

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

**California Independent System) Docket No. ER05-1025-000
Operator Corporation)**

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER TO PROTESTS,
AND ANSWER TO MOTIONS TO INTERVENE, MOTION TO CONSOLIDATE,
AND COMMENTS, OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

On May 25, 2005, the California Independent System Operator Corporation (“ISO”)¹ submitted Amendment No. 70 to the ISO Tariff (“Amendment No. 70”) in the captioned proceeding. In Amendment No. 70, the ISO proposed to revise the ISO Tariff to define a new type of entity, the Small Utility Distribution Company (“SUDC”), and to add a new *pro forma* agreement, the *pro forma* SUDC Operating Agreement. A number of parties submitted motions to intervene in response to Amendment No. 70.² In addition, Trinity PUD submitted comments in support of Amendment No. 70, PG&E submitted a motion to consolidate and protest, and CEOB submitted a protest out-of-time.

The ISO does not oppose any of the motions to intervene submitted in this proceeding. However, pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385. 212, 385.213, the ISO

¹ Capitalized terms not otherwise defined herein have the meanings set for in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² Motions to intervene were submitted by: the California Electricity Oversight Board (“CEOB”); California Department of Water Resources State Water Project; Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency; Modesto Irrigation District; Pacific Gas and Electric Company (“PG&E”); Southern California Edison Company; Trinity Public Utilities District (“Trinity PUD”); and Western Area Power Administration.

respectfully requests leave to file an answer, and files its answer to the protests,³ and pursuant to Rule 212, the ISO files its answer to PG&E's motion to consolidate. As explained below, the Commission should deny the motion to consolidate and should accept Amendment No. 70 as filed.

I. ANSWER

A. Background⁴

Amendment No. 70 had its origins in settlement discussions between the ISO and Trinity Public Utilities District ("Trinity PUD") to resolve all issues in Docket No. ER05-150-000 (the "Settlement Agreement proceeding"). On May 19, 2005, the ISO and Trinity PUD (together, the "Sponsoring Parties") filed an Offer of Settlement and Settlement Agreement ("Settlement Agreement") between themselves in Docket No. ER05-150-000. The Settlement Agreement included the following exhibits: a SUDC Operating Agreement between the ISO and Trinity PUD, new ISO Tariff language concerning the relationship between the ISO and SUDCs, and new ISO Tariff language to be included in the ISO Tariff as a *pro forma* SUDC Operating Agreement.⁵ The Sponsoring Parties submitted the SUDC Operating Agreement between the ISO and Trinity PUD for

³ The ISO requests waiver of Rule 213(a)(2) (18 C.F.R. § 385.213(a)(2)) to permit it to make an answer to the protests. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

⁴ Further background information is found in the transmittal letter for Amendment No. 70 at pages 1-4.

⁵ Explanatory Statement for Settlement Agreement at 6-7.

Commission acceptance.⁶ However, the Sponsoring Parties stated that they would make a separate filing, pursuant to Section 205 of the Federal Power Act, for Commission acceptance of the new ISO Tariff language concerning the relationship between the ISO and SUDCs and the new ISO Tariff language to include in the ISO Tariff a *pro forma* SUDC Operating Agreement.⁷ The ISO subsequently submitted that Section 205 filing in Amendment No. 70.

PG&E filed comments in opposition to the Settlement Agreement. The ISO, Trinity PUD, and Commission Trial Staff each filed reply comments that explained that PG&E had failed to show any reason why the Settlement Agreement should not be approved as just and reasonable. PG&E now makes many of the same arguments in this Amendment No. 70 proceeding.

B. The Amendment No. 70 Proceeding Should Not Be Consolidated with the Settlement Agreement Proceeding

PG&E argues that the Amendment No. 70 proceeding should be consolidated with the Settlement Agreement proceeding “[b]ecause terms and conditions to govern the only proposed SUDC and proposed [SUDC Operating Agreement between the Sponsoring Parties] are being litigated in” Docket No. ER05-150.⁸ PG&E’s argument is a *non sequitur*. Just because the SUDC Operating Agreement between the Sponsoring Parties is at issue in Docket No. ER05-150 (the Settlement Agreement proceeding), it does not follow that the Settlement Agreement proceeding must be consolidated with the Amendment

⁶ *Id.* at 7.

