

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

**California Independent System) Docket No. ER05-80-000
Operator Corporation)**

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER TO
PROTEST OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO hereby requests leave to file an answer, and files its answer, to the Protest of the Cities of Azusa, Banning, and Riverside, California (together, “Southern Cities”).¹ In support whereof, the ISO states as follows.

I. Background

On October 27, 2004, the California Independent System Operator Corporation (“ISO”)² filed an unexecuted Meter Service Agreement for ISO Metered Entities (“MSA”) between the ISO and the City of Azusa, California (“Azusa”). As noted in the October 27 transmittal letter, the purpose of the MSA

¹ 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 this 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).

² Capitalized terms not otherwise defined herein have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

is to establish the terms and conditions upon which the ISO shall certify the revenue quality meters of Azusa as an ISO Metered Entity and the terms on which Azusa will make meter data available to the ISO revenue meter data acquisition and processing system. The MSA was filed in an unexecuted form due to Azusa's refusal to enter into the MSA without significant alterations, because the meters in question would be owned and operated by Southern California Edison Company ("SCE").

On November 17, 2004, the Southern Cities filed a Motion to Intervene and Protest ("Protest") of the MSA Filing.³

II. ANSWER TO PROTEST

Southern Cities argue that Azusa cannot meet certain of the requirements of the MSA because it lacks ownership and control of the Metering Facilities. Among the provisions with which Southern Cities claim Azusa is unable to comply are the reporting requirements of MSA Article 3.2 (Protest at 6), the provision of access rights to the ISO in MSA § 3.2.4 (Protest at 7), and ensuring the ISO a role as a third-party beneficiary to future agreements relating to the Metering Facilities under MSA § 3.3.2 (Protest at 8). Southern Cities further argue that it is inappropriate to impose penalties on Azusa for failing to comply with requirements with which it lacks the ability to comply. Southern Cities Protest at 9-12. Southern Cities express the concern that penalties will be

³ The ISO does not object to the Southern Cities' Motion to Intervene, nor to the Motion to Intervene of SCE.

imposed upon them through the ISO's new Enforcement Protocol. Protest at 9-11.⁴

Finally, having acknowledged that the Commission has held that SCE is not liable for penalties associated with ISO-compliant metering equipment it installs on behalf of Azusa (Protest at 5), Southern Cities propose that the ISO "seek enforcement of the substantive obligations against SCE as a third-party beneficiary to SCE's [Wholesale Distribution Access Tariff ("WDAT").]" Protest at 12.

The Commission should accept the MSA as filed. Absent an MSA, there would be no means to ensure that metering data provided by Market Participants would be of the same nature and quality as that dictated by the ISO Tariff, and hence no means of protecting the integrity of ISO settlements. Requiring the ISO to attempt to protect the integrity of its settlements by virtue of having to assert a third-party beneficiary claim against SCE through the WDAT is simply not adequate for this purpose. The ISO does not have the resources to pursue uncertain litigation with SCE through the WDAT should the requirements normally covered under an MSA not be satisfied.

⁴ Southern Cities' concerns regarding the Enforcement Protocol are misplaced. As approved by FERC, penalties cannot be assessed directly through the Enforcement Protocol. Instead, it is the Commission who enforces the Protocol, once the ISO has brought infractions to its attention. See *California Independent System Operator Corp.*, 106 FERC ¶ 61,179 (2004) at PP 28, 46. This provides an opportunity for Market Participants that feel they have been inappropriately accused of infractions to present their concerns to the Commission. In addition, the Commission has stated that it anticipates that sanctions under the Enforcement Protocol will be imposed infrequently. *California Independent System Operator Corp.*, 109 FERC ¶ 61,179 (2004) at P 101.

As noted in the October 27 transmittal letter, the ISO does not take a position on whether Azusa or SCE (or some combination of the two) should be responsible for the maintenance and accuracy of the revenue metering for Azusa, so long as some entity is ultimately responsible for ensuring that the meter data on which settlements with Azusa depend – and which impacts settlements with all the rest of the ISO’s customers – is as accurate as possible. Nonetheless, the Commission has held that SCE should not be responsible for any penalties or liabilities for metering facilities installed by SCE on Azusa’s behalf, and that the metering service in question *should* be provided pursuant to the MSA. *Cities of Azusa, et al.*, 107 FERC ¶ 61,179 at PP 40-41.

It is for Azusa and SCE to allocate the responsibilities required of all Market Participants under the MSA properly. The ISO notes that both SCE and Azusa were participants in the FERC proceeding in Docket No. ER98-1499, *et al.*, which resulted in the settlement adopting the *pro forma* MSA. The accuracy of meter data is an essential element in the fair and accurate allocation of charges with regard to the energy market and for other purposes, and all Market Participants must be held to the same standards. It would be improper if, by virtue of particular metering ownership arrangements, a group of Market Participants could evade these requirements.

III. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept the MSA as filed.

Respectfully submitted,

/s/ **John Anders**

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Date: December 2, 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 2nd day of December, 2004.

/s/ **John Anders**
John Anders