

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System)
Operator Corporation) Docket No. ER98-899-001
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)

**ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO MOTIONS TO INTERVENE AND REQUEST FOR CLARIFICATION OR
IN THE ALTERNATIVE PROTEST**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (1997), the California Independent System Operator Corporation ("ISO") submits this answer to the motions to intervene submitted in this docket. The ISO does not oppose any of the interventions. However, for the reasons discussed herein, Enron Power Marketing, Inc.'s ("Enron") request for clarification or in the alternative protest should be denied. Enron should not be permitted to interject new issues into this proceeding which it failed to raise when the Utility Distribution Company Operating Agreements ("UDC Agreements) were first filed in early December 1997 and which are wholly unrelated to the ISO's June 1, 1998, compliance filing.

I. BACKGROUND

On June 1, 1998, the ISO submitted a compliance filing amending the ISO Tariff (including the ISO Protocols), the ISO Code of Conduct, the Transmission Control Agreement, certain of the ISO's pro forma operating agreements, and certain of the ISO's bilateral operating agreements.¹ Included in the June 1, 1998, compliance filing were amendments to the pro forma UDC Agreement and the bilateral UDC Agreements between the ISO and Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E"), and Southern California Edison Company ("Edison").²

The Commission noticed the ISO's filing on June 9, 1998, with interventions and protests due by August 5, 1998. The Commission specified that comments related to the UDC Agreements were to be submitted in Docket No. ER98-899-001.

Interventions were filed by five parties: the California Electricity Oversight Board, the Western Area Power Administration, the California Department of Water Resources, CalEnergy Company, Inc., and Enron. Only Enron has raised a substantive issue regarding the UDC Agreements, but the issue is not related

¹ Capitalized terms used herein and not defined are used with the meanings given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² By order dated February 25, 1998, the Commission conditionally accepted the UDC Agreements for filing and directed the ISO to revise the UDC Agreements to conform to the order issued December 17, 1997, Pacific Gas and Electric Co., et al., 81 FERC ¶ 61,320 (1997). California Independent System Operator Corporation, 82 FERC ¶ 61,180 at 61,670-71. The amendments were to be filed within 60 days of the start of ISO operations. Id. Amendments for the City of Anaheim Public Utilities Department were not included in the compliance filing because Anaheim was in their regulatory approval process and both Anaheim and the ISO did not want conflicting documents in circulation. However, Anaheim received approval to execute the UDC Agreement as amended by the Commission's orders.

to the compliance filing. The ISO will discuss this concern below.³ By order dated August 14, 1998, the Commission granted the ISO's motion for an extension of time to respond to all of the interventions in the various compliance dockets, including this matter.

II. DISCUSSION

The ISO does not oppose the interventions of any of the parties that have moved to intervene in this proceeding. Enron does not oppose any of the specific amendments to the UDC Agreement submitted in the June 1, 1998, compliance filing. Instead, Enron's clarification (or in the alternative protest) attempts to interject new issues into the proceeding. Enron seeks clarification from the Commission that: (1) the UDC Agreements do not impose costs or obligations on wholesale distribution transactions that are "unrelated to the delivery or to the receipt of power from the ISO Controlled Grid" and (2) the reasonableness for the Wholesale Distribution Tariff set for hearing in Pacific Gas & Electric Co., Docket No. ER97-2358-002, et al., will not be governed or controlled by the UDC Agreement. Enron Intervention at 3-9.

³ Enron has filed both a motion for clarification and protest. The ISO is permitted under Rule 213(a)(3) of the Commission's Rules of Practice and Procedure to answer this motion. 18 C.F.R. § 385.213(a)(3). Notwithstanding Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), the Commission has also accepted answers to protests that assist the Commission's understanding and resolution of the issues raised in a protest, Long Island Lighting Co., 82 FERC ¶ 61,129 at 61,462 (1998), clarify matters under consideration, Arizona Public Service Co., 82 FERC ¶ 61,132 at 61,477 n.11 (1998); Tennessee Gas Pipeline Co., 82 FERC ¶ 61,045 (1998), or materially aid the Commission's disposition of a matter, El Paso Natural Gas Co., 82 FERC ¶ 61,052 at 61,200 (1998). The ISO's Answer will clarify matters under consideration, aid the Commission's understanding and resolution of the issues and help the Commission to achieve a more accurate and complete record, on which all parties are afforded the opportunity to respond to one another's concerns. Northern Border Pipeline Co., 81 FERC ¶ 61,402 at 62,844 n.16 (1997); Hopkinton LNG Corp., 81 FERC ¶ 61,291 at 62,382 n.4 (1997). The Commission should accordingly accept this Answer.

