



STINSON
MORRISON
HECKER LLP

Glen L. Ortman
(202) 728-3015
gortman@stinsonmoheck.com
www.stinsonmoheck.com

1150 18th Street, N.W.
Suite 800
Washington, D.C. 20036-3816

July 21, 2004

VIA FACSIMILE AND OVERNIGHT MAIL

Tel 202-785-9100
Fax 202-785-9163
www.stinsonmoheck.com

Vasti S. Salinas
Senior Case Manager
American Arbitration Association
6795 North Palm Ave., 2nd Floor
Fresno, CA. 93704
Fax 559-490-1919

California Independent System Operator
Corporation
Charles Robinson, General Counsel
Richard Jacobs, Corporate Counsel and
Assistant Corporate Secretary
Kyle Hoffmann, Manager of Client Account
Management
Chris Sibley, Market Services
151 Blue Ravine Road
Folsom, CA 95630
Fax 916-351-2350

Jennifer S. Abrams
Pacific Gas and Electric Company
Law Department
P.O. Box 7442
San Francisco, CA. 94120
Fax 415-973-5520

Re: Re: PG&E v. CAISO; Case No. 74 Y 198 00625 04; Demand for
Arbitration

**PETITION TO INTERVENE OF THE SACRAMENTO MUNICIPAL UTILITY
DISTRICT**

The Sacramento Municipal Utility District ("SMUD") hereby submits this Petition to Intervene in the above-captioned matter, as initiated by the Demand for Arbitration submitted on July 9, 2004 by Pacific Gas and Electric Company ("PG&E"). The California Independent System Operator Corporation ("CAISO") posted public notice of PG&E's Demand for Arbitration on or following July 15, 2004.

KANSAS CITY
OMAHA
OVERLAND PARK
PHOENIX
ST. LOUIS
WASHINGTON, D.C.
WICHITA

I. Basis for Intervention by SMUD

The Dispute Resolution Procedure of the CAISO is contained in Section 13 of its Tariff on file with the Federal Energy Regulatory Commission ("FERC"). The Demand for Arbitration provisions are set forth in Section 13.2.5. Supplemental Procedure 3 thereto provides that any party whose interests may be affected by the outcome of the arbitration at issue shall file a written petition to intervene with the AAA, within fifteen days of public notice of the Demand for Arbitration. SMUD's petition to the AAA is timely.

In the underlying Statement of Claim by PG&E against the CAISO, SMUD was identified by PG&E as a Party to the dispute that is now the subject of its Demand for Arbitration in AAA Case No. 74 Y 198 00625 04. PG&E's Statement of Claim against the CAISO was submitted on or about June 10, 2004.

SMUD will be affected by the outcome here, as potentially liable for some of the CAISO charges in dispute, ultimately on a pass-through basis. SMUD is a participant in the California Oregon Transmission Project ("COTP"), by virtue of its participation in the Transmission Agency of Northern California ("TANC"). TANC holds an ownership interest in the COTP transmission facilities. Certain COTP transactions are being assessed charges by the CAISO, erroneously. The CAISO is unlawfully assessing PG&E for such charges. Additionally, SMUD is a party to certain agreements with PG&E and the CAISO determinative of the issues in dispute, to be decided here.

In a previous arbitration before the AAA in Case No. 71 198 00711 00, SMUD participated in support of the position of PG&E against the CAISO. As was the case there, SMUD will take a position in this docket in support of the relief sought by PG&E in its present Demand for Arbitration and underlying claim.

For all these reasons, SMUD has established good cause to intervene in this matter before the AAA, consistent with Supplemental Procedure 3.2. The following explanation is offered in elaboration of SMUD's interest and position here.

