

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System)
Operator Corporation) Docket No. ER98-1971-001
)
)

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION TO MOTIONS TO INTERVENE
AND RESPONSE TO COMMENTS AND PROTESTS**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (1997), the California Independent System Operator Corporation ("ISO") submits this answer to the motions to intervene and response to comments and protests submitted in this docket.¹ As stated herein, the ISO does not oppose any of the interventions. The ISO also provides its responses to the issues raised in the comments and protests of certain of the parties.

¹ Notwithstanding Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), the Commission has accepted answers to protests that assist the Commission's understanding and resolution of the issues raised in a protest, Long Island Lighting Co., 82 FERC ¶ 61,129 at 61,462 (1998), clarify matters under consideration, Arizona Public Service Co., 82 FERC ¶ 61,132 at 61,477 n. 11 (1998); Tennessee Gas Pipeline Co., 82 FERC ¶ 61,045 at 61,186 n. 5 (1998), or materially aid the Commission's disposition of a matter, El Paso Natural Gas Co., 82 FERC ¶ 61,052 at 61,200 (1998). The ISO's Answer will clarify matters under consideration, aid the Commission's understanding and resolution of the issues and help the Commission to achieve a more accurate and complete record, on which all parties are afforded the opportunity to respond to one another's concerns. Northern Border Pipeline Co., 81 FERC ¶ 61,402 at 62,382 n. 4 (1997); Hopkinton LNG Corp., 81 FERC ¶ 61,291 at 62,844 n. 16 (1997). The Commission should accordingly accept this Answer.

I. BACKGROUND

On June 1, 1998, the ISO submitted a compliance filing amending the ISO Tariff (including the ISO Protocols), the ISO Code of Conduct, the Transmission Control Agreement (“TCA”), certain of the ISO’s pro forma operating agreements, and certain of the ISO’s bilateral operating agreements.² Included in the June 1, 1998, filing were amendments to the TCA in compliance with the Commission’s orders.³

The Commission noticed the ISO’s filing on June 9, 1998, with interventions and protests due on or before August 5, 1998. The Commission specified that comments related to the TCA were to be submitted in Docket No. ER98-1971-001.

Timely interventions were filed by eleven parties: the Western Area Power Administration (“WAPA”), Southern California Edison Company (“Edison”), the California Department of Water Resources (“DWR”), The Metropolitan Water District of Southern California (“Metropolitan”), the Cities of Anaheim, Azusa,

² Capitalized terms used herein and not defined are used with the meanings given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

³ The initial TCA was filed as part of the comprehensive filings made on March 31, 1997. Refinements to the TCA were made as a result of the ongoing stakeholder process and a revised TCA was submitted on August 15, 1997, in compliance with the Commission’s order in Pacific Gas & Electric Company, et al., 80 FERC ¶ 61,128 (1997). In its Order dated October 30, 1997, the Commission granted interim and conditional authorization to the ISO to commence operations and required certain modifications to the TCA. Pacific Gas & Electric Company, et al., 81 FERC ¶ 61,122 (1997) (the “October 30 Order”). The ISO filed the revised TCA on February 20, 1998. By order dated March 30, 1998, California Independent System Operator Corporation, 82 FERC ¶ 61,325 (the “March 30 Order”), the Commission conditionally accepted the TCA for filing to become effective on the ISO Operations Date and required further modifications to be made in a compliance filing within 60 days of the date ISO grid operations commenced. California Independent System Operator Corporation, 82 FERC at 62,276-79.

Banning, Colton and Riverside (collectively, "Cities"), the Transmission Agency of Northern California ("TANC"), Modesto Irrigation District ("MID"), the Los Angeles Department of Water and Power ("Los Angeles"), Enron Power Marketing, Inc., the California Electricity Oversight Board and CalEnergy Company, Inc. Dynergy Power Services, Inc. ("Dynergy") filed a motion for leave to intervene out-of-time.

