UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation	Docket Nos. ER01-3013-000 and ER01-889-008

ORDER GRANTING MOTION CONCERNING CREDITWORTHINESS REQUIREMENT AND REJECTING AMENDMENT NO. 40

(Issued November 7, 2001)

In this order, we grant a motion filed by a group of California generators[1] and direct the California Independent System Operator Corporation (the ISO) to enforce the creditworthiness requirement of its open access transmission tariff (Tariff) and the Commission's creditworthiness orders within 15 days from the date of this order. We find the ISO in violation of its Tariff and the Commission's creditworthiness orders, as discussed below.

We reject the ISO's proposed amendment to its Tariff (Amendment No. 40) to suspend temporarily the "two invoice" settlement practice by suspending cash distributions based on preliminary invoices and deferring issuance of the preliminary invoice.

This order is in the public interest because our action today will help the ISO's customers by ensuring timely payment of the ISO's energy suppliers and, thus, preventing future difficulties for the ISO in obtaining adequate supplies.

I. Background

[1]This group includes Duke Energy North America LLC and Duke Energy Trading and Marketing L.L.C. (Duke Energy), Dynegy Power Marketing, Inc., Mirant California, LLC (Mirant), Reliant Energy Power Generation, Inc. (Reliant), and Williams Energy Marketing & Trading Company (Williams) and affiliates (collectively, Generators).

Docket No. ER01-889-008

The ISO Tariff imposes a creditworthiness requirement on utility distribution companies (UDCs), Scheduling Coordinators, and metered subsystems. Under that requirement, Southern California Edison Company (SoCal Edison), the California Department of Water Resources (DWR) and Pacific Gas and Electric Company (PG&E), among others, must either maintain an Approved Credit Rating or post security in an amount sufficient to cover their outstanding liability for transactions controlled through the ISO grid. The Commission's order on creditworthiness issued on February 14, 2001 (February 14 Order)[2] provided third-party suppliers assurances of a creditworthy buyer for all energy delivered to the loads throughout the ISO. In an order issued April 6, 2001 (April 6 Order),[3] the Commission granted a motion filed by a group of California generators to require the ISO to comply with the February 14 Order. In the April 6 Order, the Commission directed the ISO to ensure the presence of a creditworthy buyer for all power that third-party suppliers provided to UDCs that did not meet the creditworthiness provisions of the ISO Tariff. The ISO in a "Market Notice Re Credit Issues" posted on its web-site on April 13, 2001 stated that DWR would be the creditworthy third-party for SoCal Edison's and PG&E's net short position.[4]

On June 13, 2001, the Commission issued an order denying a request for rehearing of the April 6 Order, and clarifying that power suppliers were not allowed to ignore emergency dispatch orders even if a UDC or Scheduling Coordinator fails to meet the creditworthiness standards. The suppliers, though, were provided with the opportunity to file a complaint before the Commission to enforce their right to credit assurance.

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[2]California Independent System Operator Corporation, et al., 94 FERC ¶ 61,132 (2001). The February 14 Order addressed an ISO proposal to waive the creditworthiness requirement in its Tariff in response to the imminent credit downgrades of SoCal Edison and PG&E. In that order, the Commission authorized the ISO to waive the creditworthiness requirement as applied to resources owned by PG&E or SoCal Edison to meet their own loads. Because neither PG&E, nor SoCal Edison had sufficient resources to satisfy their load service obligations, the Commission required these companies to obtain a creditworthy party for their net short position, i.e., power that is not self-supplied by the UDCs.

[3]California Independent System Operator Corporation, et al., 95 FERC ¶ 61,026, reh'g denied, 95 FERC ¶ 61,391, reh'g denied, 96 FERC ¶ 61,267 (2001).

[4]This is power that is not self-supplied by the UDCs. February 14 Order at 61,511.

On September 10, 2001, the Generators filed a Motion for Expedited Enforcement of the Creditworthiness Orders and Request for Shortened Response Period (Generators' motion).

