

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System
Operator Corporation

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Docket No. EL02-45-001

**ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO THE MOTION FOR CLARIFICATION OF
SOUTHERN CALIFORNIA EDISON CORPORATION**

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, the California Independent System Operator Corporation ("ISO")¹ respectfully submits this answer to the motion for clarification of the Order Denying Rehearing issued on April 18, 2005, in the above-captioned docket, 111 FERC ¶ 61,078 ("April 18 Order") submitted by Southern California Edison Company ("SCE"). SCE seeks clarification as to "what entity, if any, the ISO should bill for ISO Charge Types that are (or were) billed on the basis of: 'Control Area Gross Load (CAGL)' or 'exports.'"² Specifically, SCE seeks clarification regarding the appropriate entity to be billed for the Control Area Services ("CAS") component of the ISO's Grid Management Charge ("GMC"), Minimum Load Cost compensation, Start-Up Costs and Emissions Costs ("Must Offer Charges"); and Core Reliability Services ("CRS") charges which the

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

² SCE includes in the term "exports" two billing determinants: "Demand within California outside the ISO Control Area that is served by exports from the ISO Control Area" and "Energy Exports." The ISO will use the term similarly in this Answer.

Commission has ruled should be assessed to CAGL and certain exports, including those that are served via the California-Oregon Transmission Project (“COTP”)³.

The ISO strongly agrees with SCE that Commission clarification is needed regarding the billing of these charges to CAGL and exports that are served via the COTP. Clarification is needed now because findings in the Commission’s May 10, 2004 and April 18, 2005 Orders in the instant proceeding appear to be at odds with prior orders that the Commission has issued regarding the billing of CAS, CRS and Must Offer charges. The ISO requests that the Commission respond to SCE’s motion by clarifying whether, by its orders in this proceeding, the Commission intended to reverse its ruling in Opinion No. 463-A that PG&E is responsible under the Responsible Participating Transmission Owner Agreement (“RPTOA”) for paying charges allocated to the CAGL of those governmental entities with whom it has Existing Transmission Contracts.

I. INTRODUCTION AND SUMMARY

This proceeding concerns the costs of Ancillary Services (“A/S”) that the ISO procured, based on Loads within the ISO Control Area that are served by electricity delivered over the COTP. The issue – resolved in an arbitration and appealed to the Commission – was whether the ISO could bill such costs to PG&E. In concluding that the ISO could not bill PG&E for the cost of A/S procured in connection with COTP transactions, the Arbitrator and the Commission concluded that PG&E is not the Scheduling Coordinator for the off-grid, COTP transactions

³ As the Commission is aware, the COTP is located in the ISO Control Area but is not part of the ISO-Controlled Grid.

SCE's motion concerns the allocation of a different type of charges to Governmental Entities that schedule transactions on the COTP. As explained in detail below, the Commission has ruled that these charges (CAS, CRS and Must Offer charges) should be allocated, in part, to the Loads of the Governmental Entities. Based on other Commission precedent, the ISO has been submitting the bill for these charges to PG&E. On the other hand, the Commission has ruled in its orders in this proceeding that the ISO may not bill PG&E for A/S charges incurred to support COTP transactions. The Commission needs to reconcile these decisions and clarify whom the ISO can bill for Commission-authorized charges associated with COTP and other Control Area, off-grid transactions. Commission action will clear up existing confusion and eliminate needless litigation in an arbitration proceeding that is pending.

As demonstrated by SCE's motion, the Commission's statement in this proceeding concerning PG&E not being the Scheduling Coordinator for COTP transactions, unless clarified, creates confusion regarding the billing for Control Area transactions. Edison is properly concerned that the statement could be interpreted to relieve the Loads served by the COTP of CAS, CRS and Must Offer charges for which the Commission previously found they are rightly responsible. Contrary to any such interpretation, under the ISO Tariff and Commission orders, portions of the Loads served by the COTP and exports on the COTP are responsible for certain of the charges identified by SCE. The ISO has been billing PG&E based on the belief that this is consistent with the Commission's prior orders establishing such charges and regarding the appropriate party to bill for such charges. As SCE notes, PG&E has

initiated an arbitration in which it asserts, based on the May 10 and April 18 Orders, that the ISO cannot allocate Must Offer charges to Loads served by the COTP.

