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November 12, 2004

Via Electronic Filing

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Pacific Gas and Electric Company
Docket No. ER04-689-000**

Dear Secretary Salas:

Enclosed please find the Answer of the California Independent System Operator Corporation to Supplement to Motion to Intervene, Motion to Consolidate, Request for Hearing and Maximum Suspension and Protest of the Sacramento Municipal Utility District, submitted in the captioned docket.

Feel free to contact the undersigned with any questions. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas

Counsel for the California
Independent System Operator
Corporation

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

Pacific Gas and Electric Company) Docket No. ER04-689-000

**ANSWER OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION TO
SUPPLEMENT TO MOTION TO INTERVENE, MOTION TO CONSOLIDATE,
REQUEST FOR HEARING AND MAXIMUM SUSPENSION AND PROTEST OF
THE SACRAMENTO MUNICIPAL UTILITY DISTRICT**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission"), 18 C.F.R. §§ 385.212, 385.213 (2004), the California Independent System Operator Corporation ("ISO") hereby files its motion for leave to answer and its answer to the "Supplement to Motion to Intervene, Motion to Consolidate, Request for Hearing and Maximum Suspension and Protest of the Sacramento Municipal Utility District" filed on October 28, 2004 ("Supplemental Protest," submitted by "SMUD"). As explained herein, SMUD's arguments are without merit and should be rejected.

I. Background

On October 8, 2003, SMUD filed a complaint against Pacific Gas and Electric Company ("PG&E") asserting a right of first refusal regarding the expiration of its firm EHV transmission contracts and seeking an order compelling the extension of those contracts. On December 23, 2003, the Commission

rejected SMUD's complaint. After ruling that SMUD had no right of first refusal, the Commission stated:

Furthermore, even if SMUD had requested conversion to tariff service as provided in Order No. 888, extension of SMUD's service at its current rates, terms and conditions would not be possible. SMUD would have to take service under the CAISO tariff, the only relevant tariff since the California utilities have turned over operational control of their transmission facilities to the CAISO. The right of first refusal provision in Order No. 888 is not applicable to SMUD (or any other customer in the CAISO service territory) because the service model of the Order No. 888 pro forma tariff does not apply to the California utilities' transmission systems. Such concepts no longer have meaning in the context of the CAISO's day-ahead and hour-ahead transmission scheduling system, where all customers have non-discriminatory access to transmission service and long-term transmission service is not offered. Nevertheless, under the CAISO tariff, SMUD will be able to receive transmission service to the extent it is willing to pay the CAISO tariff rate. Accordingly, while SMUD must, upon expiration of its EHV contract, take service under the rates, terms and conditions of the CAISO tariff, it would not be denied access to transmission service.

Sacramento Util. Dist. v. PG&E, 105 FERC ¶ 61,358, at P 23 (2003).

This proceeding concerns PG&E's actual notice of termination of its EHV Contracts with SMUD and of another with the California Department of Water Resources ("CDWR"). Despite the Commission's order on the Complaint, SMUD and CDWR have protested the terminations. The background of this proceeding is summarized in the Offer of Settlement and accompanying Explanatory Statement that has been filed to resolve one of the issues raised by CDWR. All other issues remain outstanding.¹

¹ Related filings have been submitted in Docket Nos. ER04-688, ER04-690, and ER04-693. The ISO has submitted comments in these proceedings.

II. Motion for Leave to File Answer

The ISO requests waiver of Rule 213(a)(2) (18 C.F.R § 385.213(a)(2)) to permit it to make this answer to SMUD's protest. 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).

III. Answer

In its initial protest, SMUD asked the Commission to reject PG&E's filings, or to set the matter for hearing, because the public interest required that PG&E or the ISO continue to offer SMUD firm transmission on the Pacific AC Intertie. Citing PG&E's plans to assure that the Western Area Power Administration – Sierra Nevada Region ("Western") would continue to have access for power transfers between its system and the Pacific Northwest after termination of Western's contracts with PG&E, SMUD contended that the termination of its EHV contracts without the continuation of service would be discriminatory. In the Supplemental Protest, SMUD points to the Transmission Exchange Agreement between Western, PG&E, and the CAISO (filed with the Commission in Docket No. ER04-688) as proof of undue discrimination.

Undue discrimination is the unjustified differential treatment of similarly situated classes. *See El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at P 115

(2003). The fundamental shortcoming with SMUD's argument is that SMUD is not similarly situated to Western. Although SMUD asserts that it and Western are similarly situated because they received similar long term service over the Pacific AC Intertie, the contracts were executed and expire at the same time, the contracts were executed "under similar circumstances," and they have had the same expectations of continued service, Supplemental Protest at 5, n. 9, SMUD totally ignores overwhelming differences in their situations. As described in more detail in Western's Comments filed in Dockets No. ER04-688, *et al.*, the existing relationship between PG&E and Western is the result of a decision to build the Pacific AC Intertie as an integrated system between California Utilities and the Federal government. The ownership and transmission exchange provisions of that arrangement are fundamental to its integrated system. The Federal government forbore from building its own transmission system in reliance upon the service it received under the existing arrangement. SMUD brings no such considerations to the table.

Further, in return for 400 MW of transmission access on PG&E-owned facilities from Round Mountain to Tracy, Western makes available to users of the ISO Controlled Grid 1,200 MW of Western-owned facilities on the Pacific AC Intertie. SMUD can offer no such benefit to users of the ISO Controlled Grid. Despite SMUD's suggestion, see Supplemental Protest at 7 and Affidavit of Brian Jobson, its offer to provide the ISO with contractual rights (on a less than one-for-one basis) and to settle pending litigation are not remotely comparable.

Contrary to SMUD's argument, Supplemental Protest at 6-7, the directives in *Mid-Continent Area Power Pool*, 58 FPC 2632 (1977), *aff'd Central Iowa Power Coop. v. FERC*, 606 F.2d 1159 (D.C. Cir. 1979), do not prevent consideration of such benefits when determining whether transmission access is unduly discriminatory. In *Mid-Continent*, the Commission rejected a power pool agreement under which pool membership (with specific benefits) was restricted to utilities with two interconnections. The Commission ruled that membership should be open to utilities with only one interconnection that were willing to pay compensation for the additional services. The ISO and PG&E have not created a situation where those with a transmission asset buy into a service shared only with others that have the transmission asset. Rather, the ISO has entered into an agreement whereby Western obtains use of a 400 MW of capacity on the ISO Controlled Grid, and *all entities, including SMUD, have nondiscriminatory transmission access to Western's 1,200 MW of capacity, regardless of whether those entities have any transmission asset of their own.* The Mid-Continent Power Pool sought to restrict transmission access; the Transmission Exchange Agreement expands nondiscriminatory transmission access.

In light of the unique history and benefits that Western presents, there can be no reasonable argument that SMUD and Western are similarly situated.

IV. Conclusion

Wherefore, for the reasons discussed above, the ISO respectfully requests that the Commission reject SMUD's arguments that the ISO's and PG&E's denials of SMUD's request for firm transmission service not offered under the ISO Tariff constitutes undue discrimination.

Respectfully submitted,

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Date: November 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California, on this 12th day of November, 2004.

/s/ John Anders
John Anders