Docket No. ER01-3013-000

Since June 2000, the ISO settlement procedures have included a two-payment process. An initial payment is made to the Scheduling Coordinators based on Preliminary Settlement Statement Invoices and receipts received in response to them, and final payment is made based on receipts received in response to the Final Settlement Statement Invoice.[5] The ISO states that because certain parties are in default on major payments and because market "reruns" result in significant shifts in the payments between the preliminary and final invoices, Scheduling Coordinators are "netting" payments owed for one month's market transactions against amounts due for transactions in a different month. Some Scheduling Coordinators have also failed to make full payment on preliminary invoices on the belief that they will not recover overpayments. The ISO states that these practices are contrary to payment obligations under the ISO Tariff.

The ISO indicates that it initiated several changes to its billing and settlement procedures in response to the actions of market participants. First, by Market Notice issued August 1, 2001, the ISO notified market participants that it did not expect to make cash distributions based on preliminary invoices for May, but would hold the payments and include them in the cash distributions based on final invoices for May.[6] Second, by Market Notice issued August 30, 2001, the ISO notified market participants that it would suspend, until further notice, cash distributions based on preliminary invoices, effective June, 2001, until the ISO issues a further market notice.[7] Third, by Market Notice issued

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[5]The ISO sends out a Preliminary Settlement Statement and a separate Preliminary Invoice with a cash disbursement. Likewise, the ISO sends out a Final Settlement Statement and a separate Final Invoice with the final cash disbursement. The invoice and payment dates are set forth in the ISO Payments Calendar, which is developed by the ISO each year.

[6]Payments for May transactions should have been made on August 20, 2001. See Docket No. ER01-3013-000, Attachment C.

[7]In the Market Notice, the ISO stated that it would hold and invest the proceeds received from the preliminary invoices and would include those proceeds, including interest with the cash distributions for the final monthly settlement. Payments for June

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September 4, 2001, the ISO notified market participants that beginning with the July 2001 trade month, it would defer the collection and disbursement of funds until the final invoices for each trade month were prepared and distributed. According to the Market Notice, the ISO would issue a single monthly invoice on the date that it issues the Final Settlement Statement for the last trade day of the calendar month and distributes payment received within five business days from the date the single invoice was issued.[8] The ISO represents that it has modified the payment dates in the ISO Payments Calendar to accommodate these changes. The ISO requests that its proposed changes be made effective, on a temporary basis, beginning August 1, 2001 (when preliminary payments for the trade month May 2001 would have been disbursed), until either the ISO notifies the Commission of its intent to revert, as of a date specified, or until the Commission accepts and makes effective a permanent change to the settlement process. The ISO requests waiver of the prior notice requirement to permit the tariff revisions to be made effective on August 1, 2001.

II. Notice of Filing, Interventions and Protests

Docket No. ER01-889-008

On September 17, 2001, the City of Santa Clara, California, Northern California Power Agency (NCPA), Modesto Irrigation District (Modesto), and Sempra Energy Trading Corp., Coral Power, L.L.C., Enron Power Marketing, Inc., Enron Energy Services, Inc., Avista Energy, Inc., El Paso Merchant Energy, L.P., and PG&E Energy Trading - Power, L.P. (collectively the Marketers) filed motions in support of the Generators' motion. From September 18, 2001 to September 25, 2001, SoCal Edison, DWR and ISO filed answers to the Generators' motion. Sempra Energy Trading Corp. (Sempra) filed a motion for leave to intervene out-of-time on September 25, 2001. On October 10, 2001, the Generators filed a reply to ISO's Answer.

Docket No. ER01-3013-000

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 48,250

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[7](...continued)
transactions should have been made on September 20, 2001. See Docket No. ER01-3013-000, Attachment D.

[8]See Docket No. ER01-3013-000, Attachment E.

(2001), with interventions, comments or protests due on or before September 26, 2001. DWR, Cities of Redding, Santa Clara and Palo Alto, California and the M-S-R Public Power Agency (Cities), Constellation Power Source, Inc. (Constellation), Los Angeles Department of Water and Power (LADWP), Modesto, NCPA, Sacramento Municipal Utility District (SMUD), Salt River Project Agricultural Improvement and Power District (Salt River Project), SoCal Edison, Transmission Agency of Northern California (TANC) and Turlock Irrigation District (Turlock) filed timely motions to intervene. Enron Power Marketing, Inc. (Enron) filed a timely motion to intervene and a limited protest. Duke Energy, California Electricity Oversight Board, Metropolitan Water District of Southern California (Metropolitan), and Mirant filed timely motions to intervene and comments. Dynegy Power Marketing, Inc., Independent Energy Producers Association (IEP), Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (Reliant), and Williams filed timely motions to intervene and protests.