WAPA, Edison, DWR, Metropolitan, the Cities, TANC, MID, Los Angeles, and Dynergy raised substantive issues concerning sections in the TCA and its appendices. By order dated August 14, 1998, the Commission granted the ISO's motion for an extension of time to respond to all of the interventions in the various compliance dockets, including this matter.

In drafting the TCA compliance filing, the ISO held a series of stakeholder meetings to discuss the various concerns. All parties to whom the Commission had granted intervenor status in Docket No. ER98-1971-000 were notified of the meetings. Almost all of the parties who have raised substantive issues regarding the June 1, 1998, TCA compliance filing participated in that process.

The intervenors have raised twelve issues regarding the TCA compliance filing: (1) conflicting sections regarding settings and functionality of auxiliary equipment and protective systems; (2) following the ISO's orders during emergencies; (3) additional protection for Existing Contracts; (4) facilities under the ISO's Operational Control; (5) revising the definition of Existing Contracts; (6) modification to the withdrawal provisions from the TCA; (7) tax-exempt financing issues (which were deferred in the compliance filing); (8) acceptance and refusal of transmission facilities; (9) leasing or renting equipment to the ISO; (10) alternative dispute resolution; (11) Path 15, and (12) Metropolitan's Service and Interchange Agreement.

II. DISCUSSION

The ISO does not oppose the intervention of any of the parties that have moved to intervene in this proceeding. In the sections below, the ISO provides its responses to the comments and protests raised by WAPA, Edison, DWR, Metropolitan, the Cities, TANC, MID, Los Angeles and Dynergy.

A. AUXILIARY EQUIPMENT AND PROTECTIVE SYSTEMS

WAPA is concerned that Section 6.1.1 and Section 8.2.2 of the TCA are conflicting.⁴ Section 6.1.1 of the TCA allows each Participating TO the “exclusive right and responsibility to operate and maintain its transmission facilities and associated switch gear and auxiliary equipment (including facilities that it operates under Entitlements).” Section 8.2.2 of the TCA requires the Participating TO to “not change or disable such settings or functionality without the prior written agreement of the ISO.” The ISO does not believe that these provisions are in conflict. Although the Participating TO has authority to operate and maintain its equipment, the ISO needs to be informed if equipment settings or functionality change in order for the ISO to successfully control these facilities. An additional reason for the ISO’s written agreement to change the equipment settings or functionality is that Participating TOs and the ISO have agreed to these settings and functionality previously. Thus, consistent with Section 26.11 of the TCA, mutual agreement is required for the modification.

WAPA asks the Commission to amend Section 8.2.2 of the TCA by adding a phrase in the section. The section, as proposed by WAPA, would read as follows:⁵

⁴ WAPA at 8-9.

⁵ WAPA does not specify where the revised text would go in the section and how the section would change to accommodate the revision. The ISO is making the best available guess based on the concern we believe to be raised by WAPA. Revised text is underlined and in italics. Additionally, the ISO believes that

Each participating TO shall maintain the settings or functionality of ISO Controlled Grid Critical Protective Systems and shall not change or disable such settings or functionality without first coordinating such changes with all affected parties and systems and providing prior written agreement to the ISO.

WAPA does not provide support for its request, and the ISO does not believe the change is warranted. Since the Critical Protective System is on the ISO Controlled Grid, the Participating TO is responsible for the equipment settings and functionalities. The Participating TO is also required to give the ISO operating instructions that honor Existing Contracts. Thus, if the Critical Protective System is related to an Existing Contract, the rights and obligations will be respected. The TCA was not intended to address the requirements of each Existing Contract and should not be used as the vehicle to transmit the operating instructions of a Participating TO regarding an Existing Contract. Therefore, the ISO requests that the Commission reject WAPA's recommendation.

