

FROM DUNCAN, WEINBERG 202 467 6379

(MON) 7. 26' 04 15:20/ST. 15:18/NO. 4260040599 P 2

Law Offices

Duncan, Weinberg, Genzer & Pembroke, P.C.

WALLACE L. DUNCAN
EDWARD WEINBERG (1916-1998)
JAMES D. PEMBROKE
ROBERT WEINBERG
JANICE L. LOWER
JEFFREY C. GENZER
THOMAS L. RUDEBUSCH
MICHAEL R. POSTAR
TANJA M. SHONKWILER
ELI D. EILBOTT
LISA B. EAST
PETER J. SCANLON
KATHLEEN L. MAZURE
SEAN M. NEAL
DEREK A. DYSON
TAMIR BEN-YOSEPH

OF COUNSEL

RICHMOND F. ALLAN
FREDERICK L. MILLER, JR.
TERRY E. SINGER
FREDERICK H. HOOVER, JR.

SUITE 800
1615 M STREET, N.W.
WASHINGTON, D.C. 20036

(202) 467-6370
FACSIMILE (202) 467-6379
www.duncanweinberg.com

July 26, 2004

Via Fax and Overnight Mail

California Office
SUITE 140
2005 HAMILTON AVENUE
SAN JOSE, CALIFORNIA 95128
(408) 888-0980
BARRY F. MCCARTHY
C. SUSIE BERLIN
OF COUNSEL

Northeast Regional Office
2700 BELLEVUE AVENUE
SYRACUSE, NEW YORK 13219
(315) 471-1318
THOMAS J. LYNCH
OF COUNSEL

* REGISTERED TO PRACTICE
BEFORE THE U.S. PATENT
AND TRADEMARK OFFICE
** NOT ADMITTED IN D.C.

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

FROM DUNCAN, WEINBERG 202 407 0379

(MON) 7, 26, 04 15:21/PT, 15:18/NO. 4200040599 P 3

PETITION TO INTERVENE OF THE TRANSMISSION AGENCY OF NORTHERN CALIFORNIA, THE CITIES OF SANTA CLARA AND REDDING, CALIFORNIA, THE MODESTO IRRIGATION DISTRICT AND THE M-S-R PUBLIC POWER AGENCY

The Transmission Agency of Northern California ("TANC"), the Cities of Santa Clara ("SVP") and Redding ("Redding"), California, the Modesto Irrigation District ("MID") and the M-S-R Public Power Agency ("MSR") (collectively, "Interested Intervenors") hereby submit 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.

I. Basis for Intervention by Interested Intervenors

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. Interested Intervenors' petition to the AAA is timely.

In the underlying Statement of Claim by PG&E against the CAISO, among the entities listed as "other potentially interested parties" are "Holders of transmission entitlements on the California Oregon Transmission Project ("COTP)." TANC holds an ownership interest in the COTP transmission facilities. MID, SVP and Redding, which are the members of M-S-R, each are holders of transmission entitlements on the COTP and thus have an interest in this proceeding. M-S-R holds a derivative interest in this proceeding through its members, MID, SVP and Redding.

In a previous arbitration before the AAA in Case No. 71 198 00711 00, each of the Interested Intervenors participated in support of the position of PG&E against the CAISO. As was the case there, Interested Intervenors 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, Interested Intervenors have 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 Interested Intervenors' interests and position here.

II. Background

This dispute is similar, if not identical, to a dispute that was 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 Sacramento Municipal Utility District ("SMUD") and Western Area

FROM DUNCAN, WEINBERG 202 467 6379

(MON) 7. 26' 04 15:21/ST. 15:18/NO. 4260040599 P 4

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 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 Interested Intervenors, to the extent that such charges may be subject to pass-through treatment to them.

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 CAISO'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 Arbitrator's 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 [CAISO] 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.

FROM DUNCAN, WEINBERG 202 467 6379

(MON) 7. 26' 04 15:21/ST. 15:18/NO. 4260040599 P 5

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, Interested Intervenors understand 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.

Interested Intervenors contend 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.E.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 Bubbles, 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.

Interested Intervenors maintain 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.

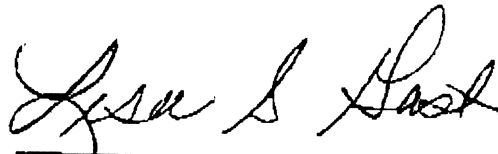
FROM DUNCAN, WEINBERG 202 467 6379

(MON) 7. 26' 04 15:22/ST. 15:18/NO. 4260040599 P 6

It is the position of the Interested Intervenors 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 Bubbles 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 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, Interested Intervenors request that their petition for intervention in support of PG&E's Demand and underlying claim be granted.

Respectfully submitted,



LISA S. GAST

Counsel to TANC, SVP, Redding, MID and
M-S-R
Collectively "Interested Intervenors"