

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

Pacific Gas and Electric Company)	Docket Nos. ER04-688-001 and
)	ER04-693-001
)	
)	(not consolidated)

**MOTION FOR LEAVE TO ANSWER AND
ANSWER OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION TO
COMMENTS AND PROTEST OF
SOUTHERN CALIFORNIA EDISON COMPANY
AND TO COMMENTS OF THE CITY OF VERNON, CALIFORNIA**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 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 Comments and Protest (“Protest”) of Southern California Edison Company (“SCE”) and Comments of the City of Vernon, California (“Vernon”), both filed on November 12, 2004.

I. Background

SCE’s Protest concerns the Transmission Exchange Agreement (“TEA”) filed in Docket No. ER04-688 and the Owners Coordinated Operating Agreement (“OCO”) and the California-Oregon Intertie Path Operating Agreement (“CPOA”) filed in Docket No. ER04-693. These agreements implement a settlement of these proceedings, which concern Pacific Gas and Electric Company’s (“PG&E’s”) termination of various contracts with the Western Area Power Administration - Sierra Nevada Region (“Western”).

SCE's primary concern is the TEA. The TEA will enable the ISO to provide open and non-discriminatory transmission service on nominally 1,200 MW of Western capacity to the Pacific Northwest (less in the south-to-north direction), similar to that previously provided under Contract 2947A between PG&E and Western. In return, the ISO will provide Western with a nominally 400 MW of transmission capacity on the ISO Controlled Grid between the southern terminus of Western's 500-kV line at the Round Mountain Substation and Western's Tracy Substation. No transmission rates, administrative charges or congestion charges will be paid for the transmission service provided by either party receiving the exchanged service, and the limited charges payable for the use of such service are specified in the contract.

Vernon's Comments oppose the compensation for the Path Operator due to concern that it may result in double charges for ISO services, first through the Grid Management Charge and then again through the Path Operator costs.

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 SCE's Protest and Vernon's Comments. 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). Although, as discussed below, the ISO believes that much of SCE's protest is repetitive of its initial Comments, and has been

addressed in the ISO's and PG&E's Reply Comments, the ISO believes its answer is particularly necessary to address SCE's concerns regarding the ISO Controlled Grid. With respect to the Vernon Comments, the ISO believes there is any easy explanation that may assist the Commission in resolving at least a portion of Vernon's concerns and allowing the implementation of the agreements coincident with the change in Control Area boundaries.

III. Answer

A. SCE Issues in Docket No. ER04-688

SCE initially contends that the Commission must reject the TEA because it cannot approve the provision of transmission access outside a utility's open access transmission tariff, because the TEA is unduly discriminatory, and because the ISO has no authority to provide transmission outside of its tariff. SCE is incorrect on all counts. First, the Commission is free to provide exceptions from its precedent as long as it has a reasoned basis. *See, e.g., American Trucking Ass'n v. Atchison, Topeka & Santa Fe Ry.*, 387 U.S. 397 (1967). In the Explanatory Statement and Reply Comments, the ISO and other parties to the settlement have identified the significant benefits that will flow from the settlement, and the degradation of transmission service that would result from termination in the absence of successor agreements.

Second, 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). As described in 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. No other party brings such considerations to the table. Further, in return for 400 MW of transmission access on PG&E-owned facilities, Western makes available to users of the ISO Controlled Grid 1,200 MW of Western-owned facilities. No other party can offer such benefit to users of the ISO Controlled Grid.

Next, SCE argues at length that somehow the PACI-W Operating Agreement (filed in Docket No. ER05-155) “trumps” the TEA and if the TEA was not unduly discriminatory before, it somehow is unduly discriminatory now that SCE understands its intent. These arguments are misplaced. Section 7.4 of the TEA has always made clear that the Western Capacity would be exempt from all ISO charges except “for Ancillary Services and losses, and only to the extent that such services and losses are not self-provided by Western.” The PACI-W Operating Agreement is merely an implementing agreement and does not alter the substantive provisions of the TEA.¹ The ISO believes that it was understood by all involved that the Western Capacity would be afforded this treatment and, therefore, SCE’s claim that it had no basis to comprehend the full impact of Section 7.4 of the TEA until the PACI-W Operating Agreement was filed is unfounded. More importantly, the numerous comments filed in this proceeding support the terms afforded the Western Capacity under the TEA.

¹ The ISO notes that the use of the phrase “Western’s PACI” in Section 6.3 of the PACI-W Operating Agreement is intended to have the same meaning as “Western Capacity” under the TEA. Reading the definition of “PACI” in the PACI-W Operating Agreement makes this clear.

