (MSS) operating within Cal ISO's markets. The revisions were designed to allow Governmental Entities and non-participating transmission owning entities to participate in Cal ISO markets and to enable

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[6]California Independent System Operator Corp., 100 FERC ¶ 61,060, order on reh'g and compliance, 101 FERC ¶ 61,061 (2002), order on reh'g, 102 FERC ¶ 61,050 (2003).

them to operate within Cal ISO's system more consistently with Cal ISO protocols and market rules. The Commission conditionally accepted the proposal.[7]

13. On March 11, 2003, Cal ISO filed Tariff Amendment No. 49 in Docket No. ER03-608-000, proposing to modify the Transmission Access Charge amendments that were previously accepted for filing and set for hearing in this proceeding. Cal ISO explained that Amendment No. 49 reflected changes based on three years of operational experience and on topics discussed during the settlement discussions. The Commission rejected one of the proposed tariff revisions, accepted some tariff provisions without suspension, accepted and suspended others, and consolidated those suspended provisions for purposes of hearing and decision with the ongoing hearing proceeding in Docket No. ER00-2019-000, et al.[8] Of relevance here were provisions (1) eliminating the RRP and (2) eliminating a date restriction on which Qualifying Facilities would be excluded from gross load billing.

Discussion

Procedural Matters

14. After issuance of the May 2000 Order, the City of Pasadena (Pasadena), and the City of San Diego (San Diego) filed motions to intervene out-of-time; each agreed to accept the record as it stood. On November 7, 2000, the Chief Judge issued an order confirming the oral granting of San Diego's late intervention. Given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay, we will grant Pasadena's motion to intervene out-of-time.[9]

15. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2003), answers to rehearing requests are prohibited. Accordingly, we will reject Vernon's answer.

16. Turlock Irrigation District, Sacramento Municipal Utility District, and the City of Burbank withdrew their motions to intervene and/or requests for rehearing in January

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[7]California Independent System Operator Corp., 100 FERC ¶ 61,234 (2002), reh'g denied, 102 FERC 61,146 (2003) (MSS Order).

[8]California Independent System Operator Corp., 103 FERC ¶ 61,260 (2003) (TAC Amendment Order).

[9]18 C.F.R. § 385.214(d) (2003).

2003. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,[10] these withdrawals became effective after 15 days.

Revenue Review Panel

17. Cal ISO's initial proposal required that GEs that are new Participating TOs submit their high voltage transmission revenue requirement (TRR) to the ISO and that if any objection were raised that could not be resolved, the justness and reasonableness of the revenue requirement would be evaluated by the RRP in accordance with standards established by the Commission pursuant to the Federal Power Act (FPA). Cal ISO proposed that the decisions of the RRP would be final and not subject to further review. The Commission discussed in the May 2000 Order that its specific authority to review the transmission revenue requirements of Governmental Entities is not established but that the Commission must be able to determine that costs incurred by Governmental Entities and passed through by Cal ISO to its customers are just and reasonable. The Commission concluded that prior review by the RRP may be acceptable, but that permitting the RRP's findings to be final and non-appealable would be inconsistent with the Commission's statutory responsibilities.

18. In a subsequent compliance filing, Cal ISO proposed and the Commission accepted an arrangement whereby Governmental Entities could choose (1) to file a TRR directly with the Commission in accordance with the rules and requirements established by the Commission, or (2) submit to Cal ISO its TRR, and any decision by the RRP would be subject to review and acceptance by the Commission.[11] Pursuant to Cal ISO's revised tariff, the City of Vernon voluntarily submitted its TRR to the Commission for review. The Commission accepted, with certain revisions, Vernon's proposal to use the rate methodology of SoCal Edison (in whose TAC area it is located) and the resulting TRR.[12]

19. PG&E appealed the approach and the standard of proof used by the Commission in considering these filings to the Court of Appeals for the D.C. Circuit contending, among other things, that the Commission's review was insufficient to ensure that Cal ISO's rates remained just and reasonable. The Court found that the Commission was unclear under

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[10] 18 C.F.R. § 385.216(b) (2003).

