110 FERC ¶ 61,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER02-1656-021

GUIDANCE ORDER ON CONCEPTUAL PROPOSAL
FOR HONORING OF EXISTING TRANSMISSION CONTRACTS

(Issued February 10, 2005)

1. In this order, we address the California Independent System Operator Corporation's (CAISO's) conceptual proposal for honoring existing transmission contracts[1] (ETC Proposal) under the CAISO's Market Redesign and Technology Upgrade (MRTU).[2] The purpose of the ETC Proposal is to solicit the Commission's guidance so that the CAISO can either proceed as planned or modify its proposal as necessary. In this order, we approve in principle certain elements of the ETC Proposal, provide guidance and seek additional information and explanation of other elements, as discussed below. We note that the settlement and cost allocation issue is an intricate part of the ETC Proposal. Therefore, it is I mportant that the CAISO provide the Commission with the additional information sought in a timely manner, to allow the Commission the time and opportunity to review the ETC Proposal in its entirety and provide further guidance, if necessary.

2. Consistent with the nature of the CAISO's filing, the Commission's approval of the ETC Proposal components is in principle only. Our objective is to provide guidance, as requested by the CAISO, on whether the components of its ETC Proposal are acceptable so that the CAISO can proceed with the development of the software and

[1] The CAISO provides that, in the context of this filing, an existing transmission contract (ETC) is an encumbrance, established prior to the start-up of the CAISO, in the form of a contractual obligation of a CAISO Participating Transmission Owner (PTO) to provide transmission service to another party in accordance with terms and conditions specified in the contract, utilizing transmission facilities owned by the PTO that have been turned over to CAISO operational control pursuant to the Transmission Control Agreement.

[2] See generally California Independent System Operator Corporation, 105 FERC ¶ 61,140 (2003) (October 28 Order); California Independent System Operator Corporation, 107 FERC ¶ 61,274 order on reh'g, 108 FERC ¶ 61,254 (2004), order on reh'g, 110 FERC ¶ 61,041 (2005) (June 17 Order).

systems required to implement this aspect of its market redesign and the preparation of detailed tariff sheet amendments. We expect that at such time as the CAISO files a detailed methodology implementing each of the components of the ETC Proposal, together with tariff language that supports each of the elements, specific issues raised by market participants can be addressed.

3. This order benefits customers by providing guidance on the treatment of ETCs under the MRTU, which will allow the CAISO to proceed with the implementation of the MRTU.

Background

4. In an order issued on January 7, 2000,[3] the Commission found that the CAISO's existing congestion management method was fundamentally flawed, and directed it to design a new comprehensive congestion management plan. The CAISO began a market participant process to develop an alternate comprehensive congestion management system, but the subsequent upheaval in the CAISO power markets in 2000 and 2001 delayed the CAISO's efforts. In a December 19, 2001 Order, the Commission directed the CAISO to propose a plan by May 1, 2002, to implement a day-ahead market, to be integrated with the revised congestion management plan that was directed in January 2000.[4] The CAISO subsequently filed its MRTU proposal, to be implemented in three phases.[5] On July 17, 2002, the Commission issued an order accepting in part, rejecting in part and directing modifications of the CAISO's MRTU proposal.[6] In that order, the Commission also implemented a west-wide market power mitigation program.[7]

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[3] California Independent System Operator Corporation, 90 FERC ¶ 61,006, *reh'g denied*, 91 FERC ¶ 61,026 (2000).

[4] *San Diego Gas & Electric Company*, 97 FERC ¶ 61,275 at 62,245 (2001).

[5] Phase 1: market power mitigation measures, real-time economic dispatch and the use of a single energy bid curve; Phase 2: an integrated forward market (IFM), including an energy market and procedures for procurement of ancillary services; and Phase 3: implementation of the full network model, redesigned firm transmission rights (Congestion Revenue Rights or CRRs), and the integration of congestion management with energy and ancillary services market.

[6] California Independent System Operator Corporation, 100 FERC ¶ 61,060 (2002).

[7] The west-wide market power mitigation program involved the extension of the existing must-offer provision within the area of the Western Electricity Coordinating Council (WECC), adoption of a set of automatic mitigation procedures to identify and

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5. On July 22, 2003, the CAISO filed a revised conceptual proposal to further develop design elements of its May 1, 2002 proposal. In response, the Commission issued the October 28 Order, which was a guidance order approving, in principle, many of the conceptual design elements submitted by the CAISO. The Commission also sought additional information and explanation for some elements of the proposal and established technical conferences to address other issues raised by the filing. Specifically on the issue of the treatment of ETCs, the Commission stated that the CAISO's MRTU proposal may alter the rights of ETC holders if deviations to schedules submitted by ETC holders cannot be accommodated. As an initial step, the Commission required the CAISO to conduct further analysis of the proposal to demonstrate the likelihood of ETC holders experiencing a diminution of contractual rights under its revised scheduling process, and to present the results of this analysis to market participants and interested parties for further consideration and discussion. The Commission stated that it would be in a position to provide a definitive ruling on the ETC proposal only when further details have been settled and submitted for our consideration.

6. On March 5, 2004, the CAISO posted on its website a White Paper on its proposal for dealing with ETCs.[8] In it, the CAISO stated that the CAISO's preference was to have all existing ETC encumbrances converted into CRRs, but that this was unlikely to happen until after implementation of other CAISO redesign elements.

7. Subsequently, the ETC issues were also addressed in the June 17 Order. In that order, the Commission directed public utility parties providing service under ETCs (and non-jurisdictional parties on a voluntary basis) to submit to the Commission the following information: (1) the name of the entity responsible under the contract for scheduling the contract; (2) the type of agreement, *e.g.*, point to point, system integration; (3) the source point(s) applicable to the ETC; (4) the sink point(s) applicable to the ETC; (5) the maximum number of megawatts transmitted pursuant to the ETC for each set of source and sink points; (6) whether any modification to the ETC is subject to a just and reasonable standard of review or a *Mobile-Sierra* public interest standard of review;[9] (7) the contract termination date; and (8) the FERC designation for the contract, if applicable. The Commission explained that this information would be used to form the basis of further proceedings.

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limit excessive bids and local market power, and introduction of a bid cap of $250/MWh to be applied to sales in all WECC spot markets. These measures are in effect today.

[8] CAISO White Paper "Proposal for Honoring Existing Transmission Contracts" March 5, 2004.

[9] United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956) (Mobile); FPC v. Sierra Pacific Power, 350 U.S. 348 (1956) (Sierra).

8. On July 23, 2004, in Docket No. ER04-928-000, parties filed the requested information detailing approximately 64 contracts. Based on contract termination dates reported, 54 contracts representing approximately 19,000 megawatts (MWs) may still be in place upon implementation of MRTU in February 2007. These contracts may represent as much as 42 percent of the CAISO's 2004 peak load of 45,000 MWs.

