

maximum extent practicable, the rates for products and services are stable and business certainty is maintained.

The commentors quoted previously also equated certainty with having physical long-term transmission rights. These physical rights are unavailable from the ISO under the PTO Alternative. As pointed out by TANC, transmission service is only available on a day-to-day basis and is allocated to those willing to pay the highest price. There is no business certainty associated with a forward purchase that requires transmission to get power to load if, day-to-day, the price of transmission varies significantly. A forward purchase of energy believed to be economical under one set of assumed transmission costs can rapidly become uneconomical if the cost of transmission increases significantly over a short period of time. Under the PTO Alternative, customers would be subject to these variable changes in transmission service costs because the use of Western's transmission system would be governed by the ISO and would be subject to all of the ISO charges. To the extent existing right holders may be eligible to receive congestion revenues, they may be able to mitigate some of this price uncertainty but not to the same extent provided by physical transmission rights.

Under the PTO Alternative, Western would also be responsible for paying ISO overhead charge increases as the SC for Base Resource and Custom Product schedules. If Western does not incur significant energy imbalance or ancillary service charges from the ISO, Western's costs may not escalate as rapidly and be as variable as the ISO's in the recent past. However, Western's customers could experience additional costs associated with the transmission and delivery of their energy due to market-based charges for congestion and ancillary services. Although prices are relatively stable now, Western and its customers may still be subject to uncontrollable market-based risk, as well as the uncertainties associated with the implementation of MD02. Western concludes that this alternative does not meet the certainty criteria.

#### Evaluation of the Durability Criteria Under the PTO Alternative

In general, operating and business protocols and practices are established and defined by the agreements which create the relationship. These agreements establish obligations and responsibilities of the parties and allocate the burdens and benefits of each business relationship. Under the PTO option, the basis for Western's

relationship with the ISO is the ISO Tariff. Because the ISO is a tariff-based organization, after a PTO executes a TCA, the operating terms, conditions, rates, and other pertinent aspects governing a PTO's business arrangements with the ISO can change with the filing of new ISO Tariff amendments. In the event Western and the ISO cannot agree upon potential changes to its existing agreement(s), the ISO can submit its proposed changes to the Commission for resolution.

Many commentors expressed reservations about the durability of any arrangement with the ISO because it uses a tariff-based approach. Many of the comments equated stable, long-term business relationships occurring through contract- and not tariff-based relationships.

For instance, the TANC stated:

We believe in the durability of long-term contracts for establishing rights and obligations of load serving entities. Western has always utilized this approach to doing business. The CAISO has historically attempted to alter the rights and obligations of existing contracts. The CAISO utilizes tariffs that can and have been frequently changed. The CAISO files amendments too frequently to consider the CAISO Tariff durable or predictable.

Others including the MID, the TID, and the SVP cite the 55 amendments that the ISO filed at the Commission in the last 5 years as evidence that a relationship with the ISO is not durable.

The ISO commented:

The ISO's operating protocols have remained substantially the same since the ISO start-up date in 1998. The only changes in operating protocols are based on the need to comply with changing operational criteria from the NERC and WECC. However, every control area, including the Western Control Area, would have to make similar changes over time. Admittedly, the ISO has necessarily changed the protocols associated with markets, market implementation, and market rules a number of times over the past 6 years. Given that the ISO was the first of its kind in the United States, an evolutionary process has been necessary when it comes to markets. Thus Western's concern with durability with respect to operating protocols has been met, but market durability is still evolving and will continue to evolve for a number of years to come. Western cannot disguise its concern regarding "operating protocol durability" as an off-hand reference to the energy crisis and changing market rules. Moreover, the ISO's ongoing market modifications are designed to promote stability based on experience, best practices, and coordination of operations to the benefit of all California consumers and market participants.

Fifty-seven ISO Tariff amendments have been filed since the ISO became operational in 1998. Western notes that

the ISO has filed four tariff amendments since this public process began on June 24, 2003. Although it is important to distinguish between procedural and substantive changes to the ISO Tariff, the underlying ability of the ISO to undertake changes to its business and operating protocols and procedures creates business uncertainty and risk.

Based on the affected term or condition, these changes could materially affect the relationship between the benefits and burdens that each party would receive and impart from being a PTO. Stakeholders continue to have ongoing concerns related to the frequency and number of ISO Tariff amendments. Although many of these changes would parallel changes that other control area operators must implement in response to ongoing industry changes, because of their frequency and the number of substantive changes made, Western concludes that the PTO Alternative almost meets the durability criteria.

#### Evaluation of the Operating Transparency Criteria Under the PTO Alternative

As a PTO, Western's transmission system would be scheduled and dispatched by the ISO as a part of the ISO-controlled grid. Assuming that the operational jurisdictional issues identified earlier in the description of the PTO Alternative are satisfactorily resolved, Western and Reclamation would operate its system under the operating protocols and procedures established by the ISO. Because the ISO is a NERC- and WECC-certified control area, the ISO would, in the ordinary course of its business, coordinate changes to its system operations with bordering control areas or provide appropriate mitigation measures to minimize the impacts of such changes to neighboring control areas. With respect to impacts to third parties, the PTO Alternative meets the requirements of the operating transparency criteria.

#### Cost-Effectiveness Criteria Under the PTO Alternative

Navigant prepared a comparative economic analysis of each post-2004 operational alternative under consideration on behalf of Reclamation and Western. Navigant's comparative analysis showed that, of the three alternatives, the comparative net benefits of Western operating as either an MSS in the ISO control area or as a new control area were similar. Navigant's analysis indicated that the PTO option was the least cost-effective.

During the public comment period, the ISO and other commentors