[11] California Independent System Operator Corp., 93 FERC ¶ 61,104 (2000), reh'g denied, 94 FERC ¶ 61,148 (2001).

[12] City of Vernon, California, 93 FERC ¶ 61,103 (2000), reh'g denied, 94 FERC ¶ 61,148 (2001).

what standard it reviewed Vernon's TRR to ensure that a pass through of its costs by Cal ISO would be just and reasonable, and also found that the orders on review did not reveal a method for ensuring just and reasonable rates. The Court remanded the case for the Commission to "articulate with clarity what approach and standard are governing its review and how both ensure the CAISO's rates are just and reasonable under § 205."[13]

20. On rehearing of the May 2000 Order, TANC, Cities/M-S-R, and Modesto object to the implementation of an RRP and vesting it with rate review authority over the rates established by a GE. They contend that the revenue requirement established by a Governmental Entity for sale by Cal ISO is not reviewable under the FPA and that neither the Commission nor Cal ISO (through the RRP) have the authority or jurisdiction to set the rates of GEs. They argue that the Commission's right and obligation to review Cal ISO's rates, must be distinguished from its lack of authority to review non-jurisdictional GE rates, and ask the Commission to reject the RRP concept.

Commission Response

21. To date, every Governmental Entity that has chosen to join the ISO has filed its TRR directly with the Commission; the RRP has never been utilized. Cal ISO's Amendment No. 49 proposed, among other things, to eliminate the RRP. The Commission accepted that portion of the proposal. Thus, all rehearing issues dealing with the appropriate role and authority of the RRP have been rendered moot.

22. Regarding the Commission's authority to review GE's rates, we continue to believe that some level of review is required by the FPA. The Commission is not purporting to set the rates of GEs (as some would argue), but, as the court indicated in PG&E,[14] we must be able to conclude that Cal ISO's rates after the inclusion of a GE's TRR are just and reasonable. The issues of what approach and standard to use are pending on remand and will not be decided here.

Firm Transmission Rights

23. In its March 31, 2000 filing, Cal ISO stated that, during the ten-year transition period (or a shorter period representing the term of an Existing Contract), a new Participating TO that converts existing Rights to ISO transmission service will receive

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[13]Pacific Gas and Electric Company v. FERC, 306 F.3d 1112 at 1119 (D.C. Cir. 2002) (PG&E).

[14]See id.

FTRs represented by those rights directly, without the necessity of participating in the ISO's auction. The number of FTRs that the new Participating TO receives will be commensurate with the transmission service represented by its Converted Rights, which would be determined when an entity with Existing Rights applies to become a Participating TO.

24. The May 2000 Order found the ISO's proposal to exempt new Participating TOs from the auction process during the transition period to be reasonable since it was an inducement to encourage participation in the ISO. The May 2000 Order also found reasonable the ISO's proposal that the FTRs be limited to the lesser of the ten-year transition period or the life of the contract if the term is less than ten years. Finally, the May 2000 Order stated that more information was needed regarding various aspects of the ISO's proposed treatment of FTRs.

25. Cities/M-S-R, TANC, Modesto, and Metropolitan urge the Commission to grant rehearing on this issue and determine that Participating TOs should be able to receive FTRs without participating in the FTR auction for the following periods: (1) for the life of the transmission facility where the new Participating TO turns over such facility to the Operational Control of the ISO and (2) for the full term of an ETC even where that ETC has a term beyond the ten-year transition period. PG&E seeks clarification that under the ISO's proposal, new Participating TOs will not receive FTR auction revenues associated with converted contractual rights after a transition period.

26. SoCal Edison requests the Commission to clarify that the holding regarding FTRs was not intended as a blanket approval of discriminatory treatment, but rather as an approval of a particular compromise reached by the parties. Enron requests rehearing stating that giving the GEs superior and preferential FTRs is unduly discriminatory and anti-competitive. Enron thus requests that the Commission should provide all other market participants with the same FTRs that new Participating TOs will receive.