On October 11, 2001, the ISO filed an answer to the protests and comments. PG&E filed a motion for leave to intervene out-of-time on November 6, 2001.

III. Motions and Responses to Motions in Docket No. ER01-889-008

A. Generators' Motion and Motions in Support

Noncompliance with the ISO Tariff and Commission's orders

Generators, with the support of Modesto, SoCal Edison, NCPA, City of Santa Clara and Marketers, request the Commission to immediately institute an enforcement action against the ISO for violations of the creditworthiness provisions of the ISO Tariff and the Commission's orders. They claim that the ISO's non-compliance with the Commission's creditworthiness orders places the reliability, stability and functionality of the marketplace in peril, because it forces sellers and creditors to transact business with the uncertainty of whether they will get paid. Generators argue that it is confiscatory, unreasonable, and unfair to require generators to operate indefinitely without being paid, given the billions of dollars in unpaid invoices accumulated to date. They also argue that the ISO is not paying the entities that sell power to the ISO in the Imbalance Energy or Ancillary Services markets, because DWR, on whose behalf the ISO purchases power, is not paying its bills.

NCPA asserts that if the Commission requires the ISO to comply with its Tariff, and makes it clear that if buyers do not pay, the ISO cannot buy power on their behalf, this should resolve many of the problems.

Generators argue that the ISO is not complying with its own Tariff, by failing to enforce the credit support requirements of its Tariff and does not, in fact, have a credit support agreement with DWR for power purchases on behalf of any of the utilities for which DWR is scheduling the net short load. Generators also assert that the ISO is permitting DWR to schedule power for the net short loads without requiring DWR to meet the explicit responsibilities and financial obligations imposed on a Scheduling Coordinator.[9] The Generators contend that the ISO must identify the purchases for which DWR has purportedly provided credit support, so that other market participants may pursue collection remedies based on that credit support.

Netting

NCPA argues that most generators are also engaging in a form of "self-help" and offsetting amounts they owe the ISO with amounts the ISO owes them while NCPA and other municipal entities in California are prohibited from doing so.

Must-offer requirement

Generators state that an implied assumption underlying the must-offer requirement is that creditworthy parties will actually pay for the power provided by third-party suppliers pursuant to the must-offer requirement. According to Generators, DWR has now defaulted on all power purchases set forth in April 2001 preliminary settlement statements and final settlement statements, and May 2001 final settlement statements. Generators also claim that based on the ISO's Market Notice of May 25, 2001 in Docket No. ER01-889-003, DWR is not backing any transaction in which generators are required to provide minimum run energy but are not dispatched for one reason or another. Thus, Generators contend that suppliers cannot be required to offer power, including minimum run energy resulting from the must-offer requirement, as well as imbalance energy and ancillary services, to buyers that are not creditworthy and are not paying their invoices.

Generators, Modesto, NCPA and City of Santa Clara request the Commission to reconsider the appropriateness of any must-offer requirement in light of the fact that Generators have not been paid for power delivered. The City of Santa Clara also argues that non-payment was particularly problematic for entities like it which must make, and timely pay for, gas purchases on the open market to run its generators to make third-party sales.

SoCal Edison claims that Generators are misusing the creditworthiness orders to

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[9] See ISO Tariff Sections 2.2.3, 2.2.4, and 2.2.6.

seek the elimination of the must-offer requirements instituted by the Commission in its April 26 Order.

B. ISO's Answer

Lack of Payment

The ISO states that the Generators' complaint centers on non-payment for transactions for which DWR has provided credit support. According to the ISO, the delay in payment derived from the lack of an agreed-upon mechanism by which DWR could make payments on behalf of SoCal Edison and PG&E (jointly referred to as non-creditworthy UDCs). The ISO further claims that although DWR is a guarantor, it is not the debtor under the ISO settlement procedures.