Failure to clarify the May 10 and April 18 Orders in this regard will prolong litigation unnecessarily, and reduce the need for potential appeals to the Commission, regarding the ISO's ability to bill PG&E for charges allocated to Control Area Gross Load served by COTP transactions, notwithstanding the Commission's ruling in the 2001 GMC proceeding.⁴ Indeed, this has already happened. The Commission should not allow ambiguity in its decisions to lead to the unnecessary expenditure of litigation resources; neither should the Commission allow the meaning of its orders to be determined in arbitrations. Accordingly, the Commission should issue an order clarifying how the ISO should bill CAS, CRS and Must Offer charges to Loads and exports served by the COTP. In such order, the Commission should clarify whether its orders in this proceeding do not change the Commission's prior decisions regarding the allocation of CAS, CRS and Must Offer charges.

II. Allocation of Charges Identified by SCE

As noted, SCE's motion concerns the appropriate billing party for three charges (the CAS, Must Offer, and CRS charges) that are allocated to CAGL and exports and have been assessed to CAGL and exports associated with COTP transactions.

The COTP transactions at issue in this proceeding serve the Loads of SMUD, the Modesto Irrigation District, the Turlock Irrigation District, the City of Redding, and the

⁴ *California Indep. Sys. Operator Corp.*, Opinion No. 463, 103 FERC ¶ 61,114 (2003) ("Opinion No. 463"), *reh'g granted in part, denied in part*, Opinion No. 463-A, 106 FERC ¶ 61,032 (2004), *reh'g pending* ("Opinion No. 463-A") (2003).

Western Area Power Administration, all of which were in the ISO Control Area during the period in question. As explained in greater detail below, the terms of the ISO Tariff and the relevant Commission orders provide that the Demand of these Governmental Entities that is served by COTP transactions will be allocated, at least in part, the charges identified by SCE.

It is important to understand, as background, that SMUD's Demand has been both Control Area Gross Load and an in-state export, but at different times. SMUD left the ISO Control Area on June 18, 2002, after which the Demand of SMUD's Load ceased to constitute Control Area Gross Load. The COTP, however, remains within the ISO Control Area. Accordingly, COTP transactions serving SMUD loads are exports from the ISO Control Area to other Control Areas within California.

A. The Commission Has Approved Allocation of Control Area Services to the Demand of Certain Load Served by COTP Transactions

In Opinion No. 463, the Commission approved the allocation of the Control Area Services portion of the ISO's Grid Management Charge to Control Area Gross Load. Opinion No. 463 at PP 25-27. Control Area Gross Load is defined by the ISO Tariff as "all Demand for Energy in the ISO Control Area," with certain exceptions not relevant to this discussion. That allocation of the Grid Management Charge was in effect through December 31, 2003, although the possibility of certain exceptions to Control Area Gross Load (not relevant to this discussion) is still being litigated. See *California Indep. Sys. Operator Corp.*, 111 FERC ¶ 63,008 (2005).

The Commission clearly understood that Loads served via the COTP fell within Control Area Gross Load, and affirmed such treatment in Opinion No. 463. In the Initial Decision, the Presiding Judge noted:

SMUD purports that the changes sought by the ISO would require all load within the Control Area to be scheduled by the Scheduling Coordinator, which would trigger charges such as the Grid Management Charge on transactions such as the California Oregon Transmission Project ("COTP") and the SMUD "Bubble" Load . . .

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SMUD submits that because the ISO has no authority over facilities within the ISO Control Area that are not a part of the ISO Controlled Grid, the ISO cannot have the authority to make charges on gross load to include SMUD's Bubble and COTP transactions. SMUD I.B. at 17-18.

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Because the SMUD IA obligates SMUD to self-provide or purchase from PG&E services to support the Bubble and COTP transactions, SMUD concludes that it should be exempt from CAS. Exh. SMD-8 at 5.

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SMUD points to the ISO Restated Interim Agreement as establishing the ISO's lack of authority to assess CAS Charge against Bubble and COTP transactions.

California Indep. Sys. Operator Corp., 99 FERC ¶ 63,020 at 65,100-01 (2002) ("Initial Decision"). The Initial Decision rejected each of these arguments, *id.* at 65,108-111, and the Commission affirmed the findings of the Initial Decision. Opinion No. 463 at PP 16-27. Therefore, there can be no dispute that Loads within the ISO Control Area and served by the COTP are subject to the Control Area Services portion of the 2001 Grid Management Charge.⁵ SMUD's Load would not be subject to these charges subsequent to June 18, 2002, when it left the ISO Control Area.