CAISO's ETC Proposal

9. Prior to submitting the ETC Proposal for the Commission's review, the CAISO conducted an extensive market participant process on ETC-related issues. The CAISO initiated the market participant process by soliciting comments to its March 5, 2004 White Paper. To address the issues raised by market participants in those comments, the CAISO held six face-to-face meetings with market participants, including Pacific Gas & Electric Company, Southern California Edison Company, and Morgan Stanley Capital Group, Inc. Subsequently, the CAISO posted on its website a Revised White Paper which summarized the results of previous market participant meetings and provided further details on and modifications to the ETC proposal. Numerous parties submitted comments to the Revised White Paper. The CAISO states that the ETC Proposal, as filed with the Commission, addresses the concerns raised in those comments by the municipal utilities regarding the treatment of ETC schedules on the interties.

10. The ETC Proposal was also reviewed by the CAISO's Market Surveillance Committee (MSC) prior to being filed with the Commission. Following the discussions with market participants, the MSC issued a favorable opinion on the ETC Proposal.

11. On December 8, 2004, the CAISO submitted its conceptual ETC Proposal, stating that additional details need to be worked out with market participants. However, the CAISO states that in order to proceed with the development of the software and systems required and to meet the proposed February 2007 implementation date for the market redesign, it is imperative that the Commission issue an order approving the conceptual ETC Proposal without modification by February 18, 2005. The CAISO states that the ETC functionality must be incorporated into software in the first quarter of 2005 for inclusion in subsequent testing stages. According to the CAISO, the current development and testing schedules established by the CAISO and its vendors contemplate that the treatment of ETCs by the Commission will substantially remain as proposed in the instant filing. For this reason, the CAISO states that any significant departure from specific elements of the ETC Proposal could have an impact on the overall MRTU project schedule. The CAISO contends that changing the design to require the CAISO to set-aside unscheduled transmission capacity in the CAISO's network would constitute a major change to the market design.

12. The ETC Proposal contains three main elements: (1) scheduling the use of ETC rights in the CAISO markets; (2) validating that ETC schedules submitted to the CAISO are consistent with the ETC holders' contractual rights; and (3) settlement and allocation

of CAISO charges associated with ETC schedules and schedule changes. The CAISO states that the ETC Proposal fully preserves the ability of ETC rights holders to change their schedules and for the CAISO to provide firm service specified in the ETCs. The CAISO also commits to hold ETC rights holders financially harmless from any congestion costs associated with ETC schedule changes. In addition, the CAISO states that the proposal would minimize the impact of ETCs on the complexity of market operations under the MRTU, would not cause delay in the MRTU implementation timeline, and would implement a reasonable validation mechanism which would not pose an undue burden on either the PTOs or CAISO.

13. Additionally, in support of its proposal, the CAISO evaluated the approach taken by Midwest Independent Transmission System Operator, Inc. (Midwest ISO).[10] The CAISO states that in the Midwest ISO Order, the Commission required that all grand-fathered agreements (GFAs) subject to a just and reasonable standard of review comply with the Midwest ISO's scheduling protocols. The only GFAs that were exempted were those GFAs that: (1) explicitly provided for a *Mobile-Sierra* public interest standard of review; (2) were silent as to the standard of review; or (3) the entity providing the service was not a public utility. The CAISO asserts that its proposed treatment for honoring ETCs is equal to or better than the treatment that the Commission approved for the Midwest ISO's GFAs, because its proposal fully honors the contractual scheduling rights of all the ETCs, not only ETCs with *Mobile-Sierra* provisions.

14. The CAISO further states that its proposal also meets the four criteria established by the Commission in the Midwest ISO Order to honor those GFAs with a *Mobile-Sierra* provision.[11] In support of their assertion, the CAISO states that their proposal provides

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[10] *See Midwest Transmission Independent System Operator, Inc*., 108 FERC 61,236 (2004) (*Midwest ISO Order*). The CAISO also states that its proposal shares many similarities with PJM's treatment of existing contracts, *e.g.*, releasing unused ETC capacity in the day-ahead market and redispatching units to accommodate the contracts in real time.

[11] The Commission stated that the "carve-out" should include the following features in order for the Midwest ISO to honor those contracts with a *Mobile-Sierra* provision: (1) the maximum MW capacity for each "carved-out" GFA should be removed from the model used for Firm Transmission Rights allocation; (2) schedules submitted by the GFA parties in accordance with Midwest ISO's day-ahead timelines should not be subject to congestion charges; (3) the Midwest ISO should incorporate the GFA parties schedules into the Reliability Assessment Commitment procedures; and (4) the Midwest ISO should allow parties to "carved-out" GFAs to settle real-time imbalances through the provisions of their GFAs instead of requiring that such imbalances be procured through the Midwest ISO's real-time energy markets. *See Midwest ISO Order* at P 90-96.

that: (1) transmission capacity for ETC will be removed from the model and used for CRR allocation; (2) all valid ETC schedules will be exempt from day-ahead congestion charges; (3) the CAISO will incorporate ETC schedules into its Residual Unit Commitment Process (similar to the Midwest ISO's Reliability Assessment Commitment Procedure) (4) the ETC rights holder and the PTOs can agree to settle real-time imbalances through their ETC or the imbalance energy market. The CAISO concludes that its ETC Proposal is consistent with the treatment that the Commission required for carved-out GFAs in the Midwest ISO Order.

Notice and Motions to Intervene

15. Notice of the CAISO's filing was published in the *Federal Register*, 69 Fed. Reg. 75,945 (2004), with comments, protests, or interventions due on January 11, 2005.[12] The Cogeneration Association of California and Energy Producers and Users Coalition, the Metropolitan Water District of Southern California (Metropolitan), Sacramento Municipal Utility District (SMUD), San Diego Gas and Electric Company (SDG&E), Arizona Electric Power Cooperative and Southwest Transmission Cooperative (AEPCO), Morgan Stanley Capital Group, Inc. (Morgan Stanley) filed timely motions to intervene in this proceeding. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding.

16. The CAISO and California Department of Water Resources State Water Project (SWP) filed answers to protests. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2004), prohibits answers to protests unless otherwise permitted by the decisional authority. We will accept CAISO's answer to protests because its answer has assisted in our decision-making. However, we are not persuaded to allow the SWP's answer to protests.

Discussion

I. Honoring ETC Scheduling Rights

17. CAISO proposes differing treatment for ETCs within the CAISO's control area and ETCs with scheduling rights over the interties. According to the CAISO, the move to address ETCs is necessitated by the change from a zonal to a nodal market design and use of a Full Network Model (FNM). Those ETCs, which, as reported in Docket No. ER04-928-000 may be in effect upon implementation of the MRTU (*i.e.*, February 2007), represent approximately 19,000 MW, or 42 percent of the CAISO's 2004 peak load.