According to the ISO, the fundamental flaw in the Generators' complaint is their failure to distinguish two functions of the ISO: the ISO's responsibility to ensure a creditworthy buyer and the ISO's role as settlement agent. The ISO asserts that the Commission's orders require the ISO, when making purchases on behalf of a Scheduling Coordinator that fails to meet the ISO' creditworthiness requirements, to obtain assurances from a creditworthy third-party. DWR accepted the responsibility for providing credit support for purchases on behalf of the non-creditworthy UDCs and the ISO provided the Commission with the letter memorializing this agreement, executed by the ISO and DWR. The ISO argues that as a result, it has, at all times, been in compliance with the Commission's order regarding creditworthiness.

The ISO also maintains that it has remained in compliance with the Tariff provisions regarding its role as settlement agent. The ISO claims that settlement provisions under Section 11 of the Tariff were not drafted to accommodate third-party guarantors and therefore the settlement provisions require the ISO to invoice the UDCs for those purchases backed by DWR. Pursuant to the ISO Tariff, the ISO billed the non-creditworthy UDCs who are the Scheduling Coordinators under the Tariff for imbalance energy and ancillary services procured on behalf of their loads. The ISO maintains that the ISO Tariff does not require it to act as a collection agent, rather its role is limited to distributing amounts in its clearing and reserve accounts. According to the ISO, the

Tariff does not require the ISO itself to become a guarantor and ensure that creditworthy parties abide by their payment obligations.

Agreement for Payment between DWR and the ISO

According to the ISO, it has recently reached an agreement on an appropriate

mechanism to facilitate payment (Agreement) which will moot the Generators' concerns. The ISO states that the procedures, including detailed examples, have been posted on the ISO web-site and presented to the ISO Board for the Board's information.[10] The ISO states generally, that by using cash management, the proposed procedures provide for DWR to assume a portion of the non-creditworthy UDC's invoiced payables under an implementation agreement between DWR and each non-creditworthy UDC. In addition, to assure that suppliers are paid in accordance with the Commission's creditworthiness orders, DWR will under specific conditions, acquire a portion of the suppliers' invoice receivables. These procedures also require an implementation agreement which is designed to determine amounts that DWR will pay suppliers directly, prior to the ISO settlement timelines.

Must-Offer Requirement

The ISO states that the issues regarding payment for running at minimum load are not creditworthiness issues. According to the ISO, the Commission's creditworthiness requirement can only apply when the ISO enters into transactions, i.e., when it dispatches energy, not in connection with energy that the ISO has not required but is nonetheless produced by a generator for operational reasons.

C. DWR's Answer

DWR claims that the relief that the Generators seek, i.e., imposition of ISO Tariff security requirements for defaulting Scheduling Coordinators upon DWR, is impermissible because DWR is not in default under the ISO Tariff. According to DWR, default entails two prerequisites: (1) an overdue unpaid statement;[11] and (2) failure to cure default after written notice from the ISO.[12] According to DWR, its marketing branch -- the California Energy Resources Scheduler (CERS) -- has timely paid for all power it has under contract for which it was invoiced and, to date, has received no requisite billing statements nor any ISO notice of default.[13] DWR claims that the ISO has

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[10]According to the ISO, no action was needed or taken by the Board. ISO's Answer at 4.

[11]See ISO Tariff Sections 2.2.3.3 and 11.22.

[12]See ISO Tariff Sections 2.2.4.5 and 2.2.4.6.

[13]Additionally, DWR states that the State Water Project is not in default because it has paid all ISO statements fully, even though the ISO is in arrears in paying State Water

(continued...)

insisted on billing SoCal Edison and the other utilities, which are no longer creditworthy, instead of communicating to CERS essential billing data which CERS must have in order to disburse public funds.

DWR states that CERS has been working with the ISO to obtain necessary data which will enable CERS to determine which suppliers need to be paid, and how much they should be paid. Because the ISO has concerns about the confidentiality of Generators' and others' transactions, CERS has not had access to requisite settlement data. According to DWR, CERS has set aside about $1 million to pay power sellers for real-time energy and ancillary services.[14]