⁷ *Id.*

⁸ PG&E at 2-3.

No. 70 proceeding. To the contrary, there are good reasons for keeping the two proceedings on separate, unconsolidated tracks. Consider the following possible scenario: suppose that the Commission approves Amendment No. 70 subject to a modification with which Trinity PUD disagrees, and then Trinity PUD withdraws from the Settlement Agreement pursuant to the terms of that agreement.⁹ In that scenario, further proceedings on Amendment No. 70 would be separate from any further proceedings on the Settlement Agreement. Moreover, the Settlement Judge in the Settlement Agreement proceeding has already issued a report concerning the agreement and has presented “the matters discussed in [the] report . . . to the Commission for its review and consideration.”¹⁰ Therefore, both the Settlement Agreement and Amendment No. 70 are now both pending before the Commission. There is no need for consolidation.

C. Amendment No. 70 Is Not Premature

The CEOB asserts that Amendment No. 70 should be rejected as premature, because “[a]pproval of Tariff Amendment 70 would pre-judge the contested Settlement in” the Settlement Agreement proceeding¹¹ The CEOB is incorrect. As explained in Section I.B, above, the Amendment No. 70 proceeding will not necessarily dictate the outcome of the Settlement Agreement proceeding (or vice versa), and the Settlement Judge in the Settlement

⁹ Section 6 of the Settlement Agreement provides that “[e]ach Sponsoring Party reserves its rights to withdraw its respective offer of settlement as set forth in this Settlement Agreement in the event that any element of the Settlement Agreement is materially modified or is rejected by the Commission, in a manner unacceptable to any such Sponsoring Party.”

¹⁰ Report to the Commission and Chief Judge Regarding Contested Settlement, Docket No. ER05-150-000 (issued June 24, 2005), at P 33.

¹¹ CEOB at 5.

Agreement proceeding has already presented his report to the Commission. Moreover, if the Commission is concerned that the result of the Amendment No. 70 proceeding will dictate the outcome of the Settlement Agreement proceeding, the proper solution is not to reject Amendment No. 70, but to defer issuing an order on the merits of Amendment No. 70 until either (i) the same date that it issues an order addressing the merits of the Settlement Agreement, or (ii) subsequent to the date that it issues an order addressing the merits of the Settlement Agreement. The CEOB itself proposes such a solution: “The CEOB submits that any consideration by the Commission of the matters put forward in the CAISO’s Tariff Amendment 70 should occur, if at all, only after issuance of a Commission order concerning the” Settlement Agreement.¹²

It would not make sense to reject Amendment No. 70 as premature, thereby requiring the ISO to submit the amendment again, requiring parties to submit interventions and protests again, and requiring the Commission to consider the amendment and parties’ interventions and protests again. Such duplication would be an unnecessary waste of effort for all concerned.

D. The ISO Acted Properly in Submitting Amendment No. 70

PG&E asserts that “[i]t is unclear whether there are any entities aside from [Trinity PUD] that fit or may fit the definition of an SUDC, and therefore it appears

¹² CEOB at 6. The CEOB also states that the situation in the present case is “analogous” with the situation concerning Amendment No. 68 to the ISO Tariff (“Amendment No. 68”). CEOB is incorrect. The CEOB contends that, in the Amendment No. 68 situation, PG&E made a tariff filing to track Amendment No. 68, requesting an effective date of June 18, 2005, but that the Commission rejected PG&E’s tariff filing as premature on the ground that the ISO had proposed a much later effective date (until at least January 1, 2006) for Amendment No. 68. CEOB at 6-7. The situation in the present case differs from the Amendment No. 68 situation in that the Sponsoring Parties proposed that the Settlement Agreement be made effective on the same date as Amendment No. 70 (see Explanatory Statement for Settlement Agreement at 7).

