

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System)
Operator Corporation) Docket No. ER99-1770-000
)
)

**MOTION FOR LEAVE TO FILE ANSWER AND
ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTIONS TO INTERVENE, COMMENTS AND PROTEST**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (1998), the California Independent System Operator Corporation ("ISO") submits this Motion for Leave to File an Answer and Answer to the Motions to Intervene, Comments and Protest submitted in this docket.

I. BACKGROUND

On February 11, 1999, the ISO filed in the above-captioned docket revisions to Appendix B of the Transmission Control Agreement ("TCA") among the ISO and Transmission Owners ("TOs").¹ These revisions were submitted as a result of negotiations involving Pacific Gas and Electric Company ("PG&E") and the existing transmission rights holders on Path 15, which is a transmission path owned by PG&E that generally extends south from PG&E's Los Banos

¹ Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.

Substation to a point of interconnection with Southern California Edison Company's transmission facilities at the Midway Substation.

The TCA is the agreement among the ISO and TOs which establishes the terms and conditions under which the TOs will become Participating TOs and dictates how the ISO and each Participating TO will discharge their respective duties and responsibilities.² The initial TCA was filed as part of the comprehensive "Phase II" filings submitted by a trustee on behalf of the ISO on March 31, 1997. In its order dated October 30, 1997, the Commission granted interim and conditional authorization to the ISO to commence operations and required certain modifications to the TCA. *Pacific Gas & Electric Company, et al.*, 81 FERC ¶ 61,122 ("October 30 Order"). By order dated March 30, 1998, *California Independent System Operator Corporation*, 82 FERC ¶ 61,325 ("March 30 Order"), the Commission conditionally accepted for filing a revised TCA and required further modifications to be made in a compliance filing within 60 days of the date ISO grid operations commenced. March 30 Order, 82 FERC at 62,276-79.

On June 1, 1998, the ISO submitted a compliance filing which, among other things, amended the TCA to comply with the October 30 and March 30 Orders. A number of parties submitting comments on the June 1 compliance filing raised concerns about certain proposed revisions to the TCA related to Path 15. PG&E has executed numerous Existing Contracts on this transmission path

² The initial TOs executing the TCA are PG&E, San Diego Gas & Electric Company ("SDG&E"), and Southern California Edison Company ("SoCal Edison").

with various priority rights which, when combined with new firm uses under the ISO Tariff, often result in congestion on the path. Due to constraints on this path and Existing Contract rights, ISO Market Participants have expressed concerns about the transmission priorities for Path 15 since early in the restructuring of the California electric market.³ Under the TCA, transmission priorities for Path 15 are established by information and operating instructions provided to the ISO by PG&E. Pursuant to Sections 2.2.1(ii) and (iii) of the TCA, applicants for Participating TO status provide the ISO with "a copy of each document setting out the applicant's Entitlements to . . . lines and facilities" and "a statement of any Encumbrances" to which those lines and facilities are subject. This information is then incorporated in Appendices A and B, respectively, to the TCA.⁴

In the March 30 Order, the Commission had rejected a proposed change to the TCA Appendix B for PG&E in response to concerns that the change would afford PG&E priority over other existing arrangements for the use of available transmission capacity on Path 15.⁵ The Commission's action on the TCA in the March 30 Order was based in part on its earlier order on ISO Tariff Amendment No. 3.⁶ In that order, the Commission rejected a proposed amendment to the ISO Tariff intended, in large part, to implement operating instructions for Path 15 provided to the ISO by PG&E. The Commission urged all affected parties to

³ See, e.g., October 30 Order, 81 FERC at 61,541.

⁴ The TCA contains separate Appendices A and B for PG&E, SDG&E and SoCal Edison.

⁵ March 30 Order, 82 FERC at 62,277.

⁶ *California Independent System Operator Corporation*, 82 FERC ¶ 61,312 (1998).

negotiate a resolution of the Path 15 priority issue.⁷ In its May 28, 1998 order on ISO Tariff Amendment No. 7, the Commission again directed the affected parties with Existing Rights to negotiate a resolution of the transmission priority issue.⁸

The June 1 compliance filing included revisions to Reference No. 54 in Appendix B of the TCA for PG&E that specifically addressed transmission priorities for Path 15. A number of parties submitted comments objecting to these revisions.⁹ The commenters argued that the revised Appendix B still failed to preserve the rights and priorities of entities other than PG&E to transmission capacity on Path 15 under Existing Contracts. Some commenters also noted that efforts to negotiate mutually acceptable operating instructions for Path 15 had been unsuccessful up to that point.

The ISO submitted its Answer to these comments in Docket No. ER98-1971 on September 3, 1998. In this Answer, the ISO explained that, consistent with the Commission's direction that the ISO have no role in interpreting Existing Contracts,¹⁰ the ISO had accepted Appendices A and B of the TCA as submitted by the Participating TOs, including PG&E's revisions relating to Path 15. The ISO also informed the Commission that it was aware of PG&E's negotiations with Existing Rightholders to address the transmission priority rights for Path 15 and

⁷ *Id.* at 62,242-43.