Neither the TEA, nor its companion the PACI-W Operating Agreement, present a circumstance of undue discrimination and the Commission has more than adequate grounds on which to make such a finding.

Finally, as the ISO previously explained, the ISO's authority to enter contracts derives from its status as a California corporation and a public utility, not from its tariff. If the Commission approves the TEA, then the ISO is authorized to provide Western service under the TEA.

SCE raises a more significant question, however, regarding the ISO's provision of transmission service on the 1,200 MW of Western capacity that is not part of the ISO Controlled Grid and over which the ISO will not have Operational Control. SCE questions the ISO's ability to provide transmission services under the terms of the ISO Tariff on these facilities to the extent that certain provisions of the ISO Tariff refer specifically to the ISO Controlled Grid. Although the ISO believes that Commission approval of the Settlement Agreement could provide the necessary authority, the ISO recognizes that the Commission may wish to avoid any confusion regarding the scope of the ISO's transmission service. The ISO therefore suggests that SCE's concern could be addressed if the Commission were to direct the ISO in a compliance filing to amend the ISO Tariff to provide that the 1,200 MW of capacity that the ISO is entitled to under the TEA is deemed to be a part of the ISO Controlled Grid for the purposes of those portions of the ISO Tariff relevant to the terms and conditions for the provision of transmission service on that capacity.

B. SCE Issues in Docket No. ER04-693

SCE also offers limited comments on the OCOA and CPOA. SCE clarifies that its agreements to the OCOA and CPOA should not be considered an awareness of or agreement to exemptions from charges granted to loads of certain entities in an agreement filed in Docket No. ER05-155, and that it will protest the agreement in Docket No. ER05-155. The ISO will respond to SCE's protests in that docket.

C. Vernon Issue in Docket No. ER04-693

Vernon uses its November 12, 2004 Comments to indicate that it will not be executing the OCOA and CPOA and to urge the Commission to address the concerns raised in Vernon's October 28, 2004 Comments. In those Comments, Vernon raised a concern that while the ISO has been providing path operator service since the ISO Operations Date, and recovering the cost through the Grid Management Charge ("GMC"), the ISO is now proposing a new charge for such service, effectively requiring Vernon to pay twice for the services.

While the ISO is indeed implementing a new charge, it is doing so for two reasons: 1) the charges for the previous path operator service were included in the Coordinated Operations Agreement ("COA") that is being terminated; and 2) the ISO believes that, consistent with the recent functional analysis of its Grid Management Charge ("GMC"), the parties who are served by the CPOA should pay for such service. Rather than result in double charging, the new charge will simply better reflect cause causation. The COA provided that PG&E could recover the costs it incurred for path operator services. When the ISO commenced operation, the COA was included as an Encumbrance in the Transmission Control Agreement and turned over to the ISO as an

Existing Contract that it must honor, which it has. The ISO does not receive the revenue from any Existing Contract, that revenue remains with the Participating TO and is used to reduce its Transmission Revenue Requirement and, accordingly, the ISO's transmission Access Charge. On the other hand, the costs that the ISO incurred as path operator were an administrative cost that the ISO could only recover through its GMC.

The OCOA replaces the COA, and Section 8.1.8 of the OCOA provides that all parties to the OCOA shall pay a share of all amounts owed for services rendered under the CPOA. Thus payment by Vernon, and the other parties to the CPOA is consistent with past agreements and the proposed OCOA and CPOA. Consistent with cost causation, the entities that cause the cost to be incurred, i.e., the parties to the OCOA, should pay for the special services that are provided by the path operator. In this case, the ISO determined the cost of the special services through an incremental cost analysis of the functions performed by the path operator versus the functions that would be performed if the ISO were just a Control Area Operator and not the path operator.

Any revenues that the ISO receives under the CPOA will be credited as Other Revenue in accordance with Appendix F, Schedule 1, Part C of the ISO Tariff. Thus the revenue collected will be used to decrease the total GMC in the following year. The costs associated with the ISO's performance as path operator will, consistent with cost causation, be thus reallocated from those paying the GMC to the parties to the OCOA. There will be no "double" collection.

IV. Conclusion

Wherefore, for the reasons discussed above, the ISO respectfully requests that the Commission approve the settlements in these proceedings.

Respectfully submitted,

Charles F. Robinson
General Counsel
John Anders
Corporate Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630

/s/ David B. Rubin

David B. Rubin
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, DC 20007

Attorneys for the California Independent
System Operator Corporation

Dated: November 22, 2004

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 22nd day of November 2004.

/s/ John Anders

John Anders