II. Background

This dispute is similar, if not identical, to a dispute that PG&E, SMUD and the CAISO submitted to arbitration in October 2000 (AAA Case No. 71 198 00711 00, herein "Arb. I"). The current dispute is over charges that the CAISO has improperly imposed on PG&E, for transactions for COTP transactions, and transactions occurring in the SMUD and Western Area Power Administration ("WAPA") bubbles for which the CAISO has been inappropriately netting from amounts due PG&E. The charges at issue are associated with COTP schedules and so-called "Bubble" transactions, which are transactions occurring on facilities that are owned by WAPA or TANC/SMUD and that are not scheduled over facilities that are part of the CAISO Controlled Grid, as that term is defined in the CAISO Tariff.

In Arb. I, the CAISO had allocated charges to PG&E using a proxy scheduling coordinator identification ("proxy sc ID") code to impose the charges. The proxy sc ID was used by PG&E purely as an accommodation to the CAISO. The proxy sc ID was expressly created to facilitate implementation of electric restructuring and to pass the COTP and Bubble information through PG&E to the CAISO so that it could perform its duties as Control Area Operator. However, in agreeing to facilitate this flow of information, PG&E was clear that it was not agreeing to act as an CAISO-certified Scheduling Coordinator ("SC") with respect to these transactions and would not accept any charges related to the COTP or Bubble schedules. Indeed, as the first arbitration establishes, the CAISO has no authority to impose such charges on PG&E. PG&E is not now, nor has it ever been, the SC for COTP or Bubble transactions and, therefore, PG&E is not liable for any charges associated with such transactions. The same is true for SMUD, to the extent that such charges are subject to pass-through treatment to it.

The December 13, 2001, decision in Arb. I held that the CAISO's charges were improper for several reasons. The principal reason is that the ISO's Tariff does not authorize the CAISO to impose upon PG&E charges for ancillary services in connection with COTP and Bubble transactions since they are not included within the CAISO Controlled Grid, as the CAISO Tariff defines that term. Arb. I Final Order and Award at 7-12. There, the Arbitrator relied on a controlling FERC order, rejecting a previous CAISO attempt to assess similar charges on non-CAISO Controlled Grid facilities like the COTP and SMUD and WAPA Bubbles. This occurred in the FERC's March 1998 Order on the CAISO's proposed Amendment No. 2 to its Tariff, which FERC rejected. 82 FERC ¶61,312 (1998).

Additionally, the decision in Arb. I held that that PG&E was not the SC for the COTP or Bubble transactions. The Arbitrator ruled that the CAISO had no authority to impose the charges. Arb. I, Final Order and Award at 17-8 (December 13, 2001), ("In short, the Arbitrator finds and concludes that PG&E is the Scheduling Coordinator under the [ISO] Tariff for transactions on the ISO Controlled Grid, but is not in that status with respect to COTP and Bubble transactions.")

The CAISO then appealed the Arbitrator's decision in Arb. I to the FERC. On May 10, 2004, FERC issued its Order Denying Petition For Review, stating: "We will uphold the arbitration award and deny the ISO's petition for review, as discussed below." *California Independent System Operator Corporation*, 107 FERC ¶ 61,152, ¶27 (2004) ("May 10 Order).

Notwithstanding the fact that the Arb. I proceeding was already underway, starting in late 2001 the CAISO began again improperly billing PG&E, this time for three new Charge Types: Emissions, Start Up and Minimum Load Compensation (Charge Types 591, 592 and 595, respectively), again using the PG&E proxy sc ID.

In the present dispute that is the subject of PG&E's Demand and underlying claim, the improper charges assessed to PG&E for the three new Charge Types totaled approximately \$9 million as of the end of May 2004. Additionally, in 2002, the CAISO began charging PG&E interest on the amount in dispute, currently totaling approximately \$115,000.

Further, SMUD understands that the CAISO also began offsetting the currently disputed amounts against money the CAISO owes PG&E. This offsetting started after the December 2001 Arb. I decision holding that PG&E is not the SC for the COTP or Bubble transactions. The improper offsetting has continued even after the May 2004 FERC decision affirming that the CAISO has no authority to impose the charges on PG&E because the transactions at issue involved use of non-CAISO Controlled Grid facilities and PG&E is not the SC for the COTP or Bubble transactions.

