



CALIFORNIA ISO

California Independent
System Operator

April 6, 2004

BY ELECTRONIC TRANSMISSION

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

**Re: California Independent System Operator Corp.,
Docket Nos. ER98-997-003, ER98-1309-002,
ER02-2297-002 and ER02-2298-002**

Dear Secretary Salas:

Transmitted herewith for electronic filing in the above-referenced proceeding is the Motion for Leave to Answer Protest and Answer of the California Independent System Operator Corporation. Thank you for your assistance in this matter.

Very truly yours,

/s/ Sidney L. Mannheim

Sidney L. Mannheim

Counsel for the California Independent
System Operator Corporation

Enclosures

cc: All active parties of record

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

California Independent System Operator Corporation))	Docket Nos. ER98-997-003 ER98-1309-002 ER02-2297-002 ER02-2298-002
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**MOTION FOR LEAVE TO ANSWER PROTEST
AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 212 and 213(a) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212, 213(a), the California Independent System Operator Corporation (ISO) hereby files this motion for leave to answer protest and answer to the joint protest filed by the Cogeneration Association of California (CAC) and the Energy Producers and Users Coalition (EPUC) in response to the ISO's January 20, 2004 compliance filing (Joint Protest). The ISO's January 20, 2004 filing was made in compliance with the Commission's August 12, 2003 Opinion No. 464 - Opinion and Order Affirming Initial Decision, 104 FERC ¶ 61,196, (Opinion 464), which directed the ISO to file a *pro forma* Participating Generator Agreement (PGA) designed specifically to accommodate qualifying facilities (QFs) that incorporated the findings of the July 31, 2001 Initial Decision, 96 FERC ¶ 63,015, as affirmed in Opinion 464. Accordingly, the January 20, 2004 compliance filing included a *pro forma* Qualifying Facility Participating Generator Agreement (QF-PGA).

As discussed in detail below, with the exception proposed revisions to Section 4.6 of the QF-PGA, the Commission should reject the Joint Protest. The Commission should

accept the ISO's compliance filing as consistent with Opinion 464 and "just and reasonable" pursuant to Section 205 of the Federal Power Act. 16 U.S.C. § 824d.

Atlantic City Electric Co. v. FERC, 295 F.3d 1, 22 (D.C. Cir. 2002).

I. MOTION FOR LEAVE TO ANSWER

Although the Commission's Rules do not allow an answer to a protest as a matter of right, the Commission has discretion to waive Rule 385.213(a)(2) and to allow an answer to ensure a complete and accurate record in the case and where, as here, the answer will aid in the Commission's understanding and resolution of the issues raised by a protest.¹ Because the Joint Protest mischaracterizes the record, confuses the issues and raises additional irrelevant issues, including issues that were not litigated, good cause exists for the Commission to accept the ISO's answer.

II. ANSWER

A. The Net-Metering and Net-Telemetry Holdings of the Initial Decision and Opinion 464 Do Not and, in Accordance with Good Utility Practice, Should Not Preclude the ISO From Obtaining Basic Information Concerning the Technical Characteristics of Individual Generating Units and Peak MW Demand of Self-provided Load

In Opinion No. 464, the Commission found it unjust and unreasonable for the ISO to impose the ISO Tariff's gross metering and telemetry requirements on QFs' behind-the-meter load and generation. Joint Protest at 7-10. The litigation over gross versus net metering and telemetry and the focus of the Commission's findings was limited to the

¹ See e.g. *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098 at 61,259 (2000) (allowing answer to protest to "insure a complete and accurate record"); *Carolina Power & Light Co.*, 94 FERC ¶ 61,032 at 61,068 (2000) (allowing answer that would assist the Commission's "understanding and resolution of the issues raised").

ISO's ability to obtain *real-time* information of the flow of power. The Commission held that the ISO may only require net metering and telemetry of QFs at the point of interconnection. The *pro forma* QF-PGA filed by the ISO on January 20, 2004 is fully consistent with the Commission's holdings.

The Joint Protest, on the other hand, argues that Sections 4.1.1 and 4.1.2 of the ISO's *pro forma* QF-PGA conflict with the Commission's holdings on net metering and telemetry. Such an allegation fails to withstand scrutiny. Sections 4.1.1 and 4.1.2 do not in any way relate to gross or net metering or telemetry but instead simply require the QF Generators to supply the ISO with information concerning the basic technical characteristics of their individual Generating Units,² including Gross (Nameplate) Capacity and the peak MW demand of the on-site Self-provided Load along with the other characteristics specified in QF-PGA Schedule 1.³

That the ISO requires such basic information is fully consistent with Good Utility Practice. This information defines the parameters of the Net Scheduled QF's operations. The ISO must be aware of how much total power may potentially be injected onto the electric grid if the QF's on-site load is curtailed and how much power the QF's on-site load may draw from the grid if the QF is out of service. Plainly such information is needed both for (1) for system planning purposes and (2) for immediate reliability