DWR states that the ISO and CERS have developed a procedure that would, among other things: (1) require the ISO to provide CERS with financial settlement information that will enable CERS to settle directly the portion of a non-creditworthy UDC's charges for which CERS has assumed financial responsibility and to recognize the portion of those charges that CERS has previously paid; (2) enable CERS to pay suppliers' Scheduling Coordinators; (3) permit CERS' direct payment for real-time energy and ancillary services dispatched through ISO markets; and (4) eliminate ISO "double billing" of non-creditworthy UDCs for real-time energy CERS procured and already has paid on a bilateral basis. According to DWR, these procedures should moot the concerns of both Generators and the UDCs.[15]

D. Generators' Reply to ISO's Answer

Generators argue that there is no agreement that binds DWR to pay the suppliers, who have been relying on the ISO's prior claims that payment was assured through DWR. Generators point out that the Agreement is only a working draft offered by the ISO that fails to comply with the Commission's orders, which, if implemented, would establish a wholly new procedure outside of the ISO's Tariff. Under the Agreement, DWR can

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[13](...continued)
Project for energy and ancillary services

[14]DWR states that to date CERS has paid over $2.8 billion in additional real time energy procured through CERS' bilateral transactions directly with power sellers.

[15]DWR cites to a reply comments filed by Southern California Edison on July 9, 2001.

determine who gets paid and at what rate, which Generators maintain is a clear violation of the Federal Power Act. To the Generators, it appears that under the Agreement, DWR is considering only paying for scheduled transactions, imbalance energy, and ancillary services. Generators assert that a wholesale revision of the Tariff's settlement and billing procedures as suggested by the Agreement must be filed with and approved by the Commission as a tariff amendment.

Generators further contend that the ISO has violated Section 11.1.2 of its Tariff by not invoicing DWR, because it is required to calculate the settlement balances "for all transactions carried out by Scheduling Coordinators." Generators claim that DWR's argument that it cannot pay since it has not been issued invoices is weak because DWR has acknowledged communicating to the ISO ahead of time on bids that DWR would back.

IV. Issues Raised by Intervenors in Docket No. ER01-3013-000

Several intervenors request rejection of Amendment No. 40 arguing that: (1) the ISO has failed to justify its unilateral suspension of preliminary invoices; (2) the proposal lengthens the time in which market participants must wait for payment of receivables; (3) it is an attempt on the part of the ISO to accommodate loads which are in major default of their bills; (4) it fails to address how settlement disputes that currently arise within the preliminary invoice process will be addressed; and (5) it does not address the sunset date of the temporary suspension of preliminary invoices. Williams urges the Commission to take action against the ISO for its continued practice of implementing Tariff changes prior to receiving Commission authorization.

Reliant argues that the ISO has an obligation under its Tariff to pursue payment from defaulting parties, including DWR.[16] Dynegy argues that the Commission should

[16]Dynegy argues that the problem is not caused by the amounts unpaid by the Scheduling Coordinators but by the fact that the ISO has never invoiced the DWR for any imbalance energy or ancillary services associated with credit-backed transactions for the

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reject Amendment No. 40 and let the status quo, albeit imperfect, continue.

Reliant states that the proposed amendment will penalize creditors by postponing payment for three weeks in each payment cycle. Reliant complains that it already takes over two months for creditors to receive preliminary payments and then the ISO makes "true-up" adjustments and creditors receive their final payments three weeks later. Duke Energy argues that a substantial increase in delays will occur before accounts are settled and sellers are paid.

ISO's Response

The ISO clarifies that Amendment No. 40 does not propose to change the issuance of either the preliminary or the final settlement statement.[17] Rather, the ISO's proposal is to return to a single invoice (i.e., to eliminate the preliminary settlement invoice), but continue to issue preliminary and final settlement statements. The ISO states that there is no intent to limit the dispute rights of the Scheduling Coordinators under the ISO Tariff.

The ISO expresses its intent to return to a two invoice payment approach when energy suppliers end the process of netting and the ISO can implement certain negotiated procedures with DWR.

The ISO recognizes the legitimate concerns raised by certain intervenors concerning the escalating financial burdens on sellers as a direct result of the ISO's failure to provide credit support for all transactions with third-party suppliers. The ISO states that it is working with market participants and DWR to address this issue, but that the issues do not address the need for Amendment No. 40, which is to ensure equitable treatment of all Scheduling Coordinators in the current situation. The ISO states that it has an obligation to protect the interests of those Scheduling Coordinators that are making full payment on preliminary invoices in accordance with the ISO Tariff, but due to the unavailability of funds and the actions of some Scheduling Coordinators that are failing to make full payments, the Scheduling Coordinators complying with the ISO Tariff are not receiving the pro rata distribution to which they are entitled.