⁸ *California Independent System Operator Corporation*, 83 FERC ¶ 61,209, at 61,922 (1998).

⁹ The commenters included SoCal Edison, the California Department of Water Resources, The Metropolitan Water District of Southern California, the Transmission Agency of Northern California, Modesto Irrigation District, and Dynegy Power Services, Inc.

¹⁰ October 30 Order, 81 FERC at 61,473; *see also* ISO Tariff Section 2.4.4.4.1.1.

stated that the ISO would file a revised Appendix B for Commission approval, pursuant to Section 26.11 of the TCA, once PG&E provided the ISO with a revised Appendix B that reflected the results of its negotiations with Existing Rightholders.

Prior to the February 11 filing in the above-captioned docket, PG&E informed the ISO that it had concluded its negotiations with Existing Rightholders and that every Existing Rightholder but one had agreed to revised operating instructions for Path 15. The ISO therefore submitted revisions to Appendix B of the TCA, consisting of changes to Reference No. 54 of PG&E Appendix B, to reflect the results of these negotiations. The revised portion of Appendix B included explicit references to the negotiated operating instructions for Path 15. In addition, PG&E had provided the ISO with its "Path 15 Operating Instructions for Existing Encumbrances Across the Path 15 Interface" to be included as Exhibit B-1 to PG&E Appendix B. These revised operating instructions have been posted on the ISO's website.

II. MOTION FOR LEAVE TO FILE ANSWER TO PROTEST

One intervenor has presented its views on the proposed revisions to TCA Appendix B styled as a protest; others have styled their pleadings as comments. The ISO respectfully suggests that its responses to any issues raised in these pleadings should be considered by the Commission, regardless of the different labels to the pleadings. To the extent this Answer responds to a protest, the Commission has accepted answers to protests, notwithstanding Rule 213(a)(2), 18 C.F.R. §385.213(a)(2), that assist the Commission's understanding and

resolution of the issues raised in a protest, *Long Island Lighting Co.*, 82 FERC ¶ 61,129 (1998), clarify matters under consideration, *Arizona Public Service Co.*, 82 FERC ¶ 61,132 (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 (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 (1997); *Hopkinton LNG Corp.*, 81 FERC ¶ 61,291 (1997). The Commission should accordingly accept this Answer.

III. DISCUSSION

The ISO does not oppose the intervention of any of the parties that have moved to intervene in this proceeding. The ISO would also note, as an initial matter, that numerous parties support the February 11, 1999 filing in this proceeding.¹¹

One intervenor, consisting of an *ad hoc* group of power marketers, raises certain issues with respect to the February 11 filing and the ISO's role in implementing transmission priorities over Path 15.¹² This intervenor suggests

¹¹ These parties include SoCal Edison Company; PG&E; the Sacramento Municipal Utility District; the Modesto Irrigation District; the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency; the Transmission Agency of Northern California; and the Northern California Power Agency.

¹² This group is identified as the Coalition of New Market Participants ("CNMP").

that the "real" operating instructions governing Path 15 are being formulated by PG&E and communicated privately to the ISO. In making this assertion, the intervenor relies on the following statement from Exhibit B-1 to the TCA Appendix B for PG&E, submitted in the February 11 filing:

Specific operating instructions have been provided to the ISO by PG&E in other documents for each of the Existing Contracts for which it is the Responsible Participating Transmission Owner on Path 15. In the contract specific instructions, information is provided on the maximum MW of transmission service available over the path; the quality of transmission service; daily, hourly and real time scheduling rights and responsibilities; curtailment procedures; points of receipt and points of delivery and effective and termination dates of the contract. This set of additional instructions will clarify how the relative transmission rights and priorities of the parties should be managed and administered during times of congestion and possible curtailment on Path 15.

The intervenor claims that these contract-specific instructions are non-public documents and that Market Participants will be unable to determine the basis for transmission priorities and reservations over Path 15 because these documents are not available.¹³

The instructions in question are not, however, non-public documents. The language quoted above refers to the operating instructions associated with various Existing Contracts provided to the ISO by the parties to those agreements or a Participating TO, pursuant to Section 2.4.4.4.1.1 of the ISO Tariff. Such operating instructions are available for review by any Market

¹³ CNMP at 4-5.

Participant. In particular, the ISO has posted on the ISO Home Page both the original and revised operating instructions provided to the ISO for Path 15 pursuant to Section 2.4.4.4.1.1.¹⁴

Similarly, this intervenor contends that, under the Path 15 Operating Instructions submitted in the February 11 filing, Market Participants will not have access to the information on Available Transmission Capacity ("ATC") which TOs are required to post pursuant to the Commission's Order No. 888.¹⁵ This contention has no basis in fact. In the California market, the ISO posts the required information on ATC. This information includes forecasts of ATC which are revised as schedules and reservations are submitted to the ISO. The February 11 filing will not alter the ISO's practices in this regard.