improper for the ISO to have filed a *pro forma* [SUDC Operating Agreement].”¹³ There is nothing improper about the filing of the *pro forma* SUDC Operating Agreement (or the other new ISO Tariff language) in Amendment No. 70. If PG&E turns out to be right and there are no other entities that ever fit the definition of a SUDC, the language merely will be in the ISO Tariff but will not be widely used in practice. If, on the other hand, PG&E turns out to be wrong and there are other entities that fit the definition of a SUDC, the new ISO Tariff language will permit them to become SUDCs. It may be the case that entities other than Trinity PUD will seek to become SUDCs at some point in the future. Therefore, it is prudent to include the new ISO Tariff language proposed in Amendment No. 70.

The CEOB asserts that, before being submitted, Amendment No. 70 should have been “tested through the stakeholder process to ascertain whether a market need exists for the service.”¹⁴ As explained above, it may be the case that entities other than Trinity PUD will seek to become SUDCs. Moreover, the Commission has approved other ISO Tariff amendments that were not made subject to a stakeholder process. For example, the Commission accepted Amendment No. 46 to the ISO Tariff (“Amendment No. 46”) (subject to modification), which the ISO had submitted, *pursuant to a settlement agreement filed the same day as Amendment No. 46*, to modify the ISO Tariff by amending

¹³ PG&E at 3. The CEOB (at 7) makes a similar argument.

¹⁴ CEOB at 7; see *also* CEOB at 8.

its provisions concerning Metered Subsystems.¹⁵ Further, all Market Participants that had an interest in presenting their views on Amendment No. 70 were given the opportunity to offer those views in this proceeding.

E. The Provisions Proposed in Amendment No. 70 are Just and Reasonable

PG&E argues that the *pro forma* SUDC Operating Agreement should include a provision akin to Section 4.7 of the *pro forma* Utility Distribution Company (“UDC”) Operating Agreement, concerning “Critical Protective Systems,” in order to “protect the interconnected [Participating TO] in cases where modification of SUDC facilities (e.g., fuses or transformers) could compromise Critical Protective Systems”¹⁶ The *pro forma* SUDC Operating Agreement already contains provisions that should alleviate any such concerns. A SUDC is obligated by Section 3.1 of the agreement to “operate and maintain its SUDC Facilities in accordance with applicable reliability standards, statutes, and regulations and Good Utility Practice so as to avoid any material adverse impact on the reliability of the ISO Control Area and the ISO Controlled Grid.” Moreover, Section 4.1 of the agreement requires the SUDC to “coordinate its SUDC Facilities Outage requirements with the Participating TO with which it is interconnected.” Section 4.1 also requires the SUDC to “provide the ISO with [a] copy of any written information regarding Outages of the SUDC Facilities that

¹⁵ Transmittal Letter for Amendment No. 46, Docket No. ER02-2321-000 (filed July 15, 2002), at 1; *California Independent System Operator Corporation*, 100 FERC ¶ 61,234 (2002). Amendment No. 46 also contained Metered Subsystem agreements between the ISO and the Northern California Power Agency, the City of Roseville, and Silicon Valley Power. Transmittal Letter for Amendment No. 46 at 1.

¹⁶ PG&E at 4.

could cause a material adverse impact on the reliability of the ISO Controlled Grid,” and states that, “[t]o the extent the SUDC schedules maintenance of SUDC Facilities that has a reasonable potential to cause a material adverse impact to reliability of the ISO Controlled Grid, the SUDC shall notify the ISO of such maintenance when it becomes known, and that information will be updated quarterly or as changes occur to the proposed schedule.”¹⁷ Therefore, the *pro forma* SUDC Operating Agreement already contains provisions to address actions or events that could cause a material adverse impact on the reliability of the ISO Controlled Grid, including an action or event that could cause compromise Critical Protective Systems.

