

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System)
Operator Corporation) Docket No. ER05-150-____

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

On November 1, 2004, the California Independent System Operator Corporation (“ISO”)¹ unilaterally submitted for filing and Commission acceptance a Utility Distribution Company Operating Agreement (“UDC Operating Agreement”) between the ISO and Trinity Public Utilities District (“Trinity”) (“November 1 Filing”). The purpose of the filing was to accommodate a planned change in Control Area boundaries related to the decision of the Western Area Power Administration – Sierra Nevada Region (“Western”) to join the Control Area of the Sacramento Municipal Utility District (“SMUD”) planned for January 1, 2005.

Trinity submitted a motion to intervene, protest, and request for technical conference and two other entities submitted motions to intervene.² Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18

¹ Capitalized terms not otherwise defined herein have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² Specifically, in addition to the Trinity filing (“Trinity Protest”), Pacific Gas and Electric Company (“PG&E”) and Western submitted motions to intervene.

C.F.R. §§ 385.212, 385.213, the ISO hereby requests leave to file an answer, and files its answer, to the filings submitted in the above-captioned proceeding.³

The ISO does not oppose any of the motions to intervene. As explained below, however, the Commission should recognize the need for a UDC Operating Agreement as generally submitted, and convene a conference for purposes of arriving at settlement as to the changes to the ISO's pro forma agreement that might be necessary to reflect Trinity's specific circumstances.

I. ANSWER TO TRINITY

Trinity objects to the UDC Operating Agreement for two basic reasons. First, even though it is a utility that distributes Energy at retail that is connected to the ISO Controlled Grid, Trinity argues that it does not fit the technical definition of a Utility Distribution Company ("UDC") under the ISO Tariff – and it further argues that if it doesn't satisfy that definition, it need not execute a UDC Operating Agreement. Regarding this first argument, Trinity misunderstands the definition of a UDC under the applicable ISO Tariff – and even if it were not a UDC under that definition, it would still need to execute a UDC Operating Agreement. Trinity's second argument is that a document (dated in 1993) satisfies any need for Trinity to execute a UDC Operating Agreement with the ISO. Trinity's document, however, fails to address the issues that need to be addressed in a UDC Operating Agreement.

³ To the extent this answer responds to a protest, the ISO requests waiver of Rule 213(a)(2) (18 C.F.R. § 385.213(a)(2)) to permit it to make this answer. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

A. The ISO Needs to Have a Contractual Relationship With Trinity That Addresses the Terms in the UDC Operating Agreement; Regardless of Whether or Not Trinity Satisfies Every Aspect of the Definition of a UDC Under the Applicable ISO Tariff

Trinity argues that based upon a technical interpretation of the ISO Tariff, it is not a UDC, and therefore it need not sign a UDC Operating Agreement. This argument fails to recognize the essential reasons why the Commission has adopted a *pro forma* UDC Operating Agreement for the ISO – and why the ISO needs to have contractual relationships with all customers directly connected to its grid. As stated by the ISO in its November 1 Filing:

The UDC Operating Agreement is applicable to utilities that own or operate their Distribution Systems within the ISO Control Area and who wish to participate in the California market by transmitting Energy or Ancillary Services to or from the ISO Controlled Grid or are directly connected to the ISO Controlled Grid. Focusing on the physical and operational interface between the Distribution System and the transmission system, the UDC Operating Agreement covers matters such as the coordination and maintenance of facilities and other activities that affect the reliability of the transmission grid, for which the ISO has responsibility under California law, thus it is critical for the ISO to have contractual relationships with all customers directly connected to its grid.⁴

Trinity never disputes this essential need for the ISO to enter into UDC Operating Agreements with utilities that own or operate their own distribution systems. In fact, Trinity acknowledges in its Protest the need for some form of agreement with the ISO, as it claims that it had “earnestly” contacted the ISO more than a year ago about the need for “necessary agreements for post-2004 transmission service.”⁵

⁴ November 1 Filing at 2.