The same intervenor also maintains that the ISO must assume a role as an evaluator and manager of the operating instructions provided to it in connection with Existing Contracts in order to ensure that entities without Existing Contract rights have "non-discriminatory access to transmission."¹⁶ This position is contrary to the clearly defined role of the ISO with respect to Existing Contracts. Under the Commission's orders and the ISO Tariff, the ISO must honor all Existing Contracts¹⁷ and shall have no role in interpreting Existing

¹⁴ Many of these Existing Contracts are jurisdictional transmission service agreements which are already on file with the Commission. The ISO does not believe it is necessary or appropriate to file operating instructions for Existing Contracts in the California market with the Commission when the Existing Contracts themselves are already on file.

¹⁵ CNMP

¹⁶ CNMP at 5-7, 10.

¹⁷ October 30 Order, 81 FERC at 61,470-71.

Contracts.¹⁸ The Commission has directed the ISO to take no role in evaluating or "managing" any disputed operating instructions submitted in connection with an Existing Contract. The Commission also has approved the ISO's reliance on the operating instructions provided by a Participating TO until a dispute between parties to an Existing Contract is resolved:

We find that it is reasonable for the ISO to rely on the operating instructions of the Participating Transmission Owner. . . . In addition, we find [recommendations] to not implement the disputed instructions until the dispute is resolved to be unworkable. The ISO must have full and complete information, including all necessary operating instructions . . .¹⁹

The intervenor quotes language from Section 2.4.4.5.1.4 of the ISO Tariff which states that the "ISO shall determine" transmission capacity available for reservation by or allocation to various rightholders and uses to support the contention that the ISO has a role in managing transmission capacity allocations related to Existing Contracts. This argument ignores the fact that, pursuant to Section 2.4.4.5.1.4, such determination is "based on the information provided by the Participating TOs and contract rights holders"

The ISO's role in implementing operating instructions for Existing Rights on Path 15 is further clarified by a number of Commission orders relevant to the instant proceeding. In its orders on ISO Tariff Amendment Nos. 3 and 7, as well as its March 30 Order, the Commission directed parties with rights under Existing Contracts for transmission capacity over Path 15 to negotiate operating

¹⁸ *Id.* at 61,473; ISO Tariff Section 2.4.4.4.1.1.

¹⁹ October 30 Order, 81 FERC at 61,473.

instructions which would resolve the transmission priority issue.²⁰ The February 11 filing represented the negotiated resolution directed by the Commission, and was submitted by the ISO on behalf of the parties to those Existing Contracts. Nothing in those Commission orders can be read as authorizing or requiring the ISO to take an additional role in evaluating or managing the resolution to the Path 15 dispute.

The same intervenor requests that the Commission direct the ISO to "document how it oversees PG&E (as ETC Facilitator) to ensure non-discriminatory transmission access is provided to all market participants."²¹ The Operating Instructions provided as Exhibit B-1 to TCA Appendix B in the February 11 filing state that PG&E will serve as "the Path 15 Existing Transmission Contract (ETC) Facilitator" and will provide certain reservation information for Path 15 to the ISO and perform certain other functions. PG&E's position as ETC Facilitator is a product of the negotiated resolution to the Path 15 transmission capacity issues. For that reason, and consistent with the ISO's role with respect to Existing Contracts as described above, it would be inappropriate for the ISO to oversee PG&E in its capacity as Path 15 ETC Facilitator, as suggested by the intervenor. The duties of an "ETC Facilitator," where one is necessary, are best defined by the parties to Existing Contracts.

Several intervenors offer comments on the substance of the negotiated resolution to the Path 15 issues. One intervenor claims that the curtailment

²⁰ Amendment No. 3 Order, 82 FERC at 62,242-43; March 30 Order, 82 FERC at 62,277; Amendment No. 7 Order, 83 FERC at 61,922.

²¹ CNMP at 7-8.

priorities set forth in the February 11 filing are unfair,²² while another raise issues concerning future relationships between Existing Contract rights and encumbrances over Path 15.²³ Since these comments do not relate to the ISO's role or responsibilities in submitting the revisions to TCA Appendix B or implementing operating instructions for Existing Contracts, the ISO offers no response to these comments.

CONCLUSION

Wherefore, for the reasons stated herein, the ISO respectfully requests that the motions to intervene be granted and that the Commission act on the comments and protest consistent with the discussion above.

Respectfully submitted,

N. Beth Emery
 Vice President and General Counsel
 Roger E. Smith
 Regulatory Counsel
 The California Independent
 System Operator Corporation
 151 Blue Ravine Road
 Folsom, CA 95630

Edward Berlin
 Kenneth G. Jaffe
 Michael E. Ward
 Sean A. Atkins
 Swidler Berlin Shereff Friedman, LLP
 3000 K Street, N.W.
 Washington, D.C. 20007-3851

Dated: March 18, 1999

²² CNMP at 8-9.

²³ California Department of Water Resources at 2-4.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, 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. this 18th day of March, 1999.

Sean A. Atkins