PG&E asserts that “[a]n SUDC such as [Trinity PUD] could adversely affect reliability and could otherwise adversely affect a [Participating TO’s] system and the ISO Controlled Grid.”¹⁸ For the reasons explained above, PG&E’s assertion is groundless. Moreover, the peak demand of Trinity PUD is only 17 MW, and an entity cannot be a SUDC if it has an annual peak demand of more than 25 MW.¹⁹ Such a small utility is unlikely to cause a material adverse impact on the ISO Controlled Grid and, if it were to do so, the ISO would have recourse pursuant to the terms of the SUDC Operating Agreement.²⁰ The ISO would

¹⁷ By comparison, Section 4.7 of the *pro forma* UDC Operating Agreement requires a UDC to “notify the ISO as soon as reasonably practicable of any condition that it becomes aware of that may compromise the ISO Controlled Grid Critical Protective Systems”

¹⁸ PG&E at 4. The CEOB and PG&E make similar arguments concerning impacts and costs that a SUDC may purportedly impose. CEOB at 8; PG&E at 4-5.

¹⁹ Explanatory Statement for Settlement Agreement at 2, 5.

²⁰ As to Trinity PUD, presumably PG&E would also have recourse pursuant to the terms of its Interconnection Agreement (“IA”) with Trinity PUD. See *Pacific Gas and Electric Company*,

certainly investigate such an event in an effort to ascertain whether the adverse impact was caused by a failure of the SUDC to comply with this provision and respond accordingly.²¹ As the entity responsible for ensuring the safe and reliable operation of all facilities that constitute the ISO Controlled Grid,²² the ISO would not have submitted Amendment No. 70 if it had believed that SUDCs would compromise the ISO's ability to perform those responsibilities.

PG&E states that the *pro forma* SUDC Operating Agreement requires a SUDC to follow only "select . . . applicable ISO Tariff requirements, while UDCs like PG&E must follow all applicable ISO Tariff provisions."²³ PG&E argues that "[s]maller size than a regular UDC has not been shown to be an adequate reason to waive . . . any . . . *pro forma* [UDC Operating Agreement] requirements."²⁴ However, the small size and limited operating capacity of a SUDC (such as Trinity PUD) are the very reasons that it is just and reasonable to make a SUDC subject to a SUDC Operating Agreement rather than a UDC Operating Agreement (which entails obligations that are more appropriate for a

111 FERC ¶ 63,062, at P 1 (2005) ("PG&E can require [Trinity PUD] to have an IA or other agreement establishing terms of interconnection, if [Trinity PUD's] distribution system is to remain interconnected with PG&E").

²¹ On page 4 of its filing, PG&E also criticizes a recital included in the *pro forma* SUDC Operating Agreement but not included in the *pro forma* UDC Operating Agreement. PG&E fails to properly recognize that the ISO intended this language purely as a recital to provide background why it is just and reasonable to subject a SUDC to obligations that differ from the obligations imposed on a UDC.

²² See Transmission Control Agreement, §§ 5.1.2, 5.1.3.

²³ PG&E at 4.

²⁴ *Id.*

comparatively large UDC).²⁵ The ISO cannot describe how a UDC such as PG&E fundamentally differs from a SUDC such as Trinity PUD any better than the Commission Trial Staff described that fundamental difference in the Settlement Agreement proceeding:

For PG&E to claim that it is similarly situated to Trinity PUD is akin to a Giant Sequoia claiming it is similarly situated to an avocado, because they are both trees located in California. According to PG&E's website, "Pacific Gas and Electric Company serves gas and electricity to 14 million people in California, from Eureka to Bakersfield." PG&E has 20,300 employees. Trinity PUD has 16,000 customers. In other words, PG&E has at least 3000 more employees than Trinity PUD has customers. There is a point at which a difference in size becomes a difference in kind.²⁶

Moreover, given a SUDC's small size and operating capacity, there is no need to make a SUDC subject to more than the set of ISO Tariff provisions that apply to a SUDC.²⁷

PG&E suggests that permitting a SUDC to voluntarily shed load during Stage 1 of a System Emergency, as proposed in Amendment No. 70, could unjustly shift firm load shedding responsibility to PG&E during Stage 3 of a System Emergency and thus "create liability for" PG&E.²⁸ This argument fails for

²⁵ Transmittal Letter for Amendment No. 70 at 5; Explanatory Statement for Settlement Agreement at 4-5, 9-10. The requirements under the SUDC Operating Agreement are mostly derivative of the requirements applicable under a UDC Operating Agreements, with a few exceptions to reflect a SUDC's size and operating capacity. Transmittal Letter for Amendment No. 70 at 5; Explanatory Statement for Settlement Agreement at 5, 9.