27. The Western Area Power Administration (WAPA) states that if it were to join the ISO under the Tariff provisions as accepted, in the tenth year it would be required to purchase and resell FTRs and possibly to sell generation on one side of a congested path and repurchase generation on the other side. WAPA believes that these activities would exceed its federal statutory authority, since it may only market surplus federal property. If this were the case, WAPA would be precluded from joining the ISO. Therefore, WAPA requests that the Commission reconsider its determination that it is reasonable to limit FTRs to no more than the ten-year transition period.

Commission Response

28. With respect to the requests for rehearing on the FTR issue, the Commission notes that many of these FTR arguments are before the Presiding Judge in the ER00-2019-000 proceeding. The primary concern of many of the rehearing requests is the receipt of FTR auction revenues associated with converted contractual rights and the length of the transition period. This issue is before the Presiding Judge. To address those concerns now would be premature and will be better served once a full record on these issues are developed before the Presiding Judge.

29. Regarding SoCal Edison's and Enron's rehearing request concerning possible discriminatory treatment, we find that the ISO's proposal is not unduly discriminatory but a balance of incentives intended to encourage other transmission owners to join the ISO.

30. With respect to WAPA's concerns about whether joining the ISO would cause WAPA to exceed its federal statutory authority, we first note that WAPA is subject to limited Commission jurisdiction as a federal power marketing agency. Nonetheless, we also note that WAPA's participation in the ISO is voluntary and that WAPA has to make its own reasoned decision on whether to join the ISO.

Metered Subsystem (MSS) Principles

31. In its March 31, 2000 filing, the ISO's proposal included provisions that would enable the systems of new Participating TOs to qualify as MSS. The ISO stated that allowing new Participating TOs to qualify as MSS would facilitate their continued operation as vertically integrated utility systems while also providing an alternative way to participate in the ISO's markets. The ISO also proposed to limit the availability of MSS status to entities that elect to become Participating TOs.

32. The May 2000 Order found that the parties had made progress on this issue, and therefore sent this issue before the settlement judge. The May 2000 Order also noted that the issue of the availability of MSS status being limited to those entities that elect to become Participating TOs was before the Commission in Docket No. ER98-3760-000, et al., and would therefore be decided in that proceeding.

33. Modesto states in its request for rehearing that despite numerous rounds of negotiation, the parties have not made progress on this issue. Therefore, Modesto states that the Commission erred in setting this matter for settlement because the ISO's proposal does not meet the needs of fully integrated utilities. Modesto further states that it was an error to set this matter for settlement without proving guidance endorsing Modesto's MSS principles.

34. Enron requests the Commission to clarify that the statement in the May 31 Order which says the stated purpose of the MSS is to accommodate vertically integrate systems

in the Cal ISO framework is not intended to prejudge the outcome of this matter in Docket No. ER98-3760-000, is intended to relate solely to the Cal ISO's specific proposal in this docket, and does not have broader implications.

Commission Response

35. Regarding Modesto's request for rehearing, the Commission notes that it addressed Modesto's MSS concerns in Cal ISO Amendment No. 46.[15] Additionally, Modesto states in its testimony filed in the hearing proceeding in this docket that the rights granted to Modesto through Amendment No. 46 satisfy Modesto that it will have the flexibility to negotiate its own MSS Agreement when and if Modesto chooses to become one.[16]

36. With respect to Enron's clarification request, we clarify that the stated purpose of the MSS to accommodate vertically integrated systems in the ISO framework is intended to relate solely to the Cal ISO's specific proposal in this docket without having broader implications. Regarding Enron's concern about prejudging the outcome of this matter in Docket No. ER98-3760-000, the Commission issued an order in Docket No. ER98-3760-000 on November, 22, 2002 which stated that Cal ISO Amendment No. 46 represented a comprehensive settlement of MSS-related issues. Therefore, Enron's concern is now moot.