B. ISO ORDERS DURING EMERGENCIES

Section 9.2 of the TCA addresses management of System Emergencies and Section 9.2.1 specifically requires the Participating TOs to comply with all directions from the ISO during System Emergencies. WAPA requests that the language be changed as follows:⁶

In the event of a System Emergency, the Participating TOs shall comply with all directions from the ISO regarding the management and alleviation of the

WAPA does not intend to circumvent the ISO's need to obtain prior written agreement from the Participating TO.

⁶ WAPA at 9. Again, WAPA was not specific as to where the revised text would go in the section and how the section would change to accommodate the revision. The ISO is making the best available guess based on the concern we believe to be raised by WAPA. Revised text is underlined and in italics.

System emergency unless such compliance would unduly risk damage to facilities [in which case], the Participating TO shall inform the ISO of the risk and together they shall determine the most prudent course of action, or impair the health or safety of personnel or the general public.

WAPA is concerned that the ISO should not have the unilateral ability to order a Participating TO to perform a function that could cause equipment damage. WAPA's concern was raised previously and was rejected by the Commission in its October 30 Order. See 81 FERC at 61,571.

Furthermore, the Commission found the requirement that participants comply with all ISO orders, except those that would result in impairment to public health or safety, to be reasonable. Id. at 61,456. Citing to Section 5.1.3 of the TCA, the Commission also stated that, “[w]ith regard to intervenor concerns about potential damage to their facilities, we note that the ISO will follow good utility practice in operating the system and will comply with all NERC, WSCC and other reliability criteria.” Id. Accordingly, WAPA's proposal should be rejected.

C. PROTECTION OF EXISTING CONTRACTS

In the March 30 Order, the Commission directed the ISO to revise the sections of the TCA to include protection of all Existing Contracts and to clarify the various types of Existing Contracts. 82 FERC at 62,277. Accordingly, the ISO revised Sections 4.1.1, 4.1.3, 4.3.3, 5.1.7 and 13 of the TCA. The stakeholders decided against revising Section 6.4.2 of the TCA, a section cited in the March 30 Order, because this section addressed protocols for Encumbrances. Since Encumbrances are Existing Contracts, the change appeared to be redundant.

Metropolitan and TANC, who were participants in the stakeholder process, both raise the concern that the ISO did not make a change to Section 6.4.2 of the

TCA in the compliance filing. Metropolitan at 4-5; TANC at 6-7. The ISO could support the changes requested by Metropolitan and TANC to the first sentence of the section. The sentence would read as follows (revised text is underlined and in italics):

A Party that is placing a transmission line or associated facility (including an Entitlement) that is subject to an Encumbrance under the Operational Control of the ISO shall *work with the holders of transmission rights under an Existing Contract in accordance with Section 2.4.3.1 of the ISO Tariff to* develop protocols for its operation which shall: (1) reflect the rights *under Existing Contracts* the Party has in such facility, and (2) give effect to *the rights in Existing Contracts and reflected in* any Encumbrance on such facility.

The revision does not change the intent of the section or the ISO Tariff. The ISO notes, however, that pursuant to Section 26.11 of the TCA, the ISO cannot unilaterally file to amend the TCA.⁷

⁷ Section 26.11 of the TCA requires that “This Agreement may be modified: (1) by mutual agreement of the Parties, subject to approval by FERC; (2) through the ISO ADR Procedure set forth in Section 13 of the ISO Tariff; or (3) upon issuance of an order by FERC.”

D. FACILITIES UNDER THE ISO'S OPERATIONAL CONTROL

In the October 30 Order, the Commission directed the ISO to include in Section 4.1.3 of the TCA new language regarding the ISO rights to refuse to exercise operational control over certain transmission lines, associated facilities, and entitlements of a transmission owner due to reliability or operational concerns.⁸

The ISO modified Section 4.1.3 but did not precisely follow the language from the October 30 Order. The ISO believed that its revisions were in accord with the intent of the Commission's order, and that its proposed language was more precise than that proposed by the Commission because it included a reference to Entitlements, which can also be turned over to the ISO's Operational Control.