The new improper charges are not insignificant, accruing at a rate of approximately \$500,000 per month.

III. Present Demand for Arbitration and Underlying Claim

As noted, the improper charges in dispute currently total approximately \$9 million, plus interest. The CAISO continues to offset the amounts it claims PG&E owes it for the disputed charges on the proxy sc ID, so the charges continue to accrue, at a rate of approximately \$500,000 per month, despite the CAISO's lack of authority to impose the charges.

SMUD contends that the CAISO has misconstrued the FERC rulings on which it states it relies, including the June 19 Order, that, among other things, allowed the CAISO to begin charging SCs for the new Charge Types at issue here. The new Charge Types were to be assessed: "against all in-state-load served on the ISO's system." June 19 Order, 95 F.F.R.C. P61,418 at 62,562.

Significantly, nothing in the June 19 Order or any other FERC order or CAISO compliance filing allows the CAISO to assess charges for transactions meeting in-state load over non-CAISO Controlled Grid facilities, or charge anyone other than an SC for any of the charges at issue. As the CAISO Tariff states at Sections 2.5.23.3.6.1, 2.5.23.3.7.1, and 5.11.6.1.4, these charges are to be paid by SCs, *e.g.*: "The ISO shall levy this charge...each month, against all Scheduling Coordinators..." CAISO Tariff Section 2.5.23.3.6.1. Given the unambiguous rulings in Arb. I and the FERC May 10 Order that PG&E is not the SC for the COTP or Bubble, the CAISO has no authority to impose the new charges on PG&E, regarding transactions over the non-CAISO Controlled Grid facilities of COTP, and the SMUD and WAPA Bubbles.

SMUD maintains that the CAISO improperly applies the disputed Charge Types against PG&E here because, among other things, transactions at issue are not "in-state load served on the ISO's system." June 19 Order. The ruling in Arb. I, as fully affirmed by FERC in its May 10, 2004 Order, is dispositive. It holds that the CAISO may not charge PG&E as the SC for the COTP and Bubbles.

It is SMUD's position that (i) the charges in dispute are unlawfully applied to non-CAISO Controlled Grid transactions, (ii) PG&E is not a Scheduling Coordinator for the COTP or Bubble or for transactions scheduled on them, (iii) PG&E has no liability for CAISO charges, if any, which result from COTP/Bubble transactions, including, but not limited to, Emissions, Start Up, or Minimum Load Compensation, (iv) the CAISO improperly included these

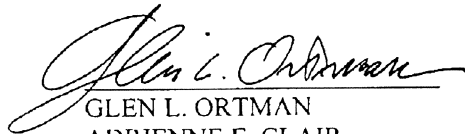
Vasti S. Salinas
California Independent System Operator Corporation
Jennifer S. Abrams
July 21, 2004
Page 5

charges in its invoices to PG&E, and continues to do so after PG&E informed the ISO of its error and also filed disputes over the improper charges, and (v) the CAISO currently improperly offsets these improper charges from amounts the CAISO owes PG&E, and imposes interest, because PG&E refused and continues to refuse to pay the improper charges on the proxy sc ID.

WHEREFORE, for the reasons above, SMUD requests that its petition for intervention in support of PG&E's Demand and underlying claim be granted.

Respectfully submitted,

ARLEN ORCHARD
GENERAL COUNSEL
LAURA LEWIS
COUNSEL
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET
SACRAMENTO, CA 94517-1899
(916) 732-6123



GLEN L. ORTMAN
ADRIENNE E. CLAIR
ANDREW HUGHES
STINSON MORRISON HECKER, L.L.P.
1150 18TH STREET, N.W., SUITE 800
WASHINGTON, D.C. 20036
(202) 728-3015
Fax: (202) 785-9163

Counsel to SMUD