V. Discussion

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[16](...continued)
investor-owned utilities.

[17]According to the ISO, it is the settlement statement upon which disputes are based, and not the invoice which governs the payment. See ISO Answer at 4.

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), the timely filed motions to intervene submitted in Docket No. ER01-3013-000 serve to make the entities that filed them parties to this proceeding. We find good cause to accept the ISO's answer notwithstanding the general prohibition on the filing of answers to a protest, 18 C.F.R § 385.231(a)(2) (2001), as the ISO's answer assists us in our understanding and resolution of the issues raised. We find that good cause exists to grant the untimely, unopposed motion to intervene filed by PG&E, given its interest in this proceeding and the absence of any undue prejudice or delay.

We accept the answers filed by SoCal Edison, DWR and the ISO to the Generators' motion in Docket No. ER01-889-008. We find good cause to accept Generators' reply notwithstanding the general prohibition on the filing of answers to an answer, 18 C.F.R § 385.231(a)(2) (2001), as ISO's answer assists us in our understanding and resolution of the issues raised. We find that good cause exists to grant the untimely, unopposed motion to intervene filed by Sempra, given its interest in this proceeding and the absence of any undue prejudice or delay.

B. Commission Decision

We have repeatedly directed the ISO to enforce its creditworthy standards under the Tariff. We have specifically held that the ISO Tariff prevents the ISO from entering into transactions with third-party suppliers on behalf of a non-creditworthy entity, absent credit support for such transactions from a creditworthy counterparty. As discussed in the February 14 Order and April 6 Order, and affirmed in the June 13 Order, the Tariff imposes a duty on the ISO to enforce the Tariff's creditworthiness standards.[18] In the June 13 Order, we stated that "it would be unreasonable to limit the ISO's creditworthiness enforcement duties to rejecting schedules from non-creditworthy parties [and] conclude[d] that it would be reasonable to require that the ISO obtain prior assurances of payment for all third-party power supplied to [SoCal Edison] and PG&E, whether directly or through purchases by DWR (or another creditworthy counterparty) on their loads' behalf."[19] We have stated our reasons for this requirement several times. First, we have found that the credit-support arrangements are necessary to ensure adequate assurance of payment for third-party suppliers; second, that such arrangements are necessary to avoid the unilateral shifting of unacceptable financial risks to third-party

[18] See June 13 Order at 62,458.

[19] Id. at 62,459. (emphasis added)

suppliers; and third, that a lowering of the financial creditworthiness standard without some assurance of payment for third-party sales would further increase prices paid by consumers.

Although DWR represents that it is the guarantor of transactions for the non-creditworthy UDCs, DWR has yet to pay for these net short positions. The Tariff requires a creditworthy party to back the transaction before the transaction is scheduled. Therefore, if the ISO does not provide a creditworthy party to back the transaction, including, specifically the net short position of the currently non-creditworthy UDCs, i.e., PG&E and SoCal Edison, the must-offer requirement will not apply. The must-offer requirement assumes a matching must-pay requirement. Thus, sellers will not be required to transact with the ISO and will be free to negotiate with other in-state and out-of-state buyers of their choosing with mutually acceptable terms and conditions.

We also disagree with the ISO and DWR's representation that under the Tariff the ISO must invoice the non-creditworthy UDCs, or that a new contractual arrangement is necessary for DWR to assume financial responsibility as the guarantor for the non-creditworthy UDCs. We note that DWR has already executed a Scheduling Coordinator Agreement with the ISO.[20] This agreement includes, among other things, an obligation by DWR to abide by and perform all of the obligations under the ISO Tariff, without limitation. This includes an obligation to pay for scheduled and unscheduled transactions made on the Scheduling Coordinator's behalf by the ISO. Under the ISO Tariff settlement and billing procedures,[21] a Scheduling Coordinator shall discharge its payment obligations and likewise, receive all payments owed to it under the ISO Tariff only through the ISO. Although this agreement was entered into prior to SoCal Edison and PG&E losing their creditworthy status, nothing in the agreement limits the scope to DWR's scheduling of its own load, or distinguishes DWR's functioning as the creditworthy party for the net short position for the non-creditworthy UDCs. The ISO has acknowledged that DWR assumed the obligations of Scheduling Coordinator for the net short load under the Tariff. The ISO confirmed that: (1) both DWR and CERS have been assigned Scheduling Coordinator identifications; (2) transactions backed by DWR and CERS since January have been entered into using their Scheduling Coordinator identifications; and (3) the UDCs provide CERS with a calculation of the net short for