[12] *See* Notice of Extension of Time, Docket No. ER02-1656-021, December 29, 2004.

A. Treatment of ETCs within the CAISO's Control Area

18. For ETCs that are within the CAISO's control area, the CAISO proposes to only set-aside ETC capacity to the extent that the Scheduling Coordinator submits a valid schedule in the day-ahead market. The CAISO would not set-aside any transmission capacity on today's inter-zonal interfaces (*i.e.*, Path 15 and 26) or any other internal transmission for ETC rights holders. In the hour-ahead market, the CAISO states that valid ETC schedule changes would be given scheduling priority over all other hour-ahead schedule changes. Any portion of a schedule change that could not be accepted in the hour-ahead market would be accepted as real-time schedule changes. In addition, where contractual rights allow, the CAISO proposes that ETC rights holders would be able to submit, and the CAISO would accept, further schedule changes after the hour-ahead market closes.[13] In real time, the CAISO would redispatch non-ETC resources relative to their final hour-ahead schedules, as necessary, to accommodate valid real-time ETC schedule changes.

19. The CAISO explains that it is infeasible to set-aside unscheduled ETC transmission capacity on the internal network within the CAISO control area under the new market design because: (1) it would have a significant impact on the congestion management market and on the complexity of the market software; and (2) it would require transmission capacity set-asides on virtually every transmission line in the network. The CAISO further explains that in the context of the MRTU, requiring the CAISO to honor ETC scheduling rights by withholding unscheduled ETC capacity would require the set-aside of transmission capacity on virtually every transmission line in the network (because the FNM is a looped network model).[14] Continuing that practice under the FNM would mean reserving capacity on 6,000 transmission paths. According to the CAISO, attempting to model ETC capacity reservation on such a scale would be a formidable and complex task that would require additional, costly software that is not included in the MRTU systems currently under development.

20. The CAISO further states that in order to consider the adverse impact of such a set-aside on the market, the CAISO conducted a study to estimate the increase in energy prices that would result. The study considered a single operating hour typical of peak demand, and indicated that this set-aside would increase cost to the CAISO control area customers on the order of a least tens of millions of dollars per year for all ETCs that are in effect when the new Locational Marginal Price (LMP) markets begin operation.

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[13] Under the proposal, the final deadline for submission of real-time ETC schedule changes will be the earlier of 20 minutes prior to the start of the operating hour (T-20) or the deadline specified in the particular contract.

[14] Currently, the CAISO reserves unscheduled ETC capacity only on internal, inter-zonal interfaces that include Paths 15 and 26 and on interties (representing about 30 paths).

B. Treatment of ETCs with Scheduling Rights over the Interties

21. For ETCs that provide priority scheduling rights over the interties (*i.e*., permit the ETC holder to submit schedule changes after the day-ahead market), the CAISO proposes to set-aside unscheduled ETC capacity on all interties with external control areas (*e.g.* California Oregon Intertie and Palo Verde). According to the CAISO, the set-aside capacity will be withheld from the day-ahead market by reducing the available transmission capacity on the relevant intertie for the operating hour for the amount of the unscheduled ETC capacity. Under the CAISO's proposal, this capacity will be withheld from the market until the deadline for making schedule changes, as specified in the contract, elapses. According to the CAISO, the proposal will not grant any rights to ETC holders in excess of those rights provided for in their contracts.

Comments

22. Commenters generally support the CAISO's proposal for honoring scheduling rights of ETC holders. However, they raise specific issues, as discussed below.

23. Pacific Gas & Electric Company (PG&E) and California Public Utilities Commission (CPUC) express strong support for the CAISO's ETC Proposal. PG&E believes that the CAISO has developed an approach that overcomes phantom congestion, while continuing to honor the rights under existing contracts. Notwithstanding, PG&E suggests that the CAISO should take interim steps to eliminate phantom congestion caused by internal ETC capacity reservation.

24. SWP argues that the approval of the ETC proposal should be strictly limited to ceasing the practice of reserving capacity for ETC use (with real-time redispatch to "firm up" transmission instead).

25. SDG&E supports the CAISO's proposal to discontinue reserving internal ETC capacity in the forward market. However, SDG&E opposes the CAISO's proposal to retain the practice of "setting-aside" transmission on the interties because, in SDG&E's opinion, it will not reduce phantom congestion. SDG&E contends that the proposed reversal of congestion charges and the lack of incentives for ETCs to use their rights efficiently would not ensure a reduction of phantom congestion.

26. SMUD and the City and County of San Francisco (CCSF) argue that the CAISO's proposal will diminish the rights of ETC holders with respect to flexibility in scheduling. According to SMUD, it has flexibility in scheduling rights, including the right to provide scheduling changes up to 20 minutes before the hour. SMUD believes the CAISO's proposal essentially abrogates the ETCs by subjecting the ETC holders to additional costs.

27. Morgan Stanley objects to the ETC Proposal because the CAISO proposes to continue to set-aside ETC capacity on the interties in the day-ahead market. Morgan Stanley argues that the ETC Proposal will not eliminate phantom congestion affecting the use of transmission capacity for imports and exports into the CAISO control area. Morgan Stanley also contends that the ETC Proposal treats ETCs internal to the CAISO differently from ETCs over the interties, which is unduly discriminatory against power importers by limiting access to transmission in a manner that is inconsistent with the CAISO's treatment of internal market participants.

28. Morgan Stanley also indicates that the CAISO Market Surveillance Committee considered the CAISO's proposal to set-aside unscheduled ETC capacity over the interties and supported the proposal based on its supposition that convergence bidding[15] over the interties will allow market participants to avoid any market inefficiencies resulting from the CAISO's proposal. Morgan Stanley asserts that the CAISO does not plan to allow convergence bidding at the interties.

29. Morgan Stanley further states that the Commission should require the CAISO to provide it with an economic analysis of alternatives so the Commission can evaluate and determine the most efficient and appropriate solution to the phantom congestion problem. The California Electricity Oversight Board (CEOB), however, argues that no further cost-benefit analysis is warranted since no market participants have demonstrated a legal right to mandate that the CAISO set-aside unused ETC capacity.

30. In addition, the City of Santa Clara and Silicon Valley Power (SVP), and California Municipal Utilities Association (CMUA) believe that the CAISO's solution to set-aside unscheduled intertie capacity could effectively preserve market participant rights under the ETCs.