²⁶ Comments of the Commission Trial Staff in Reply to PG&E's Opposition to Offer of Settlement, Docket No. ER05-150-000 (filed June 20, 2005), at 4 (citations omitted).

²⁷ Transmittal Letter for Amendment No. 70 at 4-5; Explanatory Statement for Settlement Agreement at 9.

²⁸ PG&E at 4. Proposed Section 31.5.1 of the ISO Tariff provides that "[i]f the ISO declares a Stage 1 System Emergency, the SUDC shall use any reasonable available local communication infrastructure to request that its customers curtail their electricity usage."

two reasons. First, Load shedding during Stage 1 of a System Emergency can help to avoid escalation of the System Emergency to a Stage 3 and can also help to reduce the overall amount of firm Load shedding that may be required in the event a Stage 3 Emergency should follow. In addition, a SUDC is not in any UDC Service Area, and therefore a SUDC is not included in any UDC's *pro rata* share of Load to be shed pursuant to Section 4.5.3.3 of the ISO Tariff. Because a SUDC does not count directly against any UDC's *pro rata* share of Load to be shed (the numerator stated in Section 4.5.3.3) and contributes only an extremely small percentage increase to the total Control Area annual peak Demand (the denominator stated in Section 4.5.3.3),²⁹ it is not unreasonable to exempt a SUDC from firm load shedding obligations implemented during Stage 3 of a System Emergency and instead require the SUDC to voluntarily shed load during Stage 1 of a System Emergency.

PG&E contends that the ISO “wrongly deleted the requirement for underfrequency load shedding from” the *pro forma* SUDC Operating Agreement.³⁰ PG&E, in quoting from the WECC Minimum Operating Reliability Criteria in support of its argument, fails to take note of the provision in those criteria that states that “[i]t is imperative that all entities *equitably* share the various responsibilities to maintain reliability,” including “participation in coordinated underfrequency load shedding programs”³¹ It would not be

²⁹ For example, the annual peak Demand of Trinity PUD would add only about 0.00004% to the total Control Area annual peak demand.

³⁰ PG&E at 5-6; see *also* CEOB at 7-8.

³¹ Page 1 of WECC Minimum Operating Reliability Criteria, quoted by PG&E (at 5) (emphasis added).

equitable to require a SUDC, with its small size and limited operating capacity, to participate in such programs. PG&E singles out the electrical configuration of Trinity PUD's facilities as purportedly showing that Trinity PUD should be required to participate in those kinds of programs.³² PG&E conveniently ignores the fact that nothing with respect to this electrical configuration has changed since Trinity PUD purchased the facilities from PG&E, which were originally constructed by PG&E and included in PG&E's system.³³ Trinity PUD differs from PG&E in that Trinity PUD's substations are not configured for underfrequency load shedding and Trinity PUD, unlike PG&E, does not have other substations configured for underfrequency load shedding upon which to rely in order to meet the WECC requirement. Moreover, underfrequency load shedding at just one Trinity PUD substation would exceed the equitable share referred to in the WECC requirement. To require Trinity PUD to configure its substations for underfrequency load shedding would be inequitable, both from an economic and a proportionate-share standpoint (not that the substations could be configured in a way that would enable them to be used for underfrequency load shedding).

³² PG&E at 5.

³³ The ISO has discussed with Trinity PUD the representations made in this paragraph with respect to Trinity PUD's system and Trinity PUD concurs.

II. CONCLUSION

For the reasons explained above, the Commission should deny the motion to consolidate and should accept Amendment No. 70 as filed.

Respectfully submitted,

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Dated: June 30, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California, on this 30th day of June, 2005.

John Anders
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