

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System	)	Docket Nos. ER98- 992-000,
Operator Corporation	)	ER98-996-000,
	)	ER98-1002-000,
	)	ER98-1310-000,
	)	ER98-1910-000,
	)	ER98-1912-000,
	)	ER98-1930-000,
	)	ER98-1931-000,
	)	ER98-1933-000,
	)	ER98-1935-000, and
	)	ER98-2115-000

**REPLY COMMENTS OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION IN OPPOSITION
TO THE COMMENTS OF TURLOCK IRRIGATION DISTRICT
AND HOUSTON INDUSTRIES POWER GENERATION, INC.**

**To: The Honorable Delbert R. Terrill, Jr.
Presiding Administrative Law Judge**

Pursuant to Rule 602(f)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f)(2) (1998), the California Independent System Operator Corporation ("ISO") hereby submits its reply to the comments on the Offer of Settlement submitted by Turlock Irrigation District ("Turlock") and Houston Industries Power Generation, Inc. ("HI"). Turlock and HI present no basis for the Presiding Judge to withhold certification of the Offer of Settlement or for the Commission to decline to accept it. Both Turlock and HI failed to file either testimony or affidavits alleging disputes as to material issues in fact. Instead, Turlock and HI are improperly seeking to bolster their positions in other proceedings or disputes with the ISO by contesting the Offer of Settlement. These attempts should be rejected. The Presiding Judge should certify the Offer of Settlement to the Commission and the Commission approve the Offer of Settlement, without modification or condition, as soon as possible.

I. INTRODUCTION

The ISO's Participating Generator Agreements ("PGAs") apply to Generators who wish to participate in the California markets.¹ All Energy or Ancillary Services scheduled by the ISO must be scheduled using a Scheduling Coordinator and all Generators must, if they want to schedule Energy or Ancillary Services, agree to comply with applicable provisions of the ISO Tariff. The PGA describes the obligations and manner in which Participating Generators are to comply with the ISO Tariff. The PGA covers matters such as certification requirements and data collection requirements relating to major incidents, including system emergencies that affect the reliability of the ISO Controlled Grid,

¹ Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A. The filed PGA agreements are listed in the Offer of Settlement and in the Initial Comments of the Commission Trial Staff and the Public Utilities Commission of the State of California ("CPUC").

for which the ISO is responsible. The PGA includes an acknowledgment that ISO Controlled Grid reliability depends on the Participating Generator's compliance with the ISO Tariff.

Numerous parties filed motions to intervene in these proceedings.² On February 25, 1998, the Commission issued an order granting all the motions to intervene pending at that time and conditionally accepting PGAs with SoCal Edison; SDG&E; Midway Sunset Cogeneration Company ("Midway Sunset"); PG&E; Texaco Exploration and Production, Inc. ("Texaco"); and El Segundo for filing to be effective commensurate with the start of ISO operations. California Independent System Operator Corporation, 82 FERC ¶ 61,174 ("February 25 Order"). On March 30, 1998, the Commission issued an order granting additional interventions and conditionally accepting the PGAs with Mountain Vista Power Generation, LLC; the City of Anaheim; Alta Power; Ocean Vista; Long Beach Generation, LLC; Oeste Power; and the California Department of Water Resources for filing to be effective commensurate with the start of ISO operations. California Independent System Operator Corporation, 82 FERC ¶ 61,326 ("March 30 Order"). In both the February 25 and March 30 Orders, the Commission required that the ISO modify the PGAs consistent with its order of December 17, 1997 in Pacific Gas & Electric Company, et al., 81 FERC ¶ 61,320

² Intervenors included the CPUC; the California Electricity Oversight Board; the Western Area Power Administration; the Los Angeles Department of Water and Power; the Modesto Irrigation District; the Transmission Agency of Northern California; Southern California Edison Company ("SoCal Edison"); the City and County of San Francisco; The Metropolitan Water District of Southern California; the Northern California Power Agency; Pacific Gas and Electric Company ("PG&E"); El Segundo Power, LLC ("El Segundo"); San Diego Gas & Electric Company ("SDG&E"); Alta Power Generation, LLC ("Alta Power"); Ocean Vista Power Generation, LLC ("Ocean Vista"); and Oeste Power Generation, LLC ("Oeste Power").

("December 17 Order"). The Commission also established a hearing to determine the reasonableness of the proposed PGAs.

Prehearing conferences were held in these proceedings on March 17, 1998 and on April 15, 1998. On June 1, 1998, the ISO submitted its compliance filing incorporating the modifications to the PGAs required by the Commission's December 17, February 25, and March 30 Orders.