Phantom Congestion

37. In its filing, Cal ISO described a problem it referred to as "Phantom Congestion," caused by scheduling timelines afforded to GEs under Existing Rights contracts which were different from and incompatible with the schedules under which Cal ISO otherwise operated. According to Cal ISO, Phantom Congestion resulted in available transmission capacity remaining unutilized. To remedy this, Cal ISO proposed that new Participating TOs would immediately convert Exiting Rights to FTRs, rather than the allowing a five year conversion period during which time a party to an Existing Contract becoming a new Participating TO could continue to exercise those scheduling rights. GEs opposed that aspect of the proposal, arguing that their scheduling flexibility was a valuable asset and that Cal ISO should develop software to accommodate their scheduling rights.

38. The May 2000 Order found it difficult to justify the GE's scheduling flexibility advantage in light of the congestion those rights caused Cal ISO and stated that Phantom

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[15] See California Independent System Operator Corp., 100 FERC ¶ 61,234 (2002).

[16] Direct Testimony of Roger VanHoy filed on June 2, 2003, page 23.

Congestion is a market inefficiency that must be addressed and rectified as quickly as possible. The Commission stated that, in the event Phantom Congestion was not resolved through negotiations, it would address the issue in a separate proceeding.

39. On rehearing, parties allege that the Commission erred in finding that scheduling flexibility results in overall market inefficiencies and that the abrogation of existing contracts is warranted.[17] They assert that the Commission must perform a cost/benefit analysis or consider whether the market will be more efficient on a net basis without Phantom Congestion. Further, the parties cite Commission rulings in other proceedings that Existing Contracts should not be abrogated by virtue of industry restructuring and the implementation of the ISO,[18] specifically that the problem of accommodating Existing Contract scheduling rights is outweighed by not upsetting Existing Contracts' balance between scheduling practices and penalties for failing to schedule resources to match loads.[19] Cities/M-S-R and TANC seek clarification that the Commission's discussion in the May 2000 order related only to new Participating TOs and did not envision abrogation of Existing Transmission Contracts of those that do not join the ISO.

Commission Response

40. Cal ISO submitted extensive testimony in its March 31, 2000 filing that Phantom Congestion has adverse impacts on its operations.[20] The holding that Existing Contracts should not be upset was made prior to the ISO commencing operations, and there had been no information before the Commission on the extent of congestion that would result. Nevertheless, the Commission made no finding that Existing Contracts should be abrogated in order to relieve Phantom Congestion. The only Existing Rights that are contemplated being converted to FTRs are those of GEs that become new Participating TOs. A GE would accept the immediate conversion of its rights as part of its decision to voluntarily join Cal ISO, just as it previously would have accepted conversion after 5 years under the regime as it existed prior to Amendment No. 27.

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[17] See, e.g., Modesto, Turlock, Cities/M-S-R, and TANC.

[18] Order Nos. 888 and 2000.

[19] Pacific Gas and Electric Co., et al., 81 FERC ¶ 61,122 at 61,470-71 (1997).

[20] See, e.g., March 31, 2000 filing, Attachment D at 21-22.

41. Although the May 2000 Order announced the intent to address Phantom Congestion expeditiously, we do not want to initiate a separate proceeding at this time. We note that participants have submitted testimony concerning Phantom Congestion in the hearing in this docket, and instituting another proceeding now to address Phantom Congestion may interfere with the ongoing hearing. Relying on the hearing process will allow the record to be fully developed and an initial decision to be rendered on the issue, and it will avoid a piecemeal approach to resolving congestion management that has concerned us for some time.[21] In any event, the ISO Board of Governors recently approved as part of the ISO's MD02 Comprehensive Market Design Proposal an approach that will eliminate Phantom Congestion while honoring the rights of ETC holders; a filing is expected to be submitted shortly.[22] This prospective proceeding should bring closure to this issue.

Buy-Down Provision

42. In its March 31, 2000 filing, Cal ISO proposed a Transition Mechanism under which savings, defined as a "TAC Benefit," received by new Participating TOs for joining the ISO would be computed. A new Participating TO compares what it would have paid for transmission if it had not joined the ISO versus its assessment for transmission by the ISO. Similarly, a new Participating TO compares what it would have paid in GMCs if it had not joined the ISO versus its assessment for GMC by the ISO. The net savings or TAC Benefit from these two components is then computed and the new Participating TOs investment in high voltage facilities will be reduced by the TAC Benefit. The new Participating TO may then use the amount of the TAC Benefit to retire debt supporting the transmission facilities or to establish a fund to service that debt. Accordingly, each year during the transition period a new Participating TO is required to "write-off" investment in high voltage transmission facilities equal to the savings realized through the TAC.