CAISO's Answer

31. In response to SMUD and CCSF's allegation that the ETC Proposal fails to honor ETC rights on the internal transmission network, the CAISO contends that SMUD and CCSF provide no support for their contention. In the CAISO's opinion, the parties simply make an unsubstantiated claim that there is no guarantee that they will receive the service to which it is entitled and that the proposal diminishes existing rights. The CAISO also states that SMUD misrepresents its proposal (and the CAISO's existing practice) by claiming that that the CAISO is "eliminating the practice of reserving capacity to accommodate the ETC holders' scheduling rights for the CAISO's internal

[15] Convergence bidding would allow a participant to buy (or sell) energy in the day-ahead market and simultaneously to assume an opposite obligation to sell (or buy) an identical amount of energy in the real-time market. Convergence bids are submitted only in the day-ahead market and are not relied upon to provide physical delivery in real time.

network. The CAISO indicates that the ETC filing clearly expresses that the CAISO does not currently set-aside unscheduled ETC capacity on its internal network The CAISO only sets aside capacity on the interties and on Paths 15 and 26.[16] The CAISO explains that the only change to existing practice is that it proposes to no longer set-aside unscheduled ETC capacity on Paths 15 and Paths 26. The CAISO thus concludes that, contrary to SMUDs erroneous characterizations, the CAISO's proposal reflects the continuation of an existing practice.

32. In response to the opposition to the proposed set-aside of capacity at the interties, the CAISO acknowledges that its proposal may result in some inefficiencies in the marketplace. Notwithstanding, the CAISO contends that this method is appropriate in order to honor ETC rights at the interties. The CAISO reiterates that absent a set-aside of unscheduled ETC capacity on the interties, it would not be able to guarantee that it could honor valid post-day-ahead ETC schedule changes 100 percent of the time due to seams issues and the fact that the CAISO does not control generation on the other side of the intertie, thereby limiting the CAISO's re-dispatch ability at the interties. Because interties are modeled as radial to the system, the CAISO states that the impact of setting aside unscheduled ETC capacity on the interties will be limited. To further support its argument, the CAISO conducted a study,[17] as part of the market participant process, on the impact of setting aside unscheduled ETC capacity at the interties. The CAISO concluded that even if it could have set-aside only the amount of capacity for ETCs that they actually used, thereby eliminating phantom congestion, it would not, on average,

[16] *See* the CAISO's Proposal for Honoring Existing Transmission Contracts under the CAISO's Comprehensive Market Design Proposal, Docket No. ER02-1656-021, at 6 and 28, n. 30 and 37 (December 8, 2004).

[17] The study represents data from the California Oregon Intertie (COI) and Palo Verde interties because only these two interties experienced significant day-ahead congestion in 2003. The CAISO indicates that the actual capacity rating for COI is 4,800 MW, while Palo Verde's capacity rating is 2,823 MW. The CAISO further states that the amount of hours in which congestion occurred in the day ahead markets at the COI and Palo Verde interties were approximately 2300 hours and 725 hours (out of 8760) of the year, respectively. For these hours, the CAISO analyzed the amount of New Firm Use (*i.e.*, non-ETC) schedules that could have been accepted day-ahead if the CAISO had set aside only the amount of ETC capacity that ETC holders actually used in each hour (combining both day-ahead ETC schedules and post-day-ahead schedule changes), versus the amount accepted when the CAISO set aside the full amount of capacity specified by the ETC rights. The CAISO states that the difference amounted to an average of 98 MWs for the 2300 hours of congestion at COI and 76 MWs for the 725 hours of congestion at Palo Verde, which was insufficient to fully eliminate day-ahead congestion at either intertie.

have eliminated day ahead congestion on the associated interties because the capacity only represents approximately 2 or 3 percent of capacity at the interties.

33. For the same reasons described above, the CAISO states that, contrary to Morgan Stanley's claim, the CAISO is not unduly discriminating against importers because the interties are materially different than the internal network for purposes of accommodating ETCs.

Commission Determination

A. Treatment of ETCs within the CAISO's Control Area

34. We accept the CAISO's conceptual proposal to set-aside capacity associated with an ETC[18] within the CAISO's control area to the extent that it is scheduled in the day-ahead market and to fully honor all valid schedule changes in post-day-ahead markets.[19] The CAISO's proposal is a departure from the current practice under which the CAISO sets aside unscheduled capacity associated with ETCs. Under the CAISO's proposal, Scheduling Coordinators on behalf of ETC rights holders would submit valid day-ahead schedules that then may be modified after the close of the day-ahead market. We further accept the CAISO's proposal to fully honor all valid schedule changes in the post-day-ahead market, some of which may result from particular contractual terms in the ETC. The CAISO states in its proposal that it will fully honor all ETCs and, in particular, ETC scheduling rights without regard to the existence or nonexistence of *Mobile- Sierra* clauses in the ETCs. For these reasons, we find that the CAISO's proposal fully preserves the ETCs holders' scheduling rights. We note that we accept the conceptual proposal only as it applies to scheduling rights; not as it relates to any other provisions of the ETCs.

35. Our decision to accept the CAISO's conceptual proposal for honoring scheduling rights for ETCs within the CAISO's control area is based on several factors. The proposal is the result of a comprehensive market participant process and shares large support among affected market participants. It also makes additional capacity available in the day-ahead and subsequent markets for use by other users of the system, reduces the likelihood and magnitude of phantom congestion, and promotes the convergence of day-ahead and real-time prices. While the proposal is distinguishable from the Commission's recent action in the Midwest ISO Order, which was to set-aside all capacity associated with GFAs with explicit *Mobile-Sierra* clauses or no explicit

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[18] The capacity set-aside must correspond to scheduling provisions that are expressly stated in the ETC.

[19] We note that the CAISO currently schedules ETCs using the CAISO's day-ahead scheduling rules and protocols. *See* CAISO tariff sections 2.4.4.5.1.4 and 2.4.4.5.1.5.

language on the standard of review, and place GFAs with a just and reasonable standard of review under the Midwest ISO tariff, we believe it achieves the same broad goals of providing the CAISO with the process it needs to reliably manage the grid while preserving the terms of the ETCs. We further note that our initial review of many of the ETCs with a just and reasonable standard of review indicates that those contracts do not contain priority scheduling provisions. Thus, we believe that since the CAISO's proposal will only honor priority scheduling rights specified in ETCs, many of these contracts and associated MWs will be placed under the scheduling provisions of the CAISO tariff, consistent with the scheduling of non-ETC holders' requests for transmission service. We also note that no party to an ETC containing a *Mobile-Sierra* provision has raised a concern that the CAISO's proposal for scheduling modifies its ETC.