Enron's pleading is untimely. The issues raised by Enron are unrelated to the compliance changes to the UDC Agreements reflected in the ISO's June 1, 1998, compliance filing. Enron failed to raise these concerns when the UDC Agreements were first filed and it is improper for it to do so now in this proceeding.

The ISO filed its UDC Agreements with PG&E, SDG&E, and Edison on December 2, 1997.⁴ The Commission noticed the filings on December 9, 1997 with interventions and protests due by January 5, 1998. Enron failed to intervene and raise any substantive concerns in response to these submissions. The ISO notes that Enron is absent from the list of intervenors for the UDC Agreements in the appendix to the Commission's February 25, 1998, Order. See California Independent System Operator Corporation, 82 FERC at 61,672.

The ISO filed an unexecuted UDC Agreement with the City of Anaheim Public Utilities Department on February 18, 1998. Interventions with respect to this submission were due by March 13, 1998. Again, Enron failed to submit an intervention or protest. California Independent System Operator Corporation, 82 FERC ¶ 61,326, 62,289 (1998).

Prior to its August 5, 1998 filing, Enron has not sought to participate in the ongoing proceedings concerning the UDC Agreements before Judge Joseph R. Nacy in Docket Nos. ER98-899-000, et al. The parties in that case have filed Statements of Issues that do not include the new concerns raised by Enron.⁵

⁴ The ISO noted that the bilateral UDC Agreements would also serve as a pro forma agreement. California Independent System Operator Corporation, 82 FERC at 61,669.

⁵ See the separate Statements of Issues filed by the ISO and the Transmission Agency of Northern California, the M-S-R- Public Power Agency, the Modesto Irrigation District and the Cities of Redding and Santa Clara, California on July 8, 1998 in Docket Nos. ER98-899-000, et al.

More significantly, the parties in these proceedings have been engaged in extensive settlement negotiations and reached an agreement in principle that resolves all issues raised by those who have been active participants since the inception of these proceedings.⁶ Enron's requested clarification could prejudice the active participants who have been negotiating a mutually agreeable resolution of this matter.

Significantly, Enron's pleading is devoid of any explanation as to why it could not have raised these concerns when the UDC Agreements were first filed. Enron, a sophisticated participant in electric markets "throughout the United States" (Enron Intervention at 2) should not be permitted at this late date to interject new matters into these proceedings.

III. CONCLUSION

Wherefore, for the reasons stated herein, the ISO respectfully requests that the motions to intervene be granted and that its compliance filing concerning the pro forma and bilateral UDC Agreements be accepted without modification. The ISO also respectfully requests that Enron's request for clarification or in the alternative protest be denied.

Respectfully submitted,

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⁶ See the Motion to Suspend the Procedural Schedule filed by the ISO on August 3, 1998, in Docket Nos. ER98-899-000, et al. No participant opposed the ISO's motion and the presiding Judge suspended the procedural schedule by order dated August 5, 1998. The ISO is in the process of preparing settlement documents reflecting the agreement in principle and circulated a draft to the parties on September 1, 1998 in preparation for completing the Offer of Settlement.

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Dated: September 3, 1998

CERTIFICATE OF SERVICE

I hereby certify I have this day served this document upon each person designated on the official service list compiled by the Secretary in this docket in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. ¶ 385.2010).

Dated at Washington, D.C. on this 3rd day of September, 1998.

David B. Rubin

September 3, 1998

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket No. ER98-899-001**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Answer of the California Independent System Operator Corporation To Motions To Intervene and Request for Clarification or in the Alternative Protest in the above-captioned docket.

Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,

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Enclosures
cc: Service List