⁵ Trinity Protest at 12 (“[Trinity’s] management earnestly contacted the ISO a year or more prior to the summer of 2004, requesting information and/or meetings with the ISO regarding any necessary agreements for post-2004 transmission service.”). While the ISO disagrees with this

Rather than argue that an agreement is not needed, Trinity instead argues that it is not a UDC under the tariff because it “cannot deliver Energy to the ISO Controlled Grid.”⁶ According to the ISO Tariff, a UDC is defined as:

An entity that owns a distribution system for the delivery of Energy to and from the ISO Controlled Grid, and that provides regulated retail service to Eligible Customers, as well as regulated procurement service to those End-Use Customers who are not yet eligible for direct access, or who choose not to arrange services through another retailer.⁷

Trinity claims that even if it “owns a distribution system for the delivery of Energy ... from the ISO Controlled Grid,” it does not “own a distribution system for the delivery of Energy to ... the ISO Controlled Grid.” First, Trinity’s rules of tariff construction are fatally flawed, as the “to and from” in the definition of UDC is inclusive, meaning that even if a distribution utility is not delivering Energy *to* the ISO Controlled Grid, it still qualifies as a UDC if it is delivering Energy *from* the ISO Controlled Grid.⁸ Moreover, Trinity states in its introductory paragraph that “TPUD currently receives 100% of its power and energy from Western” and “This power and energy is delivered to TPUD . . . over certain of the transmission facilities owned by Western and PG&E . . .”.⁹ Since all of PG&E’s transmission facilities are ISO Controlled Grid, and Trinity receives 100% of its power and Energy from the ISO Controlled Grid, then it does meet the definition of a UDC. Second, for Trinity to prevail in its view, the definition of Energy under the ISO

assertion, we believe it is not of benefit to anyone at this time to argue the point as discussed further in Footnote 23.

⁶ Trinity Protest at 5.

⁷ Definition of UDC at ISO Tariff at Substitute Third Revised Sheet No. 354.

⁸ Section 1.1 of the ISO Tariff states that the definitions “have the meaning set out in the [definitions section of the tariff] unless otherwise stated or the context otherwise requires.” Because it is critical that the ISO have contractual relationships with all customers directly connected to its grid, the “context otherwise requires” that Trinity be a UDC.

⁹ Trinity Protest at 2.

Tariff must be narrow enough to exclude alternating current ("AC") Energy on transmission and distribution systems. However, under the ISO Tariff, Energy includes "energy ... flowing ... by ... transmission or distribution facilities."¹⁰ Since Trinity is part of the AC system within the ISO Controlled Grid, then it has "energy ... flowing ... by ... transmission or distribution facilities." Thus, by the ISO Tariff definition of Energy, Trinity certainly delivers Energy "to and from" the ISO Controlled Grid.¹¹

More importantly, even if Trinity is not technically a "full-grown UDC", it still must execute a contract that concerns all of the terms and conditions of the *pro forma* UDC Operating Agreement. In fact, Trinity is well aware that it could have been included in the Western UDC Operating Agreement, which would have eliminated the need for Trinity to execute a separate UDC Operating Agreement altogether.¹²

Finally, Trinity attempts a circular argument to explain its refusal to enter into an appropriate agreement in this matter. Specifically, Trinity claims that it is

¹⁰ The definition of Energy under the ISO Tariff is "[t]he electrical energy produced, flowing, or supplied by generation, transmission or distribution facilities, being the integral with respect to time of the instantaneous power, measured in units of watt-hours or standard multiples thereof." Third Revised Sheet No. 314.

¹¹ Trinity is integrated into the system so that its equipment can cause overloads, "voltage flicker", and other power quality problems on nearby facilities. Direct Testimony of James L. Filippi, at page 3, attached to transmittal letter for interconnection agreement filing of PG&E and Trinity dated October 29, 2004 in Docket No. ER05-130.

¹² November 1 Filing Letter at 3 ("Trinity has been offered the opportunity to be included under the Western UDC Operating Agreement ("Operating Agreement"), which would eliminate the need for this separate filing. The ISO suggests that this would both meet the ISO's requirements and afford Trinity the benefit of continuing to be included in the arrangements Western makes for the rest of Western's customers directly connected to the ISO Controlled Grid."). Since the November 1 filing, the ISO understands that Trinity has executed agreements with Western that result in Western being its Scheduling Coordinator in addition to serving Trinity's Load, thus similar to other similarly situated customers, the addition of Trinity on Schedule 1 of the Western Operating Agreement filed in Docket No. ER05-151-000 would resolve all the issues in this proceeding. The ISO has spoken with Western and Western is in agreement that Trinity could be listed on Western's Operating Agreement.

not a UDC since it did not execute a UDC Operating Agreement, concluding that therefore it need not execute a UDC Operating Agreement because it is not a UDC.¹³ The ISO flatly rejects any contention that an entity can avoid executing a UDC Operating Agreement by claiming that it has not yet executed a UDC Operating Agreement.