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[20]See Service Agreement No. 102 under FERC Electric Tariff, Original Volume No. 1 accepted by delegated letter order dated June 4, 1998. This contractual relationship is binding on all branches of DWR including CERS and DWR's State Water Project.

[21]See Section 11.8.1 of the ISO Tariff.

this purpose.[22] In addition, we note that AB1X provides that: "Upon delivery of power to them, the retail end use customers shall be deemed to have purchased that power from [DWR]. Payment for any sale shall be a direct obligation of the retail end use customer to [DWR]."[23]

Therefore, because DWR has assumed responsibility for purchases by the ISO, and because DWR functions as a Scheduling Coordinator for this net short position of PG&E and SoCal Edison, DWR must abide by the requirements of the ISO Tariff and the Scheduling Coordinator Agreement. For this reason, we disagree with the ISO's argument that under the Tariff, it is required to send invoices to PG&E and SoCal Edison – rather than DWR – for generation it dispatches to serve their respective loads. The ISO is obligated under its Tariff to invoice, collect payments from and distribute payments to DWR,[24] as the Scheduling Coordinator for all scheduled and unscheduled transactions made on behalf of DWR, including transactions where DWR serves as the creditworthy counterparty for the applicable portion of PG&E's and SoCal Edison's load.[25]

We reject the ISO's and DWR's argument that the Agreement[26] resolves the issues raised by the Generators in this proceeding. This Agreement has never been filed with the Commission and, to the extent that payment is negotiated for services under the

Tariff, that Agreement is jurisdictional and must be filed with and approved by the Commission under section 205 of the Federal Power Act prior to implementation.

The issue raised by Generators regarding payment for providing minimum run energy is pending before the Commission on rehearing in Docket Nos. EL00-95-001, et al., and will be addressed in that proceeding.

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[22]See Deposition of Jim Detmers, Volume No. 1 in Docket No. EL00-95-045 pages 15-17 and 285-86. (October 24, 2001).

[23]See Cal. Water Code Sec. 80104 (Deering 2001) (AB1X).

[24]The Tariff requires the ISO to remit those funds paid to it through its billing and settlement process to the appropriate parties.

[25]See Section 11 of the ISO Tariff.

[26]The ISO has merely indicated that it is negotiating with DWR and has reached only a preliminary settlement with DWR concerning DWR becoming the creditworthy third party.

We will reject Amendment No 40. The two-invoice settlement process is not the problem, rather the problem is that parties are not being paid for services rendered. We believe that it is the ISO's obligation to enforce the provisions of the Tariff uniformly and to ensure that all parties are treated equitably and fairly. If the ISO enforced its Tariff provisions which require all Scheduling Coordinators to pay each preliminary and final settlement statement invoice in each settlement period, (thus enforcing no "netting"), it would eliminate the need for the temporary suspension of the two-part settlement process and render Amendment No. 40 unnecessary. We also believe that under Amendment No. 40, Scheduling Coordinators will face a 75-day lag between their market transactions and any receipt of payment for those transactions. We find this delay unacceptable. It is imperative to the marketplace that a prompt settlement process be in place that matches market transactions and prompt payment for those transactions on a timely basis. Amendment No. 40 further delays the payment process.

Moreover, a creditworthy party pays its bills when they are due. DWR does not have unilateral discretion to determine the rates for purchases it makes on behalf of PG&E and SoCal Edison and instead must accept and pay the rates set by this Commission. If DWR disagrees with these rates, it may challenge the rates through an appropriate filing with this Commission. Neither DWR nor any other party should be engaging in the types of self-help described in this proceeding.