36. With respect to SMUD's contention (without demonstration) that the CAISO's proposal diminishes ETC holders' flexibility in scheduling, the CAISO states, and we have no reason at this stage to conclude otherwise, that the proposal will honor all valid post-day-ahead schedule changes up to and including real time. Thus, we are unconvinced based on SMUD's assertion that the CAISO's proposal diminishes its rights.[20]

B. Treatment of ETCs with Scheduling Rights over the Interties

37. We also accept the CAISO's conceptual proposal to continue to set-aside unscheduled capacity over the interties. The CAISO does not control generation on the other side of interties, and its ability to redispatch resources is thus more limited on the interties than on the internal transmission network. Because the interties are modeled as radial to the CAISO system, the impact of setting-aside unscheduled ETC capacity on the interties will be limited. Furthermore, because interties are represented in the FNM in a radial fashion, it will be relatively straightforward for the CAISO to set-aside capacity for those ETCs without the problematic effects that would result from setting-aside capacity on the internal network. According to the CAISO, this set-aside will not affect capacity on the rest of the network, nor will it require complex software to implement. For these reasons, we find the CAISO's proposal reasonable.

38. In their protests, Morgan Stanley and SDG&E argue that the capacity set-aside on the interties will not reduce phantom congestion and that the CAISO's proposal is inefficient without the introduction of convergence bidding. We agree that convergence bidding will allow market participants to eliminate market inefficiencies by using convergence bidding on the interties based on their expectations of the amount of capacity released in real time. We also note that the CAISO is directed to include convergence bidding in its market design. In a recently issued order clarifying our earlier

[20] We note that SMUD's contracts (PG&E Rate Schedules 88, 91 and 136) provide for a just and reasonable standard of review.

directives in regard to convergence bidding,[21] we stated that:

> [t]he CAISO is directed to either: (1) submit tariff sheets to implement convergence bidding simultaneously with the implementation of the day-ahead market, or (2) if it does not believe the simultaneous implementation to be feasible, explain why and inform the Commission of a date when it would be feasible to implement it . We also … clarify that while we allow the CAISO flexibility in the timing of filing tariff language addressing convergence bidding, we believe such bidding to be beneficial to the California market and direct the CAISO to include it in its market design.[22]

We believe that the CAISO should provide for convergence bidding on the interties when it submits its convergence bidding proposal for the Commission review.

II. <u>Validation of ETC Schedules</u>

39. Validation of ETC schedules means verifying that submitted ETC schedules and schedule changes are within the contractual limits specified in ETCs with regard to eligible injection and withdrawal locations, maximum MW quantities, scheduling deadlines and other relevant parameters. The CAISO believes that in moving to the LMP-based market design, the complexity of ETC schedule validation based on the enforcement of a full network model will likely lead to increased disputes arising over validation decisions. Because the CAISO is not a party to these contracts, the CAISO asserts it should not have a role in interpreting the ETCs. Although the CAISO would prefer that PTOs have full responsibility for ensuring that each ETC schedule submitted to the CAISO is valid, to lessen this burden, the CAISO proposes to create an automated day-to-day verification process based on parameters provided by the contract seller, *i.e.*, the PTO, to serve as the basis for this verification. The CAISO offers this option for those ETCs where it is appropriate and workable.[23] However, its proposal does not preclude the CAISO's previous proposal, which requires PTOs who are the sellers of the ETC rights to take full responsibility for ensuring that each ETC schedule submitted to the CAISO is valid. The CAISO states that it is critical that under the automated validation procedures: (1) the contract sellers (*i.e.*, PTOs) be responsible for the accuracy

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[21] California Independent System Operator Corporation, 110 FERC ¶ 61,041 (2004).

[22] *See Id*. at P 33.

[23] According to the CAISO, the scheduling rights of some ETCs cannot be captured in the type of data file needed for the CAISO's automated procedure and therefore the automated procedure may not be available.

of the data files against which the CAISO validates ETC schedules; (2) each ETC data file be provided to the ETC rights holder and the CAISO simultaneously, to enable any disagreements between the contracting parties to be resolved outside of the CAISO's day-to-day markets; and (3) the procedures be fully automated to maximize transparency and eliminate the need for interpretation or discretion from the CAISO in the validation process. The CAISO states that the validation process should not add unacceptable complexity or costs to the MRTU project or increase the CAISO's exposure to disputes.[24]

Comments and Protests

40. SDG&E argues that the CAISO should not be in the business of validating ETC schedules. SDG&E claims that the CAISO is exposing itself to potential liability if one or both parties to the agreement disagree on whether or not the ETC schedule is valid. SDG&E suggests that the CAISO treat the ETC schedules similar to non-ETC schedules because the responsibility would shift to the Scheduling Coordinators submitting the ETC schedule to settle all associated costs.

41. Transmission Agency of Northern California (TANC) supports the proposed automated procedure for validation of ETC schedules because, in its opinion, it reduces the complexity and conflict that would have developed as a result of relying on the Scheduling Coordinator for the ETC. However, TANC states that it is concerned with the CAISO's proposal to rely on instructions from PTOs. TANC argues that the Commission should require the CAISO to include a resolution process that will facilitate agreement and resolution of disputes over operating procedures to the extent that there is disagreement.

42. SVP raises a concern that there will be disputes as to the correctness of the information derived from the contract. SVP believes that the CAISO should not accept unilaterally filed operating instructions, or any such instructions that have not been validated by all parties affected. SVP requests that the Commission identify a resolution process by which parties can settle their differences in a timely manner.

43. Metropolitan generally supports the CAISO's proposal for automated validation of ETC schedules. However, it proposes that rather than requiring the PTO to submit the required data simultaneously to the CAISO and ETC holder, it would be far more efficient for the PTO to submit the data to the ETC holder for its review and concurrence.

44. Southern California Edison Company (SCE) supports options offered by the CAISO for validating ETC schedules to the extent they are voluntary and do not impose an obligation on the PTO to assume the role of scheduling coordinator for any ETC. SCE states that where the ETC cannot be described in a data file format, and the ETC holder

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[24] The CAISO also explored an option whereby the ETC schedule validation task would be delegated to a third party.

(or its designate) acts as the scheduling coordinator for the ETC, then the ETC holder (or its designate) may validate the ETC schedule on a daily basis subject to periodic audits by the PTO to ensure that the ETC is abiding by the terms and conditions of the contract. In SCE's opinion, the use of third party validation should be the choice of the scheduling coordinator for the ETC, and the cost should be borne by the parties electing to use that option. With respect to schedules that fail the automated process for validation, SCE believes those schedules should be rejected by the CAISO and the rejection should be communicated in a timely manner to the Scheduling Coordinator for that ETC.