⁵ The ISO anticipates that some party may file an answer to the ISO's request for clarification and cite a portion of the Initial Decision that states the Presiding Judge will not consider arguments concerning the COTP. That portion of the decision, however, concerned the Market Operations charge, which is based on "total purchases and sales of Ancillary Services, Supplemental Energy, and Imbalance Energy," not Control Area Gross Load. As the ISO pointed out to the Presiding Judge, issues concerning Ancillary Services, etc., were pending before the Commission in this docket. See Initial Decision at 65,137. Issues concerning Control Area Gross Load were not.

B. The Commission Has Approved Allocation of Must Offer Charges to Certain Load Served by COTP Transactions.

Must Offer Charges include Start-Up Costs, Emissions Costs, and Minimum Load Cost compensation. Under the ISO Tariff, each of these costs also is allocated, in part, to Control Area Gross Load. See ISO Tariff §§ 2.5.23.3.6.1, 2.5.23.3.7.1 and 5.11.6.1.4. As is the case with the Control Area Services portion of the 2001 Grid Management Charge, the Demand of Loads within the ISO Control Area that are served by the COTP falls within this definition. Moreover, the Commission contemplated that this Demand be included when it directed that these charges be allocated to Control Area Gross Load.

On July 10, 2001, the ISO submitted a compliance filing in which it proposed to allocate charges for Emissions Costs and Start-Up Fuel Costs to "metered Demand within the ISO Control Area and Demand within California outside of the ISO Control Area that is served by exports from the ISO Control area."⁶ On August 24, 2001, the ISO filed an answer to protests and comments regarding that compliance filing, in which it noted:

Consistent with the Commission's directive that these charge [sic] be "assessed against all in-state Load served on the ISO's transmission system," the ISO believes it is most appropriate to assess these charges to all ISO Control Area Gross Load within the ISO's Control Area and to all Load exported from the ISO Control Area to another Control Area in California. "ISO Control Area Gross Load" includes all Demand for Energy within the ISO Control Area.⁷

⁶ See July 10, 2001 Compliance filing in Docket No. No. EL00-95, Attachment E, §§ 2.5.23.3.6.1 and 2.5.23.3.7.1 (Exhibit 1).

⁷ Answer of the California Independent System Operator Corporation to Motions to Intervene, Requests for Clarification, Comments and Protests to July 10, 2001 Compliance Filing and Proposed Tariff Amendments at 36-37 (Exhibit 3) (Emphasis added).

SMUD filed a response, arguing that "[t]he import of the ISO's August 24 Answer [clarifying that it would use "gross" Load] would be to change the ISO Tariff to force SMUD to pay the Emissions Cost Charge and Start-Up Fuel Cost Charge for self-generation, COTP and bubble transactions which do not utilize the ISO transmission system (the ISO Controlled Grid)." ⁸ SMUD asked the Commission to reject the ISO's attempt to base charges on Gross Load.

On December 19, 2001, the Commission issued its order on the ISO's compliance filing. The Commission stated, "[w]e agree with the ISO that total gross Load is the most appropriate method to assess these costs. . . . Accordingly, the use of gross Load as the basis for the assessment of emissions and start-up fuel costs is appropriate in that all users of the transmission grid will be assigned these costs consistent with the ISO's markets performing a reliability function." 97 FERC ¶ 61,293 at 62,370 (2001).⁹

At the time of the Commission Orders relevant to the Must Offer Charges, COTP transactions did not implicate exports because all Load served by the COTP transactions was within the ISO Control Area. SMUD subsequently became its own Control Area, on June 18, 2002. Because the COTP remains in the ISO Control Area, COTP transactions serving SMUD Load are exports from the ISO Control Area serving

⁸ Answer of the Sacramento Municipal Utility District in Support of the Motion of the Cogeneration Association of California and the Energy Producers and Users Coalition's Motion to Reject Amendment to CAISO's July 10, 2001 Compliance Tariff Filing, filed September 17, 2001, in Docket No. ER00-95 at 5 (Exhibit 5) (Emphasis added).

