

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

San Diego Gas & Electric Company,	)	Docket Nos. EL00	-95-022
Complainant,	)	EL00	-95-023
	)	EL00	-95-024
v.	)	EL00	-95-025
)		
Sellers of Energy and Ancillary Services)		
Into Markets Operated by the California)		
Independent System Operator and the)		
California Power Exchange,)		
Respondents))		
Investigation of Practices of the California	)	Docket Nos.	EL00-98-021
Independent System Operator and the	)		EL00-98-022
California Power Exchange	)		EL00-98-023
	)		EL00-98-024

**REQUEST FOR REHEARING OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to 313(a) of the Federal Power Act, 16 U.S.C. § 825l(a), and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.713, the California Independent System Operator Corporation (“ISO”) ¹ hereby requests that the Commission grant rehearing of its “Order Accepting and Suspending, Subject to Refund and to Further Commission Action, Generator Interconnection Procedures” issued on June 4, 2002 in the captioned proceeding (“June 4 Order”).

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

In support thereof, the ISO respectfully states as follows:

I. BACKGROUND

On April 2, 2001, the ISO filed Tariff Amendment No. 39 that prescribed procedures for the interconnection of new generators to the ISO Controlled Grid and existing generators that propose to increase their capacity. The ISO requested a prospective effective date (60 days after its Amendment No. 39 Tariff filing) of June 1, 2001 for its proposed generation interconnection procedures. The Participating Transmission Owners (Participating TOs), who all support this rehearing request, filed conforming amendments to their Transmission Owner Tariffs (TOT) on April 2, 2001.

On June 4, 2002 – more than 14 months after the ISO filed Tariff Amendment No. 39 – the Commission accepted and suspended Tariff Amendment No. 39 and the Participating TOs' conforming TOTs for filing, subject to refund and subject to the Commission's Final Rule on generator interconnection policy in Docket No. RM02-1-000. The Commission approved an effective date of June 1, 2001 for Tariff Amendment No. 39. June 4 Order, slip op. at 5.

II. REQUEST FOR REHEARING

The ISO submits that the Commission erred in approving a June 1, 2001 effective date for Tariff Amendment No. 39 and the TOT amendments. The ISO requests that the Commission grant rehearing of its June 4 Order and (1) vacate such determination and (2) approve, instead, an effective date of June 4, 2002. While the ISO is appreciative of the Commission's support in establishing ISO

Controlled Grid -wide interconnection procedures and cost -responsibilities, retroactive application of these rules is, as discussed below, inappropriate.

Prior to the Commission's acceptance of Amendment No. 39, the procedures applicable to the connection of new generators to the ISO Controlled Grid were those established in each Participating TO's Transmission Owner Tariff. Thus, the procedures and cost -responsibilities for connecting to the ISO Controlled Grid were those outlined in Pacific Gas & Electric Company's, Southern California Edison Company's and San Diego Gas & Electric Company's TOTs. However, Amendment No. 39 proposed new and different queuing and cost responsibility requirements. For example, while the existing TOTs are largely silent on the establishment of queuing procedures and milestones, Amendment No. 39 established certain explicit milestones that each connecting generator must satisfy in order to maintain its queue position. In addition, while Amendment No. 39 established clear cost -responsibilities for each connecting generator based on its queue position, the previously approved TOTs afforded the Participating TO some discretion in determining a new generator's cost responsibility for connecting to the grid. For example, one Participating TO assigns all of the grid facility costs of interconnecting a particular generator to that generator; whereas, another Participating TO, assigns such costs to a larger number of generators that, arguably, created the need for the additional facilities. Thus, as a result of the differences between the interconnection procedures and cost-responsibilities established under Amendment No. 39 and those previously in effect under the TOTs, a retroactive effective date for Amendment No. 39 and the proposed amendments to the TOTs is problematic and inappropriate.

If the ISO and Participating TOs are required to apply Amendment No. 39 on a retroactive basis back to June 1, 2001, it would be necessary to reconstruct the interconnection queue and, consequently, reallocate cost responsibilities among generators whose interconnection requests have been processed since that date. In that regard, during the period June 1, 2001 to June 1, 2002, the PTOs, in coordination with the ISO, processed approximately fifty-seven (57) interconnection requests in accordance with those pre-existing queuing and cost responsibility requirements. The ISO submits that it is unfair and impractical to approve Amendment No. 39 effective retroactively to June 1, 2001. The ISO and Participating TOs have processed interconnection requests in accordance with the pre-existing tariff provisions. Generators have evaluated the economics and many have committed themselves to interconnect to the ISO Controlled Grid with the legitimate expectation that the existing interconnection tariff provisions would apply. The June 4 Order would retroactively change the fundamental basis for these commitments and the basis upon which interconnection requests were processed. However, many of the affected generators cannot alter their prior behavior in light of the new Amendment No. 39 "rules" that the Commission has applied retroactively.² The courts and the Commission have generally recognized that new "rules" (replacing old "rules" that were reasonably clear) should not be applied retroactively where the expectations of the parties that

² Generation interconnection procedures should be designed to facilitate efficient deployment of capital on a forward-looking basis. Once financial commitments have been made, they cannot be undone. Thus, retroactive changes in interconnection procedures does nothing to enhance the value of capital commitment decisions. The Commission has recognized that after economic decisions have been made, it is difficult to undo such choices, and new policy should not be applied retroactively to cases where the investment decisions have been made. See, e.g., *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶61,227 at 61,750 (1999).

relied on the pre-existing "rules" would be upset. See *Williams Natural Gas Company v. FERC*, 3 F.3d 1544 (D.C. Cir. 1993); *Aliceville Hydro Associates v. FERC*, 800 F.2d 1147 (D.C. Cir. 1986); *National Fuel Gas Supply Corporation*; 96 FERC ¶ 61,195 (2001); *Southern Company Energy Marketing, L.P., et al.*, 86 FERC ¶ 61,131 (1999).

Thus, for the foregoing reasons, the Commission should vacate that part of its June 4 Order applying Amendment No. 39 retroactively effective June 1, 2001. Rather, consistent with the intent of Amendment No. 39 and applicable judicial and Commission precedent, the Commission should approve Amendment No. 39 and the TOT amendments effective prospectively from the date of the Commission's order approving such Tariff Amendment, *i.e.*, June 4, 2002.

Respectfully submitted,

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Dated: July 3, 2002



July 3, 2002

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

**Re: San Diego Gas & Electric Company v. Sellers of Energy and Ancillary
Services Into Markets Operated by the California Independent
System Operator and the California Power Exchange
Docket Nos. EL00 -95-022, EL00 -95-023, EL00 -95-024, EL00 -95-025**

**Investigation of Practices of the California Independent System
Operator and the California Power Exchange
Docket Nos. EL00 -98-021, EL00 -98-022, EL00 -98-023, EL00 -98-024**

Dear Secretary Salas:

Enclosed for electronic filing please find the Request for Rehearing of The California Independent System Operator Corporation in the above -referenced dockets.

Thank you for your assistance in this matter.

Respectfully submitted,

Anthony J. Ivancovich
Counsel for The California Independent
System Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Folsom, CA, on this 3rd day of July 2002.

Anthony J. Ivancovich