CAISO's Answer

45. In response to TANC and SVP, the CAISO states that no new dispute resolution process is necessary and reiterates that disputes between parties to the ETCs should be resolved outside the CAISO. Furthermore, the CAISO states that its tariff specifies the means for resolving ETC disputes and that the ETCs, themselves, also contain dispute resolution procedures. Moreover, the CAISO states that the Commission has previously stated that, ". . . Parties should resort to the [Alternative Dispute Resolution] procedures of the existing contract or the ISO Tariff to resolve their differences."[25]

Commission Determination

46. We accept the CAISO's conceptual proposal to validate ETC schedules using an automated validation procedure which will allow the CAISO to verify whether submitted ETC schedules are within their contractual rights based on contract data[26] provided by the PTO, *i.e.*, the contract seller. We agree that the PTOs should be responsible for the accuracy of the data files against which the CAISO validates ETC schedules and that those disputes which arise between the contracting parties should be identified and resolved by the parties.

47. In response to SVP and TANC's contention that the Commission should require the CAISO to include a resolution process that will facilitate agreement and resolution of disputes over operating procedures to the extent that there is disagreement, we note that the CAISO's tariff addresses this issue. Specifically, section 2.4.4.4.1.1 of the CAISO tariff states in pertinent part:

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[25] California Independent System Operator Corporation, 101 FERC ¶ 61,219 (2002).

[26] The ETC specific parameter table provided by the PTO would contain details of the ETC holder's rights in terms of allowable injection and take-out points, maximum MW, allowable scheduling deadlines and other data.

> The ISO will have no role in interpreting Existing Contracts. The parties to an Existing Contract will, in the first instance, attempt jointly to agree on any operating instructions that will be submitted to the ISO. In the event that the parties to the Existing Contract cannot agree upon the operating instructions submitted by the parties to the Existing Contract, the dispute resolution process provisions of the Existing Contract, if applicable shall be used to resolve the dispute; provided that until the dispute is resolved, and unless the Existing Contract specifies otherwise, the ISO shall implement the Participating TO's operating instructions. . .

We also note that the CAISO states that further details of this proposal will be developed with further market participant input.

III. Settlement and Allocation of CAISO Charges Associated with ETC Schedules

48. In its proposal, the CAISO envisions creating a "perfect hedge" that it contends will preserve the financial terms of all ETCs such that ETC rights holders will not bear any day-ahead or real-time congestion costs associated with valid ETC schedules and schedule changes.[27] Under its proposal, the CAISO, using the simultaneous feasibility test in the CRR allocation process, would create ETC CRRs "on paper" and hold them on behalf of ETC holders in order to ensure revenue adequacy for CRRs allocated or auctioned to other parties.[28] These CRRs would be used to offset congestion costs associated with valid day-ahead ETC schedules.

49. Congestion costs created by ETC post-day-ahead schedule changes will be reversed, or "refunded" on the standard 10-minute interval basis. The CAISO explains that under the MRTU, non-ETC metered demand and exports receive a rebate of real-time congestion revenues using a separate neutrality account.[29] Accordingly, the reversal of real-time congestion charges for ETCs will reduce the amount of funds in the

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[27] The CAISO's proposal does not distinguish between contracts containing just and reasonable or *Mobile-Sierra* standards of review.

[28] These CRRs, held by the CAISO on behalf of ETCs would have no underlying right to congestion revenues. The amount of capacity to be withheld from the market on behalf of ETC contracts to implement the "perfect hedge" is currently under consideration by the CAISO.

[29] The CAISO states that because congestion charges are collected by the CAISO in the real-time settlement and there are no holders of rights to receive real-time congestion revenues under MRTU, the CAISO proposes to create a special and separate account, referred to as a "neutrality account." The CAISO does not explain this in any more detail.

neutrality account and the costs of these post day-ahead ETC schedule changes would be spread over all non-ETC loads and exports. According to the CAISO, the impact should be limited by the symmetrical facts that ETC load and exports do not receive a share of this account, nor do they pay into it.

Comments and Protests

50. SDG&E argues that the proposal does nothing to alleviate the subsidies that market participants without ETC rights (such as SDG&E) will pay to manage congestion caused by ETC holders outside of the CAISO market (*e.g.*, through RMR dispatch notices).

51. Modesto Irrigation District (Modesto) asserts that the proposal fails to recognize that some ETCs have no cause or effect on congestion management. In Modesto's opinion, the CAISO should be required to identify and exempt those ETCs from any congestion related costs. Similarly, Modesto contends that the CAISO should not assess congestion related costs to loads that are: (1) within the CAISO control area but are not served by the CAISO-controlled grid and; (2) not within the CAISO control area but are served by ETCs that are not subject to the CAISO congestion management. These loads, by definition, do not benefit from the proposal and, therefore, should not be obligated to pay any related costs.

52. The Cities of Anheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities) argue that the costs incurred to honor ETCs in the post-day-ahead market should be allocated on a zonal rather than system-wide basis. They further state that prior to the formation of the CAISO, costs incurred by SCE and PG&E to honor ETCs were borne by the non-ETC loads in those control areas. Because the CAISO is proposing to continue this operating practice, the Southern Cities argue, there is no justification for shifting the costs incurred to honor ETCs created by PG&E to load in SCE service area, or vice versa. Thus, they further argue, the costs should be recovered from non-ETC loads in the relevant area.

53. Metropolitan requests that the Commission reject the CAISO's limited definition of "congestion cost" as the only redispatch costs to be reversed. Metropolitan is concerned that other congestion charges disguised as "reliability" or arising from "must-offer waivers," such as those being addressed in Docket No. ER04-835-000, may be improperly charged to ETC schedules and will not be reversed. Metropolitan would support the proposal assuming that all costs of redispatch to honor ETCs are spread to metered demand and exports.

54. SCE supports the CAISO's proposal to allocate congestion costs to all loads using the CAISO controlled grid, especially since unscheduled ETC capacity is made available to participants in forward markets. While the cost allocation method is focused primarily

on congestion costs, SCE states that there are other costs the ETCs may be subject to in the MRTU. As a result, SCE requests that the CAISO provide a list of potential charges that ETCs would be subject to and explain how those costs will be treated.

55. AEPCO urges the Commission to reject the ETC Proposal. AEPCO argues that the best reconciliation of the CAISO's proposed LMP regime with the ETCs would be to assign CRRs for ETC transmission paths to the ETC holders. AEPCO believes that, since the ETC holders have paid for the transmission, the ETC holders should be entitled to the additional value, if any, associated with use of the transmission.

56. TANC states that although the ETC proposal for allocation and settlement of the CAISO charges is not perfect, it is an equitable compromise for market participants. The CEOB and SWP also support the "perfect hedge" option of cost allocation because, in their opinion, it provides the greatest likelihood of protecting ETC holders from cost shifts originating from congestion. SWP, however, requests that the Commission require the CAISO to provide a "perfect hedge" with respect to all inter-zonal congestion costs associated with ETC service. SWP further states that the CAISO should also be required to: (1) certify that it shall not charge ETC service any congestion charges; (2) provide data to its congestion management system in a way that the program will be able to perform as described in the tariff; and (3) immediately and publicly inform the Commission, the CAISO Board, market participants, the CAISO Market Surveillance Committee, and ETC holders of failures in the CAISO's congestion management that in the CAISO's view justify, for instance, the CAISO off-tariff non-market purchases of incremental or decremental generation as a means of congestion management.