TANC and Metropolitan take exception with the ISO's implementation of the Commission's order for facilities under the ISO's Operational Control. TANC at 5-6; Metropolitan at 9-10. They correctly note that the ISO failed to utilize the specific language directed by the Commission. The ISO is willing to make the conforming changes. Section 4.1.3(iii) of the TCA would be revised as follows (revised text is underlined and in italics):

Transmission lines, associated facilities and Entitlements *that* are located in a Control Area outside of California, are operated under the direction of another Control Area or independent system operator, and *that* cannot be integrated into the ISO Controlled Grid due to technical considerations *cannot be included in the ISO Controlled Grid*.

Again, the ISO notes that it cannot unilaterally file amendments to the TCA.

E. DEFINITION OF EXISTING CONTRACTS

⁸ 81 FERC at 61,568. See also March 30 Order, 82 FERC at 62,278.

The Cities suggest that the definition of Existing Contracts be amended to include the phrase “other similar arrangements.” Cities at 3-4. The ISO is concerned with this addition, as it is ambiguous and therefore could be subject to various interpretations. Additionally, certain stakeholders and the ISO did not want to include a reference to “other” types of Existing Contracts in the definition for fear that it might not include a specific agreement. The stakeholders who participated in the meeting process, and have Existing Contracts, appeared to believe that the list developed covers all of the types of Existing Contracts that exist. If the Cities (who were part of the stakeholder sessions) are concerned that a specific contract type is not included in the ISO’s definition (i.e., interconnection, integration, exchange, operating, joint ownership and joint participation agreements), the ISO would be willing to consider adding an additional specific reference. However, the ISO recommends that the Commission reject the Cities’ proposal, as it is ambiguous and may lead to disputes over its meaning.

F. WITHDRAWAL PROVISIONS FROM THE TCA

In the October 30 Order, the Commission stated that a Participating TO that elects not to convert its Existing Rights during the five-year transition period “should be able to withdraw from the Transmission Control Agreement and resume service under the previously existing contract so long as that contract had not expired or been terminated.” 81 FERC at 61,473. TANC correctly notes that modifications should have been made to Section 3.3.3 of the TCA consistent with the Commission’s October 30 Order. TANC at 3-4.

The text should be revised as follows (revised text is underlined and in italics):

Any withdrawal from this Agreement pursuant to Section 3.3.1 or Section 3.3.2 shall be contingent upon the withdrawing party obtaining any necessary

regulatory approvals for such withdrawal. The withdrawing Participating TO shall make a good faith effort to ensure that its withdrawal does not unduly impair the ISO's ability to meet its Operational Control responsibilities as to the facilities remaining within the ISO Controlled Grid. *If the withdrawing Participating TO has not converted its transmission rights under its Existing Contract in accordance with Section 13 of this Agreement, and the Existing Contract has not expired or terminated, the Participating TO may restore its Existing Contract transmission rights.*

The ISO notes that, if the Existing Rights have been converted, then the Participating TO has terminated its Existing Contract and there is no Existing Contract to restore.

G. TAX-EXEMPT FINANCING ISSUES WHICH WERE DEFERRED IN THE COMPLIANCE FILING

In the October 30 Order, the ISO was directed to make changes to the TCA to resolve concerns raised by Los Angeles with regard to the treatment of tax-exempt debt referenced in Section 2.3 of the TCA.⁹ In the ISO's June 1, 1998, compliance filing, the ISO requested a 90-day extension of time to permit the ISO to meet with Los Angeles to resolve this issue. The ISO has been working with Los Angeles to determine what its concerns are, but a resolution has not yet been reached. Consequently on August 31, 1998, the ISO requested an additional 90-day extension to continue negotiations.¹⁰

In addition, TANC raises the concern that Section 2.3.3 of the TCA should be modified to delete the reference to December 20, 1995. TANC at 10-11. TANC states that "the October 30 Order did not discuss this issue." *Id.* TANC is

⁹ 81 FERC at 61,567.