Therefore, the ISO is directed to comply with its Tariff and the Commission's creditworthiness orders by: (1) enforcing its billing and settlement procedures under its Tariff; (2) invoicing DWR for all ISO transactions it entered into on behalf of SoCal Edison and PG&E within 15 days from the date of this order; (3) filing a report with the Commission, within 15 days from the date of this order, indicating overdue amounts from DWR and a schedule for payment of those overdue amounts within 3 months of the date of this order; and (4) reinstating the billing and settlement procedures under the Commission-approved ISO Tariff since we are rejecting Amendment No. 40. If the ISO fails to take these steps, we will consider it a violation of the Commissions' creditworthiness orders and the ISO's Tariff warranting the Commission to seek injunctive relief under section 314(a) of the Federal Power Act, 16 U.S.C. § 825m(a) (1994).

<u>The Commission orders</u>:

(A) The ISO must enforce its billing and settlement procedures under its Tariff, as discussed in the body of this order.

(B) The ISO is hereby directed to invoice DWR for all ISO transactions it entered into on behalf of SoCal Edison and PG&E within 15 days from the date of this order.

(C) The ISO is directed to file a report with the Commission, within 15 days from the date of this order, indicating overdue amounts from DWR and a schedule for payment of those overdue amounts within 3 months of the date of this order.

(D) Amendment No. 40 is hereby rejected and the ISO is hereby directed to reinstate the billing and settlement procedures under the Commission-approved ISO Tariff, as discussed in the body of this order.

By the Commission. Commissioner Massey dissented in part with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation

Docket Nos. ER01-3013-000 and ER01-889-008

(Issued November 7, 2001)

MASSEY, Commissioner, dissenting in part:

This order attempts to address a very serious problem in the California ISO market. Generators that sell into the ISO market are not being paid for their services. Compounding the problem is the fact that the generators are required to sell into the ISO market by the Commission's must offer condition, established as a key part of our mitigation program for the dysfunctional California market. The fundamental basis of commercial activity is that sellers are paid for their services. The fact that they are not is untenable. It is right for the Commission to aggressively address this problem.

Pursuant to the ISO's tariff, all buyers in its market must be creditworthy. Two of the major utilities in California, however, do not meet the creditworthiness requirements, and the California Department of Water Resources (DWR) is serving as the creditworthy party backing the purchases of these utilities. But DWR has not been paying the bills for purchases in the ISO market. The claimed reason is that there is no established mechanism to do so. Today's order resolves this in a straightforward way by explaining that the ISO should directly invoice DWR per its status as a scheduling coordinator. The order says that if the ISO fails to do this within fifteen days, it is a violation of the tariff and our creditworthiness orders that justifies the Commission going to court to seek injunctive relief under the Federal Power Act. I support this aggressive Commission action to ensure that the generators are paid.

The order, however, goes farther. It says that if the ISO does not provide a creditworthy party to back the transactions of the non-creditworthy utilities, the must offer requirement set out in our mitigation orders will no longer apply. I cannot support this provision and dissent from this part of today's order.

The must offer requirement is a critical part of the mitigation program the Commission put in place in our April and June orders, finding the program necessary to ensure just and reasonable rates in California's dysfunctional electricity market. The mitigation conditions are to remain in place until September 2002. While the Western

markets are behaving right now, we cannot be assured that this will continue. In fact, I give the must offer requirement a lot of the credit for the current lower prices. The Commission has made no finding that some or all of the California mitigation program is now unnecessary. Indeed, our pronouncements declare that all of the mitigation program is necessary until next September.

I do agree, however, that the current untenable situation must be resolved quickly.

The order instructs the ISO, among other things, to invoice DWR within 15 days for all transactions it entered into on behalf of the non-creditworthy utilities. I would give that approach a chance to work, perhaps adding a requirement that the ISO indicate to us within 5 days that it will do so. We could then pursue remedial action such as seeking injunctive relief if the ISO does not respond positively. We should explore any other direct approaches to ensuring that the suppliers get paid.

I strongly urge the ISO and DWR to resolve this untenable situation and pay the bills. I cannot, however, support lifting a key component of the mitigation program that a mere four months ago the Commission found necessary to ensure just and reasonable prices. I want to find a solution that includes both a "must offer" and a "must be paid" requirement.

Therefore, I respectfully dissent in part from today's order.

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William L. Massey
Commissioner