57. The CEOB also recognizes that ETC holders do not want to pay any additional costs, however costs not associated with transmission congestion (*e.g.*, marginal losses) should be settled by the parties to the ETC. In addition, the CEOB states that ETCs should not be exempt from charges related to RUC or uninstructed deviations as they are not related to transmission congestion costs.

CAISO's Answer

58. The CAISO states that under the "perfect hedge" mechanism, for purposes of allocating congestion costs related to day-ahead ETC schedules, the CAISO will create but not release CRR obligations for ETCs. According to the CAISO, this will enable the CAISO to minimize any risk of a revenue shortfall for non-ETC CRR holders due to application of the "perfect-hedge" mechanism in the day-ahead market. The CAISO further explains that because congestion charges will be absorbed by the CRRs held by the CAISO, the impact upon non-ETC holders should be neutral as long as a sufficient number of CRRs are created to hedge day-ahead ETC congestion charges. The CAISO

further states that the structure of the CRR release provides for monthly adjustments to CRR allocations, which would enable the CAISO to adjust the ETC CRR set-aside in a timely manner if necessary.

59. The CAISO states that for congestion charges related to post-day-ahead ETC schedule changes, there should be no impact on non-ETC Scheduling Coordinators. The CAISO explains that congestion charges are embedded in the location real-time prices and collected from Scheduling Coordinators as part of the LMP settlement. However, because there are no CRR payments in real time, these congestion charges are refunded to Scheduling Coordinators through a dedicated neutrality account. To implement the "perfect-hedge" for post-day-ahead ETC schedules in this context, the CAISO would not collect congestion charges for these schedules, and would likewise not include them as receipts of the neutrality account refunds. As a result, there should not be any impact on the refund of congestion charges to non-ETC Scheduling Coordinators in real time.

60. Regarding allocation, the CAISO states that there is a strong preference by market participants, as reflected in written comments, to spread post-day-ahead congestion costs to all non-ETC metered load and exports. In response to the comments opposing the CAISO's proposed cost allocation method, the CAISO argues that the socialization of costs is reasonable because the ETC Proposal addresses phantom congestion and improves transmission efficiency, thereby benefiting all transmission customers.

Commission Determination

61. We find the CAISO's concept of the "perfect hedge" appealing because it would provide financial protection to ETC rights holders against any congestion charges that may arise under the LMP design. However, we find that the CAISO's "perfect hedge" lacks sufficient detail even at this conceptual stage regarding exactly how the mechanics of the "hedge" would work, including the settlement and allocation of those costs that would result from the implementation of the ETC Proposal. For example, it is unclear from the CAISO's proposal: (1) whether revenues from the "paper CRRs" flow to the neutrality account or are maintained in a separate account; (2) whether congestion costs that result from valid post day-ahead ETC schedule changes will be paid for by surpluses in the neutrality account (which includes only congestion surpluses from the real-time market); (3) whether the real-time congestion revenues that accrue to the neutrality account will be sufficient to cover the costs associated with ETC holders' scheduling changes following the day-ahead market; and (4) how many CRRs should be withheld from the CRR allocation process in order to implement the "perfect hedge." We note that excess revenues from the "paper CRRs" could serve to further reduce those costs associated with post day-ahead ETC schedule changes. It is also unclear how and to whom these costs are assigned.

62. For these reasons, we request that the CAISO file with the Commission within 30 days of the date of issuance of this order additional details on the "perfect hedge" approach, including responses to the issues discussed above. . The CAISO should prepare examples with sufficient detail to ensure that the filing is comprehensive. Consequently, we will entertain parties' specific concerns involving settlement and cost allocation issues raised in this proceeding when we review the additional information sought in this order.

IV. Miscellaneous

A. Transmission Ownership Rights

63. The CAISO argues that its ETC Proposal does not apply to transmission owner rights (TORs), such as the California-Oregon Transmission Project (COTP), where transmission rights derive from physical ownership of transmission facilities within the CAISO control area that have not been turned over to the CAISO's operational control. The CAISO states that the ETC Proposal applies only to contractual transmission rights to receive service on transmission facilities that have been turned over to the CAISO's operational control. The CAISO further states that it is in the process of developing a White Paper addressing the TOR issues. In connection with this, the CAISO requests that the Commission not rule on the TOR issue in addressing the instant ETC Proposal until after the CAISO submits its specific proposal on the treatment of TORs under the MRTU.

Comments and Protests

64. TANC, CMUA, SVP, and Metropolitan support the CAISO's suggestion that the management of TORs should be addressed separately because, in their opinion, TORs that are associated with the COTP are distinguishable from ETCs.

Commission Determination

65. In the October 28 Order, we stated that we were "reluctant to allow an exception to the general rule regarding the treatment of the California Oregon Transmission Project [because] [o]n its face, the exception proposed by the CAISO for the [COTP] may be regarded as discriminatory."[30] Accordingly, we required that, "as part of the further development and consultation, the CAISO undertake a further analysis of this part of the proposal, and demonstrate that the variation in treatment of certain ETCs, as proposed, is not unduly discriminatory."[31] In its ETC Proposal, the CAISO informs us that it is in the process of formulating the proposal on the treatment of TORs for the consideration of its

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[30] See October 28 Order at P 204.

[31] See Id.

market participants and requests that we not rule on the TOR issue in this order. We will grant the CAISO's request. We will address the treatment of TORs under the MRTU when the CAISO submits its proposal for the Commission review.

B. Request for Technical Conference and Clarifications

66. Several parties argue that the CAISO's proposal lacks necessary details and therefore parties seek clarification of certain issues. Parties also request that the Commission direct the CAISO to conduct a technical conference to resolve outstanding issues. For example, CMUA along with other parties seeks, among other things, further discussion of non-congestion related costs (*e.g.*, marginal losses), how the CAISO will segregate ETC redispatch from other system redispatch, and the proposed treatment of invalid ETC schedules.[32] Furthermore, SMUD and Modesto suggest that the Commission reject the ETC proposal. SMUD argues that the proposal provides no details on the estimated costs of developing and implementing the ETC Proposal, while Modesto contends that the ETC Proposal is premature and should be integrated with the functionality of the MRTU and discussed collectively. In the event that the Commission does not reject the ETC Proposal, they request that the Commission establish a technical conference to discuss their concerns. In addition, TANC requests that the Commission encourage the CAISO to continue to explore additional alternatives, and to develop software programs that will allow for alternative approaches to treatment of ETCs.