In accordance with the procedural schedule established in these proceedings, the ISO filed its Direct Testimony on September 1, 1998. The ISO's testimony indicated certain modifications the ISO was willing to make to the filed agreements to address concerns raised by intervenors in this proceeding. Exhibit No. ISO-1, Direct Testimony of Deborah A. Le Vine at 10-11 and Exhibit No. ISO-4. On October 20, 1998, one participant, the Cogeneration Association of California ("CAC"), submitted Answering Testimony. CAC recommended that "the Commission order the ISO to develop a separate and independent pro forma Participating Generator Agreement for Qualifying Facilities."³

A prehearing conference was held on November 18, 1998. At the prehearing conference, the ISO agreed to undertake the following actions: (1) to file a motion to sever the QF-PGA dockets from the non-QF PGA dockets, (2) to file an offer of settlement in the non-QF PGA dockets incorporating the revisions proposed in the ISO's Direct Testimony, and (3) to institute a stakeholder process to develop a separate QF-PGA.

On November 18, 1998, the ISO filed its motion to sever Docket Nos. ER98-997-000 and ER98-1309-000. The Motion was granted by order of the Chief Judge dated November 19, 1998. That same day, the Presiding Judge

³ Direct Testimony of James A. Ross at 2.

issued an order suspending the procedural schedule and directing the ISO to file an Offer of Settlement no later than December 18, 1998. On December 17, 1998, the ISO filed its motion to extend the time for filing the Offer of Settlement until December 31, 1998. The Motion was granted by order of the Chief Judge dated December 18, 1998.

On December 29, 1998, the ISO filed an Offer of Settlement for the non-QF PGA Dockets. The Offer of Settlement was based on the uncontested revisions the ISO proposed to make in its Direct Testimony.

Four participants submitted comments on the Offer of Settlement on or before January 19, 1999. The CPUC and the Commission Trial Staff submitted comments in support of the Offer of Settlement. The CPUC has determined the settlement to be just and reasonable and in the public interest. CPUC Comments at 4. Accordingly, the CPUC recommends “FERC approval of the Settlement, which represents the collaborative work of many parties at the forefront of the electric restructuring endeavor” and which will “help facilitate electric restructuring in California.” *Id.* at 5. Trial Staff also encourages the Commission to accept the Offer of Settlement in its entirety as a “reasonable compromise between the parties with respect to the development of a PGA Agreement acceptable to all non-QF market Participants.” Staff Comments at 9. Only Turlock and HI submitted comments opposing aspects of the settlement.

II. ARGUMENT

- A. Neither Turlock Nor HI Raise a Dispute as to a Material Issue of Fact that would Preclude Certification of the Settlement
 1. Turlock and HI Failed to File Testimony on the Issues They Now Seek to Contest

In its Direct Testimony filed on September 1, 1998, the ISO took the unusual approach of adopting the positions it was taking in the ongoing settlement negotiations. The ISO's testimony outlined in detail the revisions it was willing to make to the PGA and included a draft of a revised pro forma agreement. The ISO utilized this approach because it believed that a basis for settlement had been reached as to virtually all issues.

In accordance with the procedural schedule, intervenors, including Turlock and HI, were given an opportunity to file testimony in response to the ISO's case. No intervenor other than the QF's (whose issues were subsequently severed into another proceeding) elected to do so.

Turlock and HI do not allege that the ISO has in the Offer of Settlement improperly modified or in any way retreated from the specific revisions it proposed in its unrebutted Direct Testimony. Moreover, they do not even attempt to demonstrate that the issues raised in their Initial Comments arose after the October 20 1998 procedural date for filing intervenor testimony.

The only two participants scheduled to submit testimony at a subsequent date, FERC Staff and the CPUC, support the settlement. It is improper for Turlock and HI at this late date to seek to interject additional issues into this matter. In fact, the issues raised by Turlock and HI were not even included on the joint statement of issues filed in this case on August 17, 1998.

2. Turlock and HI Failed To File Affidavits Alleging a Dispute as to Material Facts

Under Rule 602(f)(4) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f)(4) (1998), a party contesting an Offer of Settlement by alleging a dispute as to a genuine issue of material fact "must include an affidavit detailing any genuine issue of material fact." Neither Turlock nor HI has included such an affidavit in their comments.

The Commission has held that if the dispute concerns a matter of policy, it does not preclude certification, and the Commission can resolve the dispute without further development of a record. Koch Gateway Pipeline Co., 74 FERC ¶ 61,088, 61,270-71 (1996). See also Northern Natural Gas Co., 73 FERC ¶ 63,009, 65,030 (1996)(comments in opposition to a settlement deemed insufficient to bar certification). Turlock and HI have not raised material issues of fact that would prevent certification of the settlement.