¹⁰ Motion of the ISO for an Extension of Time in Docket Nos. EC96-19-029, ER96-1663-030, and ER98-1971-001 filed on August 31, 1998.

incorrect. The Commission specifically noted the December 20, 1995, date (81 FERC at 61,561) but did not require the TCA to be amended to remove the limitation. Id. at 61,567-68. Therefore, TANC's recommended change should be rejected. In addition, the ISO has discussed this proposed change with the other parties to the TCA and understands that the other parties would not agree to this modification.

H. ACCEPTANCE AND REFUSAL OF TRANSMISSION FACILITIES

Los Angeles recommends that the Commission require the ISO to delete Section 4.7.1(i) because it is unnecessary and confusing. Los Angeles at 3-5. Section 4.7.1 provides that the ISO may relinquish its Operational Control over any transmission lines and associated facilities if the ISO determines that it no longer requires to exercise Operational Control over the facilities in order to meet its Control Area responsibilities. Section 4.7.1(i) states that these facilities could include "directly assignable radial lines and associated facilities interconnecting generation." Los Angeles contends that since Section 4.1.1(i) provides that "directly assignable radial lines and associated facilities interconnecting generation" are deemed not to form a part of a Participating TO's transmission network, and therefore are not part of the ISO grid, Section 4.1.7(i) is unnecessary. Id.

While the ISO recognizes Los Angeles's concerns, the fact is that Pacific Gas & Electric Company ("PG&E"), San Diego Gas & Electric Company, and Edison have turned operational control of certain generation tie lines over to the ISO and the Commission has accepted that transfer of control. Therefore, the ISO believes that it must retain the discretion to release those facilities. Once the ISO has additional operating experience, the ISO may decide that such generation tie lines should not be part of the ISO Controlled Grid, and the ISO wants the ability to exercise its right under Section 4.7.1(i) to return control of

those facilities to the owner. The ISO believes that for future Participating TOs, the ISO will have the ability to review the application and this concern will not be an issue. Accordingly, the ISO requests that the Commission reject Los Angeles's proposed change to the TCA.

I. LEASING AND/OR RENTING EQUIPMENT TO THE ISO

Los Angeles is concerned that Section 21.2 only gives "the Participating TO two choices – to rent or to lease its equipment to the ISO." Los Angeles at 5-6. Los Angeles requests that the section be modified to state that "the Participating TO is not required to rent or lease its equipment to the ISO." Id. at 6.

Section 21.2 needs to be read in conjunction with Section 18 of the TCA. Section 18 allows the ISO, as a Party, to own, rent or lease equipment on property owned by the Participating TO. Section 21.2 requires that "the ISO and the Participating TO shall mutually determine whether the ISO shall lease or rent the Participating TO's equipment." Consequently, if the parties do not agree under Section 21.2, then, in accordance with Section 18, the ISO can put its own equipment on the Participating TO's property, thus solving the rent or lease issue. Section 21.2 does not require a Participating TO to either lease or rent its equipment to the ISO. It merely preserves those alternatives as options for the parties. Under certain circumstances, it may be less expensive for the ISO to lease or rent facilities. If that is agreed to by the parties, Section 21.2 provides that the parties will enter into an agreement to provide, among other things, fair compensation to the Participating TO for the use of its facilities. Therefore, the clarification required by Los Angeles is unnecessary.

J. ALTERNATIVE DISPUTE RESOLUTION

Los Angeles again raises its concern with Section 26.11 regarding amendments to the TCA which are the result of Alternative Dispute Resolution. Los Angeles at 6. The Commission specifically ruled on this issue in the October 30 Order, and the ISO implemented the Commission's order. See 81 FERC at 61,572. Accordingly, the Commission should reject Los Angeles's request.