67. Furthermore, certain parties seek clarification of specific issues. For example, Powerex Corp. (Powerex) and SVP seek clarification from the CAISO on whether the ETC Proposal will honor the sales of primary ETC rights to secondary ETC rights holders. SCE states that the CAISO must change its current treatment of ETCs that provide wheeling through the CAISO grid. Specifically, SCE argues that the CAISO should be required to change its settlement practices to eliminate load-related charges to ETC wheel-through schedules. Additionally, SVP seeks clarification regarding the CAISO's representation that, "the ETC rights holder and the PTO can agree to settle real-time imbalances through their ETC or through the imbalance energy market." SVP also seeks clarification that the CAISO's proposal will not interfere with other components of the ETC, such as provisions for ancillary services in an ETC which involve the supply of generation. SVP seeks clarification that the proposal to curtail day-ahead ETC schedules last, when non-economic adjustments are required, would also apply in the hour-ahead and real-time markets.

[32] SWP seeks a commitment by the CAISO to promptly negotiate a MSS Agreement because it would resolve longstanding issues relating to the ISO tariff's failure to accommodate SWP resources available through ETCs.

CAISO's Answer

68. In its answer, the CAISO provides clarification of footnote 18, as requested by SCE. Further, the CAISO explains, in response to Powerex's concern regarding the secondary ETC rights, that to the extent an ETC permits the resale of ETC rights to a third party, the CAISO will permit such right to be utilized by the Scheduling Coordinator to whom such rights are transferred.

Commission Determination

69. We disagree with protesters that the CAISO's filing is premature and should be rejected. The ETC Proposal is the conceptual framework for honoring ETCs under the MRTU and, as CAISO states, the instant filing does not specify all of the details that will ultimately be included in the CAISO's MRTU tariff. In this order, we approve in principle the ETC Proposal and provide guidance, seek additional information and explanation on certain aspects of the ETC Proposal. Our action in this regard will allow the CAISO to proceed with the development of requisite software and tariff modifications, to facilitate the implementation of the MRTU without further delays. Parties will have an opportunity to comment on the ETC issues when a comprehensive MRTU tariff is filed with the Commission. The CAISO states that it recognizes that this proposal addresses only certain elements of the ETC treatment under the MRTU and commits to further activities with market participants to develop additional details of its ETC Proposal. We therefore direct the CAISO to address those issues raised by interveners during this process and deny the requests for a technical conference, as premature.

70. We also reject TANC's request to direct the CAISO to develop alternative approaches for treating ETCs under the MRTU. The CAISO considered other options for honoring ETCs under the new market design and determined through a process open to all market participants that these options were not feasible under MRTU. Accordingly, we do not believe that the development of further approaches would be productive.

C. Characterization of Individual ETCs

71. Several parties allege that the list of ETCs submitted along with the ETC Proposal is not accurate; specifically, it allegedly includes contracts that do not qualify as ETCs or omits contracts that fall within the definition of an ETC. In particular, SCE states that two agreements (Rate Schedule Nos. 304 and 421) listed on Table 1 to the CAISO's ETC Proposal do not qualify as ETCs and should be removed from the table. SDG&E states that the ETC Proposal incorrectly lists only SCE and PG&E as holders of ETC contracts. Based on the CAISO's definition of an ETC (*i.e.*, an encumbrance, established prior to the start-up of the CAISO in the form of a contract), SDG&E argues that it has some contracts that would qualify as an ETC. Midway Sunset Cogeneration Company (Midway) also states that the CAISO has failed to identify a transmission agreement

providing service to Midway as an ETC. SDG&E and Midway contend that if Attachment D is meant to provide a comprehensive catalog of the ETCs to be covered under the CAISO's proposal, then the Commission should ensure that the list is complete. According to Midway, if Attachment D is not intended to be a catalog, then the Commission's approval should be contingent on an explicit procedure for creating such a catalog. Metropolitan also does not agree with SCE's description of Rate Schedule No. 203 submitted by CAISO in Attachment D.

72. MSR Public Power Agency (M-S-R) submits that the Commission should not rely upon or utilize the data in Attachment D of the ETC proposal to determine the rights and obligations of parties to these agreements. M-S-R states that its ETC with SCE (Rate Schedule 339) provides both the just and reasonable and *Mobile-Sierra* public interest standards of review. To the contrary, SCE believes that the ETC in question only provides for a just and reasonable standard of review. M-S-R and SVP request that the Commission, when acting upon the ETC proposal, explicitly state that the Commission does not accept the CAISO's interpretation of the terms and condition of the ETC contracts. Modesto also argues that the CAISO erroneously interprets the standard of review for its interconnection agreement with PG&E as simply just and reasonable.

CAISO's Answer

73. The CAISO states that Attachment D was intended to be used as a definitive categorization of the rights under the numerous ETCs. Accordingly, the CAISO does not seek a Commission determination on the merits of the disputed ETCs. The CAISO further argues that it is not necessary for the Commission to rule on the characterization of each ETC in order to find that the ETC Proposal is just and reasonable and does not abrogate ETCs.

Commission Determination

74. M-S-R, SCE, SVP, and Modesto's challenges of the CAISO's interpretation of the standard of review in these parties' contracts, while important to resolve, do not directly impact our determination with respect to the CAISO's conceptual ETC Proposal. In this order, we accept the CAISO's proposal to honor scheduling rights for all contracts in which the CAISO's proposal does not diminish rights and for which parties agree that their rights are not diminished. The CAISO's proposal will honor scheduling rights for

all ETCs,[33] not just those containing a *Mobile-Sierra* standard of review. Thus, the CAISO proposes to treat all ETC holders the same, regardless of the standard of review in those contracts. The parties to the ETCs must, however, resolve disputes concerning the characterization of the ETCs. The CAISO must have an accurate accounting of the ETCs. We will issue a subsequent order setting forth the universe of ETCs based on the CAISO's Attachment D and the submission of data in Docket No. ER04-928-000. Accordingly, we will address the issues raised on the contract characterization issues raised above in that order.

<u>The Commission orders</u>:

(A) Approval in principle is hereby granted for certain elements of the CAISO's ETC Proposal; guidance is provided; and clarification is sought on other elements, as discussed in the body of this order.

(B) The CAISO is hereby requested to file with the Commission additional information on the settlement and cost allocation component of the ETC Proposal within 30 days of the date of issuance of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.

[33] Data was filed for approximately 64 contracts in Docket No. ER04-928-000. Based on contract termination dates reported, 54 contracts representing approximately 19,000 MWs may still be in place upon implementation of MRTU in February 2007. Of the 54 contracts, 23 contracts are characterized as containing a just and reasonable standard of review, 10 contracts are characterized as containing a *Mobile-Sierra* public interest standard of review, and 21 contracts are characterized as mixed. Some parties submitted comments challenging the standard of review characterization of their individual contracts.