43. The May 2000 Order rejected this Buy-Down provision as being unsupported and potentially discriminatory. The Commission also found the buy-down proposal to be fundamentally inconsistent with the goals of Order No. 2000 and that it would discourage participation in the ISO.

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[21] See, e.g., California Independent System Operator Corp., 103 FERC ¶ 61,265 at P 27, 39.

[22] See Memorandum dated May 30, 2003 describing the Comprehensive Market Design Proposal, http://www.caiso.com/docs/09003a6080/23/6f/09003a6080236fa1.pdf.

44. PG&E argues that there is no basis to reject this element of Cal ISO's proposal because it has not been shown inconsistent with Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and request rehearing. PG&E states that the Buy-Down provision would enhance the goals of Order No. 2000 by making the presently high-cost owners more competitive in terms of total delivered cost of power and thus narrowing present cost disparities among transmission owners. PG&E asserts that the effect would be similar to the accelerated recovery of investment by California utilities that have already joined Cal ISO and those adopted by other states. PG&E also states that the Buy-Down provision is a means of moderating rate increases for the original Participating TOs and those new Participating TOs who own below-average cost transmission facilities. PG&E asserts that Participating TOs that pay higher costs during the transition period should not be denied a reasonable opportunity to receive the benefits that will justify the additional expense. Finally, PG&E states that the alternative chosen by the Commission, with regard to the Buy-Down provision, cannot provide any assurance that offsetting transition period benefits will be recognized.

45. SoCal Edison states in its request for rehearing that the funds used to affect the accelerated depreciation of the new Participating TOs transmission facilities will come from the existing Participating TOs and their ratepayers. Therefore, according to SoCal Edison, unless there is a corresponding long-term rate reduction that lowers the TRRs of the new Participating TOs, the ratepayers of the new Participating TOs will enjoy a windfall. SoCal Edison also argues that the high cost of the new Participating TO facilities are not simply caused by the fact that they are relatively new system, but also because these systems were vastly overbuilt. Finally, SoCal Edison argues that without the buy-down provision, the new Participating TOs would receive enormous added funds from the existing Participating TOs which they could use to either reduce the transmission rates of their customers or to fund general municipal expenses.

46. Enron states in its request for rehearing that although the increase in transmission rates of the current Participating TOs is due to the higher cost associated with the GE's, this is not just a vintaging problem. Enron asserts that this is also a function of the fact that the GE's transmission systems are in certain cases overbuilt.

Commission Response

47. We will deny rehearing of our rejection of the Buy-Down provision. PG&E's arguments that the inclusion of a Buy-Down provision would be analogous to what has been required of it under a broad state-mandated restructuring program is off-point. The proposed Buy-Down provision is part of a forward-looking transmission access rate design that includes a significant number of costs/benefits to both Participating TOs and users of the grid. As such, we continue to believe that it is important that the Cal ISO

have a rate design that has the proper incentives to attract new Participating TOs. All new Participating TOs consider a wide range of costs and benefits in deciding whether to join the Cal ISO. The proposed Buy-Down provision would significantly alter the benefits to new Participating TOs. Thus, this provision may very well deter the addition of any new Participating TOs. Accordingly, the benefits, such as the possible reduction in interzonal congestion, the lowering of the Grid Management unit charge, reduction in unused transmission capacity due to scheduling differences, that result from potential GEs joining the Cal ISO would not be realized. Therefore, we are not persuaded that the Buy-Down provision in this particular instance is in the public interest.

48. With respect to the arguments raised regarding the reason for a new Participating TOs facilities being higher cost than the average cost of other Participating TOs or the Original Participating TOs, such as overbuilding, we find that these issues are best addressed in proceedings when a new Participating TO applies to join the Cal ISO. Therefore, they should not be considered in the instant TAC rate design proceeding.