⁹ The Commission also specifically denied a protest by the Transmission Agency of North California ("TANC"), the agency that constructed the COTP for itself and other parties, of an ISO compliance filing regarding Start-Up and Emissions costs in which the TANC "object[ed] to the ISO's proposal to assess these costs to Load that is not served by the ISO-controlled grid." Protest to the January 25, 2002 Compliance Filing by the Transmission Agency of Northern California, filed February 12, 2002, in Docket No. EL00-95 at 5-11.

Demand within California outside of the ISO Control Area, and the Demand of such exports is properly allocated Must Offer Charges.

C. The ISO's 2004 Grid Management Charge Provides for the Allocation of Core Reliability Services charges to the Demand of Certain COTP Transactions Serving Load Outside the ISO's Control Area.

Under the provisions of the ISO's 2004 Grid Management Charge, a portion of the CRS charges is allocated according to Energy Exports. ISO Tariff § 8.3.2. Energy Export is defined as:

For purposes of calculating the Grid Management Charge, Energy included in an interchange Schedule submitted to the ISO, or dispatched by the ISO, to serve a Load located outside the ISO's Control Area, whether the Energy is produced by a Generator in the ISO Control Area or a resource located outside the ISO's Control Area.

Although the settlement in Docket No. ER04-115 made certain modifications to the allocation, none of them affected COTP transactions. See ISO Tariff Appendix F, Schedule 1, Part F.

III. Commission Precedent Indicates That It Is Appropriate To Bill PG&E for Charges Allocated to the Control Area Gross Load or Demand Served by Exports of Governmental Entities with Which PG&E Has Existing Contracts

In Opinion No. 463-A, the Commission ruled that PG&E is the appropriate party for the ISO to bill for GMC charges allocated to the Control Area Gross Load of Governmental Entities with whom PG&E has Existing Contracts identified in its RPTOA, such as the Governmental Entities whose Loads are served by COTP transactions. Under the logic of this ruling, PG&E is properly billed for charges assessed to Control Area Gross Load served by the COTP even if PG&E is not the Scheduling Coordinator responsible for scheduling transactions on the COTP. The distinction between these charges on the one hand, and the charges at issue in this proceeding on the other, *i.e.*, the Ancillary Service charges that the Commission concluded can only be charged to

users of the ISO Controlled Grid, is that the former accrue to these Loads by virtue of their location in the ISO Control Area; *whether they are served by the COTP is irrelevant.*

In Opinion No. 463, the Commission explained:

[T]he ISO proposed to assess both the [Control Area Service] and the [Market Operations] charges to “other appropriate parties.” While the term is not defined by the ISO’s tariff, the ISO has described such entities as Governmental Entities (GEs), generally municipal utilities and government agencies serving behind-the-meter Load “for whom all or a portion of their volumes of Demand are not scheduled, metered, or settled with the ISO by [a Scheduling Coordinator].”

Opinion 463 at P 36.

In Opinion 463, the Commission noted that SMUD complained that the term “other appropriate parties” was vague and could be used to attempt to impose costs on entities outside the ISO’s footprint. SMUD argued that parties with whom the ISO does not have a contractual relationship should not be charged. *Id.* at P 38. The Commission rejected arguments, such as SMUD’s, that parties that benefit from ISO services should avoid payment. It instructed the ISO to define “other appropriate parties” and provide a factual and legal basis for billing them. *Id.* at P 39.

In Opinion No. 463-A the Commission noted that the ISO sought rehearing “with regard to billing Governmental Entities directly for their ‘behind-the-meter Load not otherwise scheduled,’” and that the “ISO once again argues that the GMC should be assessed to the entities that act as Scheduling Coordinators for those entities.” Opinion 463-A at P 69. Despite its length, it is worthwhile reproducing the Commission’s full discussion, because it fully explains the context of the Commission’s order:

The ISO states that under Section 2.3 of its Responsible Participating Transmission Owner Agreement, PG&E has agreed to be the Scheduling

Coordinator for certain Governmental Entities with which it has existing contracts. The ISO states that while arguments have been made that a Responsible Participating Transmission Owner is only a Scheduling Coordinator to the extent that it actually schedules energy for a Load with generation behind a meter, no such limitation appears in the Responsible Participating Transmission Owner Agreement. Moreover, the ISO argues that such a limitation would make little sense given that the existing contracts identified in the Agreements may require the Governmental Entity and Responsible Participating Transmission Owner to perform various tasks that assist, or are necessary for, the Control Area Operator's fulfillment of its reliability functions, and may also establish the cost responsibility for those tasks.