B. Trinity’s Attached Document Fails to Address the Issues That are Required in a UDC Operating Agreement.

Attaching a document to its protest (the “Trinity Document”), Trinity further argues that it need not execute the UDC Operating Agreement because that document is “essentially an interconnection agreement” with PG&E.¹⁴ Yet PG&E has submitted testimony before the Commission which describes why the Trinity Document is not an interconnection agreement, and why Trinity must enter an interconnection agreement with PG&E as a result of the termination of Contract 2948A.¹⁵ According to PG&E’s testimony, the document dated in 1993 is missing the major contract provisions that are necessary in a modern interconnection agreement. Specifically, interconnection points are not identified, and no provision is made for control area arrangements, system planning, upgrade facilities, metering, billing and payment, and standard legal provisions including term and termination. As stated by PG&E:

¹³ Trinity Protest at 5-6 (“only those entities who meet the above definition [for UDC] *and* who sign a UDC Operating Agreement are considered UDCs.”) (emphasis in original).

¹⁴ Trinity Protest at 6. The Trinity Document attached to the Trinity Protest consists of nine pages, and it purportedly was signed by PG&E and Trinity on May 21, 1993. It is entitled “Electric Transmission and Distribution Operating Agreement between Pacific Gas and Electric Company and Trinity County Public Utilities District.” It was purportedly part of a settlement agreement, and as explained below, it lacks many terms and conditions of enforceable contracts.

¹⁵ Direct Testimony of James L. Filippi, at pages 5-6, attached to transmittal letter for interconnection agreement filing of PG&E and Trinity dated October 29, 2004 in Docket No. ER05-130. Also see the transmittal letter for the PG&E filing at pp. 3-4.

Q. Why is the [Trinity Document] inadequate as an interconnection agreement?

A. The [Trinity Document] is missing major contract provisions for a modern interconnection agreement. For example, the interconnection points are not identified, and no reference is made to the arrangements in effect for power, transmission, and interconnection provided for in contracts existing at the time such as Contract 2948A. The [Trinity Document] lacks provisions regarding control area arrangements, system planning, upgrade facilities, regulatory and operating changes, installation and access, metering, billing and payment, adverse impacts, and standard legal provisions including term and termination.¹⁶

In the absence of provisions concerning the term of the Trinity Document and its termination, the question is raised as to whether the Trinity Document is still (or ever was) an enforceable contract under applicable law. Indeed, even the text of the Trinity Document explicitly recognizes that Trinity and PG&E “may, in the future, need to expand or further define the operating relationship between them.”¹⁷ Thus, the Trinity Document recognized that even if the arrangements under that document were sufficient in 1993, those arrangements would not necessarily be sufficient under contemporary regulation.

In addition, it should be noted that the Trinity Document was never listed as an Existing Contract that the ISO must honor. In accordance with the Transmission Control Agreement ("TCA"), PG&E has listed as Encumbrances in Appendix B to the TCA transmission agreements that encumber the ISO Controlled Grid, including interconnection agreements. The Trinity Document is not, and never has been, listed in this appendix. Furthermore, PG&E in the Responsible Participating Transmission Owner Operating Agreement ("RPTOA")

¹⁶ Direct Testimony of James L. Filippi, at pages 5-6, attached to transmittal letter for interconnection agreement filing of PG&E and Trinity dated October 29, 2004 in Docket No. ER05-130. Also see the transmittal letter for the PG&E filing at pp. 3-4.

¹⁷ Trinity Protest at 10; referring to the Trinity Document at section D-5.

listed all of the Existing Contracts it was responsible for. While Trinity is listed on Schedule A, it is listed solely with respect to the Western agreement which is terminating.

Finally, Trinity argues that since other entities that have entered interconnection agreements with PG&E have not executed a UDC Operating Agreement, it would be discriminatory to require Trinity to execute a UDC Operating Agreement.¹⁸ Yet, Trinity misses a key distinction, as unlike Trinity, those other entities have executed interconnection agreements with PG&E, and unlike the Trinity Document, these interconnection agreements not only contain the terms and conditions of such agreements, they are listed as Existing Contracts in the TCA and RPTOA.

C. Other arguments and concerns of Trinity

Trinity raised numerous other issues in its protest, but few of them relate to acceptance of the UDC Operating Agreement, which is the actual issue before the Commission in this proceeding. First, Trinity claims that it is not directly connected to either Western's transmission system or SMUD's transmission system.¹⁹ However, Western points out that it is directly connected to Trinity at Lewiston.²⁰

Second, Trinity has several pages of complaints about the ISO's conduct during its negotiations with Trinity.²¹ Besides the obvious point that if negotiations were successful, the ISO would not have made a unilateral filing,

¹⁸ Trinity Protest at 7.

¹⁹ Trinity Protest at 4.

²⁰ Western's motion to intervene and comment in Commission Docket No. ER05-130 at 2 (filed November 18, 2004).