B. The Metered Subsystem Concept Is Not at Issue in this Proceeding

A Metered Subsystem (“MSS”) is a system subsumed within the ISO Controlled Grid where all interconnection points of the MSS to the ISO Controlled Grid are metered. The MSS concept being discussed allows for self provision of Ancillary Services and bidding and sale of Ancillary Services. In its initial comments, Turlock asks the Presiding Judge and the Commission to establish a separate docket and stakeholder proceeding “for the design of an MSS PGA.” Turlock Comments at 2.

While, Turlock forthrightly notes that “[i]n numerous dockets involving the ISO, Turlock has expressed an interest in the Metered Subsystem (“MSS”) concept embodied in the ISO Tariff” (Id. at 1), it fails to inform the Presiding Judge and the Commission that the MSS issue is being addressed in a number ongoing dockets and ISO stakeholder processes. On September 11, 1998, the Commission issued an order directing:

the ISO and the parties to develop a list of all active issues, to negotiate resolutions with respect to as many of these issues as possible, and to file a report with the Commission within 120 days of the date of this order. Furthermore, we direct the Commission Trial Staff to establish procedures for and to facilitate the negotiations to complete this objective. The report should contain a

stipulation of outstanding issues that have been resolved through Settlement, and issues that remain for resolution by the Commission. The report also should separately identify issues that have been newly raised as a result of actual ISO operations, and issues that are related to outstanding rehearing requests.

California Independent System Operator Corporation, 84 FERC ¶ 61,217, 62,048. The MSS issues raised by Turlock in Docket Nos. EC96-19 and ER96-1663 have been assigned by the Commission to this settlement process.

In addition, the ISO, in early Summer 1998, established a separate stakeholder process to address concerns of Existing Rightholders. This process has lead to discussions regarding System Units and development of the MSS concept.

Turlock has raised its concern regarding MSS in other proceedings. Turlock should not be permitted to try and enhance its respective litigation and settlement positions by delaying Commission consideration and approval of the Offer of Settlement. Turlock is correct that the Commission has urged the ISO to act expeditiously in developing an MSS (Turlock Comments at 3), but the Commission has disagreed with Turlock that changes to the PGA are required to implement MSS.⁴Pacific Gas & Electric Co., et. al., 81 FERC ¶ 61,320 at 62,474 (1997).

⁴ The Commission has stated,

We disagree with Turlock that Article IV (General Terms and Conditions) of the PGA should be modified to reflect that a Metered Subsystem can use a System Unit to provide certain services. As the title to the section implies, these are general terms and conditions and we find that there are no provisions in this article that would preclude a Metered Subsystem from utilizing a System Unit to provide any services. Similarly, we find Schedule 1 [of the PGA] to be reasonable and not in need of the clarification requested by Turlock.

Issues associated with MSS include metering and balancing of electricity flows on a system-to-system net basis (as opposed to a generator-specific, load-specific, or intertie-specific basis). These are complex concepts that go well beyond the scope of the PGA agreement. The ISO originally anticipated that MSS would be implemented through a separate Existing Operating Agreement (“EOA”). While the Commission accepted the EOA for filing, it noted “that there are many still unresolved issues with regard to the Metered Subsystem concept and the related agreements.” Pacific Gas and Electric Co., et. al., 81 FERC at 62,477. The Commission stated it would address these issues “when the ISO completes its Metered Subsystem proposal.” Id. As discussed above, this proposal is being developed in ongoing stakeholder working groups. Turlock is improperly trying to leverage its opposition to the PGA settlement into a higher priority for MSS.

Turlock also “invites” the ISO to restate its intention that the settlement will not set a precedent or otherwise prejudice whatever will be necessary to implement the MSS concept. Turlock Comments at 2. The ISO believes the Offer of Settlement is clear on this question. Section 2.1 of the Offer of Settlement states as follows:

In addition, nothing in this Offer of Settlement and nothing in this PGA is intended to set any precedent for or otherwise prejudice the terms and conditions of any agreement that the ISO may require from Metered Subsystems in order to undertake transactions utilizing a System Unit, as defined in the ISO Tariff.

MSS is not an issue in this case. As noted above, it was not identified on the joint statement of issues submitted in the proceeding in August 1998. Most

significantly, the Offer of Settlement does not modify or prejudice, in any respect, the ISO's authority under the ISO Tariff to implement a MSS proposal.