The ISO states that since it has assumed the functions of the Control Area Operator, but not the assignment of the Existing Contracts, it must rely upon the former control area operator (i.e., the Participating Transmission Owner that is the contracting party for the Existing Contract) to fulfill its responsibilities under the Existing Contracts and to ensure the Governmental Entities fulfill theirs. The ISO asserts that these responsibilities pertain to the *entire Load* of the Governmental Entity, not just to the portion scheduled, and that the appropriate Commission-approved agreements are in place to allow the Scheduling Coordinators for the Governmental Entities to be the billing representatives for those entities' entire portion of the GMC, including any portion assessed on behind-the-meter Load.

Id. at PP 70-71 (emphasis added). The Commission agreed with the ISO, stating that

We agree with the ISO that the Scheduling Coordinator [for the Existing Contracts] is the appropriate entity to be billed, since the Scheduling Coordinator acts as the billing representative for the customers it serves. As such, the Scheduling Coordinator is obligated to pay the ISO's charges in accordance with the ISO Tariff. . . . With regard to Governmental Entities, under the relevant Responsible Participating Transmission Owner Agreement, each Governmental Entity has an arrangement with regard to existing contracts that utilizes a Scheduling Coordinator. Accordingly, the Scheduling Coordinator is the appropriate party to be billed.

Id. at P 73.

In short, Opinion No. 463-A stands for the proposition that the Responsible Participating Transmission Owner is responsible, with regard to charges assessed to

Control Area Gross Load, for the entire Load of those Governmental Entities for which it has agreed to act as a Scheduling Coordinator under the RPTOA.

Although the discussion in Opinion No. 463-A primarily focused on behind-the-meter Load, the Commission had determined that COTP Load was to be billed for Control Area Services. The same billing issues arise with COTP Load as with behind-the-meter Load: Load served by COTP transactions is not easily distinguished, under the reasoning of Opinion No. 463-A, from behind-the-meter Load. The same issues arise with regard to exports using the COTP. The Commission has directed that Must Offer Charges be allocated to in-state Demand served by exports from the ISO Control Area, which includes the Demand of SMUD that was served by exports on the COTP after June 18, 2002. The CRS Energy Export charge applies to exports of Energy from the ISO Control Area, which includes exports using the COTP. Under the Commission's April 18 and May 10 orders, these exports are not Scheduled by an official ISO Scheduling Coordinator. Under the reasoning of Opinion No. 463-A, therefore, the appropriate billing representative may be the Participating Transmission Owner who is the Scheduling Coordinator (under the RPTOA) for the Existing Contracts of the Governmental Entities that are exporting the Energy – PG&E.

SCE's assertion that the ISO has chosen to spread the CAS and CRS charges to the market rather than allocate and bill them consistent with these Commission orders is not correct. PG&E has contended that the Commission's decisions in this docket bar the ISO from billing PG&E for CAS and CRS, despite the earlier Commission orders cited by SCE and discussed above in this answer. Although the ISO is currently interpreting the Commission's orders contrary to PG&E's contention, the ISO has

agreed to hold these charges in abeyance until the final resolution of this docket.

Unless the Commission rules definitely, in response to SCE's motion, that its decisions in this docket do preclude the ISO from billing PG&E for those charges, the ISO intends to bill PG&E after a final order is issued in this docket. For these reasons as well, it is imperative that the Commission resolve the apparent conflict between the April 18 and May 10 Orders and the Commission's previous orders.

IV. Conclusion

The ISO therefore requests that the Commission clarify the May 10 and April 18 Orders as described above.

Respectfully submitted,

Charles F. Robinson
General Counsel
Daniel J. Shonkwiler
Litigation Manager
The California Independent
System Operator Corporation
Tel: (916) 351-4499
Fax: (916) 608-7296

/s/ Michael Ward
Michael Ward
J. Phillip Jordan
Swidler Berlin LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Dated : June 2, 2005

Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service lists compiled by the Secretary in the above-captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010). Dated this 2nd day of June in the year 2005 at Folsom in the State of California.

/s/ Daniel J. Shonkwiler

Daniel J. Shonkwiler