²¹ See Trinity Protest at 12-15.

complaints about prior negotiations will not advance, in the words of Trinity, the “necessary agreements for post-2004 transmission service.”²² For this reason, the ISO will refrain at this time from responding to the claims that negotiations were not successful because of conduct on the part of the ISO.²³

Third, Trinity argues that it need not execute a UDC Operating Agreement because it is such a small utility that its “total load and operations is so miniscule ... that [it] could not adversely affect the ISO Controlled Grid reliability no matter what it did.”²⁴ While correct that Trinity in and of itself does not threaten system-wide reliability, it is integrated into the system so that its equipment can cause overloads, “voltage flicker”, and other power quality problems on nearby facilities.²⁵ In addition, as the ISO pointed out in its filing, a number of small UDCs in the aggregate can represent a significant amount of Load and thus a reliability issue. The ISO is not prepared to set a precedent that a UDC does not need to sign a UDC Operating Agreement simply because it is small.

D. Trinity’s Specific Concerns About the Express Terms of the UDC Operating Agreement

Trinity expresses several concerns about the terms and conditions of the UDC Operating Agreement. First, Trinity argues that the “Whereas” clauses in the agreement are factually inaccurate because the UDC Operating Agreement

²² Trinity Protest at 12, where it claims that it contacted the ISO a year or more prior to the summer of 2004 about the “necessary agreements for post-2004 transmission service.”

²³ The ISO reserves its rights to respond to the individual allegations with respect to the conduct of the negotiations, if such conduct becomes an issue in this or any other forum. While the ISO believes that Trinity’s allegations are not accurate (and perhaps outrageous), to go through a point by point rebuttal in this reply would not be productive given the purpose of this proceeding.

²⁴ Trinity Protest at 11.

²⁵ Direct Testimony of James L. Filippi, at page 3, attached to transmittal letter for interconnection agreement filing of PG&E and Trinity dated October 29, 2004 in Docket No. ER05-130.

will not assist Trinity. Trinity is factually wrong, as without the interconnected ISO Controlled Grid, Western would be unable to supply power and Energy to Trinity, and Trinity would be unable to serve its customers.²⁶

Second, Trinity does not want to subject the UDC Operating Agreement to the ISO Tariff because it has only one individual employed in management. However, this would stand the ISO Tariff on its head, as it would be impossible to manage the ISO Tariff were it to be subject to this contract (and presumably to others with contracts who seek such treatment). "Freezing" the ISO Tariff based on a snapshot of market and operational rules is not efficient, productive, or reliable.

Trinity objects to the additional sections of the UDC Operating Agreement outright, or objects to some components of the sections, but agrees with the concepts. Ultimately the issue boils down to Trinity is a "very small public utilities district . . . approximately 2,126 square miles . . . serving 6,600 retail customers" and therefore does not have the resources to meet the requirements of the pro forma UDC Operating Agreement which was originally designed for the Investor-Owned Utilities and large municipal utilities.²⁷ However, absent a UDC Operating Agreement the ISO has no other mechanism in place to meet the unique circumstances of Trinity. While Trinity requests a technical conference, the ISO would be willing to support a settlement conference process to address the terms

²⁶ While Trinity has alleged that a transmission line could be built from the Trinity Dam, a Bureau of Reclamation generator that is marketed by Western, thus potentially by-passing the ISO Controlled Grid, this proposal is only in the thought process stage. However, if the transmission line were to be built, and Trinity were no longer connected to the ISO Controlled Grid and in the ISO Control Area, the ISO would agree that Trinity did not need an agreement with the ISO.

²⁷ Trinity Protest at 2.

and conditions of an "appropriate UDC Operating Agreement".²⁸ However, to avoid a gap in service and responsibility, it is critical that a UDC Operating Agreement be in place on January 1, 2005 when Trinity is no longer covered by the terminating Western agreements.²⁹

II. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission recognize the need for a UDC Operating Agreement as generally submitted, and convene a conference for purposes of arriving at settlement as to the changes to the ISO's pro forma agreement that might be necessary to reflect Trinity's specific circumstances – or allow the ISO to withdraw this UDC Operating Agreement and amend the Western Operating Agreement to include Trinity.

Respectfully submitted,

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²⁸ Trinity Protest at 24.

²⁹ The Commission issued an order on December 3, 2004 terminating Western Contract 2948A with PG&E effective January 1, 2005. This termination is the ultimate reason behind the need for this UDC Operating Agreement with Trinity.

CERTIFICATE OF SERVICE

I hereby certify I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA, on this 7th day of December, 2004.

/s/ John Anders
John Anders