² Terms used with initial capitalization and not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

³ The Commission requires developers of new Generating Units that request interconnection to provide the interconnecting utility substantial technical information regarding their Generating Units. See, for example, Appendix 1 to Appendix C of Order 2003 in the proceeding on Standardization of Generator Interconnection Agreements and Procedures in RM02-1 and Appendix 1 and Appendix 6 to Appendix C to the Small Generator Interconnection Preamble issued by the Commission in the Notice of Proposed Rulemaking on Standardization of Small Generator Interconnection Agreements and Procedures in RM02-12. Appendix 6 specifically requires the applicant to identify, among other things, nameplate rating and customer load.

response purposes to permit real-time grid operators to make an accurate assessment of the effect of a contingency that causes an unanticipated change in power flows either to or from the QF—or on the electric grid in the vicinity of the QF—and to direct an appropriate response.

The Joint Protest argument that the basic information required to be provided pursuant to Sections 4.1.1 and 4.1.2 and Schedule 1 is not needed for reliability purposes because Section 4.5 provides the ISO with authority to “dispatch or curtail the Qualifying Facility Generating Unit in order to respond to an existing or imminent System Emergency or condition that would compromise ISO Control Area integrity or reliability” is without merit. The right under Section 4.5 is virtually meaningless in the absence of prior information available to the ISO’s real-time dispatchers concerning the characteristics of the individual Generating Units and behind-the-meter load served by the QF. The ISO’s dispatchers must, at a minimum, know the total rated capacity of the individual Generating Units and the peak MW value of the Self-provided Load in order to issue Dispatch Instructions that appropriately resolve the reliability concerns that may be created by an unanticipated contingency.

One of the most serious contingencies or emergencies the ISO may face is one occurring within the QF facility itself. A QF could have a large Generating Unit serving a large amount of behind-the-meter load, which would not be observable to the ISO through net telemetry until the unit tripped or a large amount of generation/load imbalance appeared at the point of interconnection. The ISO’s responsibility for maintaining system reliability requires it to assess the potential impacts to the system for

contingencies such as this and cannot do so without at least basic, *static*, information on generation and load.

Indeed, the Commission has recognized the importance of transmission providers being supplied with this basic data. In its Notice of Proposed Rulemaking on Standardization of Small Generator Interconnection Agreements and Procedures, the Commission's own pro-forma application requires facilities to provide data regarding the technical capabilities of generating units and on-site load. See Appendix 6, Small Generating Facility Interconnection Request Application Form at Sections 2 through 5. The ISO's need for this data is no less for existing units than for new interconnections.

The need for this data is clearly separate from the measurement of net flows in "real time" for 4-second EMS telemetry grid operation purposes and 5-minute revenue meter data recording for billing and settlement purposes. Accordingly, CAC/EPUC's protest of this element of the QF-PGA should be rejected.

B. The Proposal to Modify Section 2.2.1 of the QF-PGA to Exempt QFs That Enter into New PPAs Should be Rejected

Section 2.2.1 of the QF-PGA exempts certain Generators with an existing power purchase agreement (PPA) with a Utility Distribution Company (UDC) from the requirement that they enter into the QF-PGA. The exemption extends to PPAs entered into and effective as of December 20, 1995 for PPAs with the UDC pursuant to which the QF sells all of its Energy (except for auxiliary load) and Ancillary Services to the UDC or sells any Energy through "over the fence" arrangements authorized under California law.⁴ The relevant date is December 31, 1996 if the Generator employs landfill gas technology.

⁴ The exemption does not extend to Generators that participate in the ISO's markets. Even if a QF has an "over the fence" arrangement, the QF will be required to enter into a QF-PGA (or standard PGA) if it chooses to participate in the ISO's markets.

This is the same exemption language included in the ISO's Commission-approved *pro forma* PGA.

CAC/EPUC now argue that Section 2.2.1 of the QF-PGA must be modified to exempt new or replacement PPAs in order to be consistent with Opinion 464 and "not subject to misinterpretation." Joint Protest at 12-15. Their protest is without merit and should be rejected on both procedural and substantive grounds.

CAC/EPUC's proposed modification of Section 2.2.1 of the QF-PGA should be rejected because it was never litigated and is, in fact, an entirely new issue that has only been raised for the first time in the Joint Protest.⁵ The request stems from a January 26, 2004 decision of the California Public Utilities Commission (CPUC) (D.04-01-050) in its procurement rulemaking (R.01-10-024). As set forth in the Joint Protest, the CPUC proposes to allow existing QFs with expired, or soon-to-be expired PPAs to sell their power to UDCs in one of three ways: (1) competitive bidding process; (2) renegotiation of the existing PPA; and (3) new five-year Standard Offer (SO1) contracts. D. 04-01-050 at 158. The CPUC also proposes that new QFs be eligible to: (1) participate in a competitive bidding process; (2) negotiate with the UDC on a case-by case basis for non-standard contract terms; and (3) possibly enter into new Standard Offer contracts. *Id.* at 159-160. The Joint Protest contends that that any such PPA should exempt the QF from the obligation to enter into the QF-PGA.