Treatment of Behind-the-Meter Load

49. Cal ISO proposed that the TAC would be payable on each MWh of energy withdrawn from the ISO controlled grid; thus, entities would pay for transmission based on the amount of gross load. The proposal recognized one exception, for loads served by a QF that was operational as of March 31, 2000 and that either has secured Standby Service from an existing Participating TO and thus is already bearing a portion of the costs of the ISO grid through the charges for Standby Service, or is configured to be curtailed concurrently with the outage of the generating unit and, thus, is not relying on the ISO grid for the receipt of either operating reserves or energy. These loads would be charged on a net basis. GEs protested the proposal and argued that its behind the meter generation which did not utilize the ISO grid should also not be subject to ISO TAC charges.

50. The Commission accepted Cal ISO's proposed use of gross load as the billing determinant for transmission service which includes behind the meter loads, noting that Order No. 888 addressed similar concerns and no change in circumstances warranted a different result here. Regarding the exception for QFs, the Commission generally agreed with Cal ISO's criteria but determined that the record should be further developed to show that those criteria were applied in a non-discriminatory manner.

A. Distinguishable from Service under Order No. 888

51. A number of GEs seek rehearing regarding the inclusion of behind the meter generation in the transmission billing determinants, contending that the Cal ISO's TAC is

distinguishable from the network integration service described in Order No. 888.[23] These parties state that analogizing Cal ISO's service to network integration service fails to appreciate that Cal ISO customers are not able to designate discrete loads as non-network, non-integrated loads and to supply these loads with point-to-point transmission service. They conclude that the failure to provide this option and to charge the entire gross load for transmission service, regardless of whether that load uses the Cal ISO controlled-grid, is contrary to precedent regarding duplicative charges and cost causation, and finding that a different result is not warranted does not represent reasoned decision-making. Cities/M-S-R also argue that the use of gross loads as the billing determinant gives improper price signals regarding the location of new generators.

52. Calpine states that Order No. 888 addressed the computation of cost responsibility for wholesale customers receiving network services, which is not a situation where transmission charges would be imposed on load not using network or any other transmission service. Further, Calpine asserts that the issue of whether the Cal ISO may assess charges on retail customers' behind-the-meter load was not addressed in Order No. 888 or anywhere else by the Commission. NCPA notes that Order No. 888-A stated that the Commission did not intend for a transmission provider to receive two payments for providing service to the same portion of a transmission customer's load and that such double recovery would be unacceptable. However, NCPA argues that if it were to join the Cal ISO while WAPA did not, then NCPA would pay twice for transmission service needed to serve some of its load, once for the Cal ISO's TAC and again under existing contracts with WAPA. NCPA contends that this result would be unfair and serves as a disincentive to Cal ISO participation.

53. Modesto and TANC assert that the Commission's analysis avoided the arguments that it would not be just and reasonable to assess the TAC regardless of whether that portion of a new Participating TO's load uses the Cal ISO grid. Modesto explains that GEs serve their load through a combination of remote and behind-the-meter generation and that the transmission serving GEs is sometimes insufficient to meet the total load of GEs. Although the ISO-controlled grid cannot physically serve the entire load of every GE due to transmission constraints, the Cal ISO proposes to bill on the basis that the grid can serve the entire load.

Commission Response

54. We agree with the GEs that the Cal ISO's TAC rate design is not identical to the network and point-to-point transmission services required under Order No. 888. Our

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[23] See, e.g., Modesto, Calpine, Cities/M-S-R, and TANC.

decision to allow Cal ISO to use gross load as the billing determinant for essentially network transmission service was cognitive that there were differences. Our reliance on Order No. 888 in determining that the use of gross load was acceptable in the instant rate design, rested on the predicate that to the extent network users had behind the meter generation that arguably did not utilize the grid on a regular basis, that load, unless alternatively served by firm point-to-point service was required to be included in the customer's cost responsibility for transmission capacity. Similarly, under the Cal ISO's proposed use of gross load, the GEs behind the meter generation which serves local load a significant amount of the time, will be assessed a transmission access charge. This proposal does not violate cost causation principles because the behind the meter generation is not available at all times. In those times when this generation is not available, the parties will avail themselves of the Cal ISO's grid. Thus, the Cal ISO's grid is available at all times for potential use. While this pricing does not offer the same specific flexibility provided under Order No. 888, it is not unjust or unreasonable in that the proposed rate design is for non-pancaked, network transmission service at a single price.