C. HI's Unsupported Allegations of Delay Are Without Merit

In its initial comments, HI states that it "cannot support the Offer of Settlement as filed, due to the ISO's failure to include ... a mechanism for prompt updating of Schedule 1 to the PGA." HI Comments at 1. HI alleges that the ISO "refuses to update on a timely basis the Schedules 1 to HIPG's affiliates, citing software problems with the CAISO's Master File." *Id.* at 2. HI seeks a means by which generators can keep their schedules up to date, "without obstruction by the CAISO." *Id.* Lost in HI's rhetoric are the facts of its current dispute with the ISO.

As specified in the ISO's Tariff and procedures, generating facilities are to be certified as to their capability to provide Ancillary Services (Regulation, Spinning Reserve, Non-Spinning Reserve, and Replacement Reserve) when called upon by the ISO. The certification process includes testing to measure the response of each Generating Unit at a facility to a variety of dispatch instructions in order to determine the unit's capabilities. Following the conclusion of a test, the ISO notifies the facility of the results of the testing and the certified capabilities for that facility and requests a revised Schedule 1 to the PGA that includes such certified values. Facilities are permitted to request re-testing if the generator disputes the certified values or to reflect modifications. The ISO is also authorized to perform unannounced tests to verify the certified values.

HI's disagreement is related to an ongoing debate over the proper ramp rates to be used to establish certification limits. HI and a number of other Generators have objected to their certified ramp rates as currently recorded in the ISO's Master File. HI has requested recertification and submitted a revised Schedule 1 to the ISO which includes higher ramp rates. HI correctly states in its comments that the ISO has not filed this revised Schedule 1 with the

Commission. The ISO has not done so because the information contained in the revised Schedule 1 is inconsistent with the capability of HI's generating facilities demonstrated through certification testing. The ISO cannot agree to values for the HI generating facilities that have not been demonstrated, particularly due to concerns regarding the reliability of the electric system in the early stages of the ISO's operation of the electrical system.

However, the ISO is currently developing a generally applicable approach to address the dispute over certified ramp rates. Over the past several months, the ISO has sought the input of all Participating Generators on the ramp rate certification issue through the stakeholder process and these matters have been discussed with Generators at several public meetings. These issues are therefore being addressed by the ISO in forums unrelated to the instant proceedings involving the PGA. Until a final resolution of these issues can be reached, the ISO believes it is appropriate to maintain the currently certified values for reliability reasons.

The changes to section 4.1.3 of the pro forma PGA proposed in HI's initial comments are unacceptable. The ISO cannot, as HI has proposed, give potentially hundreds of Participating Generators the right to file amendments with FERC modifying the operating parameters of their facilities.⁵ The ISO is responsible for ensuring the safety and the reliability of the ISO Controlled Grid and administering the ISO's markets. Limitation of the ISO's ability to inspect and test units at any time by issuing unannounced Dispatch instructions is inconsistent with section 2.5.25 of the ISO Tariff and the Ancillary Service

⁵ HI's proposal is also inconsistent with section 11.9 of the PGA which requires that the "Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing." HI has not proposed to modify this provision.

requirements protocols. The ISO needs to be able to ensure that resources are available to support the reliability of the ISO Controlled Grid.

It is also the ISO's responsibility to file jurisdictional agreements with the Commission. The ISO would be unable to fulfill these responsibilities if it did not maintain its authority to certify the operating values of facilities and to submit amendments to the numerous jurisdictional PGAs. The ISO also notes that rebuilding the Master File program is a time-consuming process. Until the modified values are actually entered into the Master File, they will not be accepted by the ISO's scheduling systems.

Moreover, it is inappropriate for HI to inject the ramp rate certification issue into these proceedings at this late date or to propose a revision to the pro forma PGA at this stage in the settlement process. As noted above, HI submitted no testimony in this proceeding and did not identify issues related to the updating of Schedule 1 in the joint statement of issues submitted in this proceeding in August 1998.

Although the instant Offer of Settlement is the not the proper vehicle for addressing HI's Schedule 1 disputes, HI will not be left without a remedy. First, as noted above, the ISO is developing an approach to address the concerns of HI and others about ramp rate certification through the ISO stakeholder processes. Second, the PGA is subject to the alternative dispute resolution procedures in the ISO Tariff. HI has the opportunity to raise its Schedule 1 concerns through those procedures. HI seeks to bypass these options and instead attempts to implement its disputed ramp rates through a unilateral change to the PGA at the eleventh hour. The Presiding Judge and the Commission should recognize that this is not a proper use of the settlement comment process.

III. CONCLUSION

Wherefore, for the reasons stated herein, the ISO respectfully requests that the Presiding Judge certify the Offer of Settlement to the Commission and that the Commission approve the Offer of Settlement, without modification or condition, as soon as possible.

Respectfully submitted,

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Dated: January 28, 1999

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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 28th day of January, 1999.

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