It is clear from the foregoing that this issue is beyond the scope of the matters set for hearing in the QF-PGA proceeding that culminated in Opinion 464 and should not be resolved in a protest of the ISO's compliance filing. The QF exemption has been in

⁵ Counsel for CAC/EPUC did advise the undersigned during the week prior to the filing of the Joint Protest, that the Joint Protest would include this issue.

effect since market start-up as part of the original PGA⁶ and is reflected elsewhere in the ISO's Tariff.⁷ In the event the CPUC allows QFs to enter into the types of PPAs described in D.04-01-050,⁸ and believes that it would be unjust or unreasonable to require QFs to enter into the QF-PGA, it can proceed under Section 206 of the Federal Power Act and/or to enter into negotiations with the ISO concerning the scope of appropriate exemptions through modification of the QF-PGA and standard PGA and the related provisions of the ISO Tariff.

Finally, as to the substance of the proposed modification, the ISO opposes broad new exemptions.⁹ The reason for exempting, or "grandfathering" QFs with PPAs that predate the creation and design of the ISO markets was to protect the pre-existing contractual expectations of the parties. There should be no justification for exempting or grandfathering QFs with new PPAs. Given that the prospective parties to a new PPA are fully aware of the ISO's requirements, there is no reason for the PPAs to be inconsistent with the ISO's requirements and the QFs should have the direct contractual relationship with the ISO through the QF PGA. CAC/EPUC's protest of Section 2.2.1 should be rejected.

C. Proposed Modifications to Section 4.6 are Acceptable to the ISO

The Joint Protest correctly observes that there are two ways to become a certified QF. Pursuant to Section 292.207 of the Commission's Rules, a QF may self-certify or may apply for Commission certification. Joint Protest at 15-16. Accordingly, the ISO

⁶ See the ISO's June 1, 1998 compliance filing in Commission Docket Nos. EC96-19-029 and ER96-1663-030.

⁷ See e.g. MP 13.5.2.vi. exemption concerning QFs with PPAs effective as of December 20, 1995 if PPA is inconsistent with ISO's Metering Protocol.

⁸ The Joint Protest acknowledges the D.04-01-050 is subject to rehearing.

⁹ As noted above, the ISO will consider and grant exemptions on a case by case basis.

agrees to the proposed modification of Section 4.6(a). The Joint Protest also proposes to amend Section 4.6(b) to clarify that the relevant PPA that the QF must provide to the ISO is its PPA with the UDC. The ISO agrees that this is the relevant PPA for Section 4.6(b).

D. Proposed Modifications to Section 4.2.2 Should be Rejected

The Joint Protest proposes two changes to QF-PGA Section 4.2.2, only one of which is discussed in the protest. Neither change is required by the order, and the latter change confuses rather than clarifies any issue. First, CAC/EPUC propose that Section 4.2.2 should be modified, “in order to insure that there is no opportunity for misinterpretation” to expressly state that metering and telemetry installed at the Point of Demarcation are “for the purpose of recording the net impact of the QF upon the CAISO grid.” Protest at 17. The Joint Protest does not explain why any clarification would be needed or how the QF-PGA could be misinterpreted on the point of net metering and telemetry.

The second change to Section 4.2.2 is more troubling. As filed by the ISO, Section 4.2.2 reads in relevant part that the meters and telemetry installed at the Point of Demarcation must “otherwise meet the requirements of the ISO Tariff and Metering Protocol.” Instead, CAC/EPUC propose that the installed meters and telemetry “satisfy the technical *functional and performance* requirements for meters and telemetry set forth in the ISO Tariff and Metering Protocol” (emphasis added). No justification is offered for this change. Moreover, it suggests something other than the ISO’s metering and telemetry standards might be allowed and confuses rather than clarifies the issue. The ISO’s proposed language is entirely consistent with Opinion 464, and CAC/EPUC’s proposed revisions should be rejected as unnecessary and potentially confusing.

E. The Proposed Global Change to Replace the Term “Generating Unit” with the Term “Net Scheduled QF” Should be Rejected

Finally, the Joint Protest proposes to replace the term “Generating Unit” with “net Scheduled QF.” This proposed change appears related to the broader issue concerning individual Generating Unit information. For the reasons discussed above, the ISO believes it is entirely appropriate, fully consistent with Order 464 and necessary for reliability purposes for the ISO to obtain individual Generating Unit information. Accordingly, the term “Generating Unit” should not be replaced.

III. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept the ISO’s January 20, 2004 compliance filing as revised by the Joint Protest’s proposed modifications to Section 4.6 to the QF-PGA, which the ISO is willing to accept.

April 6, 2004

Respectfully submitted,

/s/ Sidney L. Mannheim

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 6th day of April 2004, served copies of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Sidney L. Mannheim

Sidney L. Mannheim

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