55. However, consistent with the treatment of behind the meter generation for purposes of the ISO's Control Area Services portion of the Grid Management Charge (GMC),[24] we find that customers that primarily rely on behind the meter generation to meet their energy needs are allocated too great a share of the TAC. Instead, these customers should pay the TAC on a net load basis, i.e., the actual cumulative kWh load that utilized the grid in any given month, to reflect their use of the grid to access alternative resources, rather than on the basis of gross load. As with the GMC, customers eligible for such treatment are those with generators with a 50 percent or greater capacity factor.[25] Accordingly, we grant rehearing in part. We will direct the ISO to submit tariff sheets to implement this change, on a prospective basis.[26]

B. Discriminatory Application

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[24]California Independent System Operator Corp., Opinion No. 463, 103 FERC ¶ 61,114 (2003), reh'g pending.

[25]Capacity factor is the ratio of the average load or output of a generator for a given time period to the capacity rating of the generator.

[26]See Consumers Energy Company, Opinion No. 429-A, 89 FERC ¶ 61,138 at 61,397 (1999), reh'g denied, Opinion No. 429-B, 95 FERC ¶ 61,084 (2001) (discussing the Commission's policy to avoid retroactive application of changes in rate design).

56. Modesto and Calpine object to the Commission's general acceptance of the ISO's QF exception, alleging that it is unduly discriminatory because is does not provide equal treatment to similarly situated entities. Calpine states that no reasonable basis exists for distinguishing between existing QF load and load receiving energy from any other generator; neither load uses the ISO's grid to schedule energy, and both pay a UDC for Standby Service. Nevertheless, the TAC would apply to all energy consumed by retail load. Calpine argues that retail load served by an Independent Power Producer (or QF) who receive Standby Service, with rates that include the costs associated with a UDC's use of transmission bear a share of the costs of the ISO-controlled grid. Calpine counters the ISO's argument that such Standby Service rates could be modified to remove the transmission the transmission component, pointing out that jurisdiction over bundled retail Standby Service is within the purview of the California Public Utilities Commission.

57. Energy Producers and Users Coalition and the Cogeneration Association of California (EPUC/CAC) asserts to the contrary that QF and other loads are not similarly situated, and that the treatment of QF-served load should not require a broader extension to include the load served by municipal utilities.

Commission Response

58. The hearing in this proceeding should examine whether the exclusion of QF's who pay a standby charge that includes a transmission component from the TAC charge is unduly discriminatory with respect to non-QFs with behind the meter generation.

C. New Qualifying Facilities

59. Calpine and EPUC/CAC argue on rehearing that Amendment No. 27 unjustly and unreasonably discriminates against load directly served by new QFs, as the QF exemption only applied to facilities operational as of March 31, 2000. In the TAC Amendment, filed in Docket No. ER03-608-000, the ISO proposed to delete the date limitation in order to eliminate the potential for double charging customers taking Standby Service. The Commission accepted and suspended the proposed revision and consolidated it with the ongoing hearing proceeding in Docket No. ER00-2019-000. EPUC/CAC further objects to the ISO's proposal to impose the TAC on the potential load of new QFs that could call on the ISO system under Standby Service tariffs, as opposed to the energy actually withdrawn from the grid in the event of an outage, which would be billed to non-QF entities.

60. We will refrain from acting on this issue at this time and allow the parties to develop a full record before the Presiding Judge on which to base a determination.

The Commission orders:

(A) The requests for rehearing of the May 2000 Order are hereby denied in part, or deferred from consideration in the ongoing hearing proceeding, as discussed in the body of this order.

(B) The ISO is hereby directed to submit a compliance filing, within fifteen days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.