K. PATH 15

Edison, DWR, Metropolitan, TANC, MID and Dynergy all raised concerns with PG&E's Appendices A and B to the TCA.¹¹ These parties question PG&E's use of Path 15. Section 2.2.1(ii) and (iii) of the TCA requires the applicant to provide the ISO with "a copy of each document setting out the applicant's Entitlements to such lines and facilities" and "a statement of any Encumbrance." This information constitutes Appendices A and B to the TCA. In the TCA compliance filing, PG&E revised the Supplement to Appendix A and Appendix B #54. Consistent with the Commission's direction that the ISO not interpret Existing Contracts, the ISO has accepted whatever the Participating TO includes in Appendix A and Appendix B of the TCA with the expectation that Existing Rightholders, if they disagree, would intervene when the ISO files the revisions at FERC.¹² This is exactly what has happened.

¹¹ See Edison at 1-4; DWR at 1-6; Metropolitan at 5-9; TANC at 7-10; MID at 9; and Dynergy at 3.

¹² The ISO notes that Dynergy believes that Appendix B of the TCA contains an incorrect termination date for its Control Area and Transmission Service Agreement, item No. 29. Dynergy at 3. Similarly, in a July 13, 1998 filing in Docket Nos. EC96-19-029 and ER96-1663-030, Nevada Power Company states that there are errors in Appendix A regarding Edison's contract entitlements.

As required by Section 6.4.2 of the TCA, PG&E, as the Path 15 owner, has been negotiating a settlement of the priority rights for Path 15 with the Existing Contract holders. The ISO has participated in one of those meetings and provided PG&E with comments on two of the draft Path 15 Operating Instructions. At issue is whether PG&E will retain priority rights for itself in the real-time curtailment priority. The ISO has talked with PG&E's representative and the ISO understands that PG&E is trying to negotiate separately with each Existing Rightholder. It is unknown at this time when the negotiations will be concluded.

Once the ISO receives a revised Appendix from PG&E, the ISO will file it with the Commission for Commission approval in accordance with Section 26.11 of the TCA. Until that time, PG&E is the appropriate party to inform the Commission as to the negotiations on this issue.

L. METROPOLITAN'S SERVICE AND INTERCHANGE AGREEMENT

Metropolitan raised a concern that its Service and Interchange Agreement ("S&IA") is not listed as an Encumbrance in Appendix B to the TCA. Metropolitan at 10-11. Metropolitan states that "no explanation was provided for such removal." *Id.* at 10. To the contrary, Metropolitan was a participant in the discussion and agreed to the Appendices. The S&IA has two transmission pieces to it. The first is a 230-kV transmission line owned and operated by Metropolitan to which Edison has an Entitlement which is listed in Appendix A2, number 30. The second piece is that Metropolitan has contractual rights on Edison's Hinds-Vincent transmission line which is an Encumbrance of this transmission path. The Encumbrance is listed in Edison's Appendix B, number 5. The Commission does not need to order the ISO to reinstate the Encumbrance, because it is already there. The S&IA is specifically referenced as the Contract Title of the Encumbrance.

III. CONCLUSION

Wherefore, for the reasons stated herein, the ISO respectfully requests that the motions to intervene be granted and that the Commission accept, without modification except as discussed above, the ISO's compliance filings of the TCA.

Respectfully submitted,

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Dated: September 3, 1998

CERTIFICATE OF SERVICE

I hereby certify I have this day served this document upon each person designated on the official service list compiled by the Secretary in this docket in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. ¶ 385.2010).

Dated at Washington, D.C. on this 3rd day of September, 1998.

David B. Rubin

September 3, 1998

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket No. ER98-1971-001**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Answer of the California Independent System Operator Corporation To Motions To Intervene and Response to Comments and Protests in the above-captioned docket.

Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,

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Enclosures
cc: Service List