UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	)	Docket No. ER01-313

ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO MOTIONS TO INTERVENE OUT OF TIME

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the California Independent System Operator Corporation ("ISO") respectfully submits its Answer to the Petition to Intervene Out of Time of the California Cogeneration Council ("CCC") and the Motion to Intervene Out of Time of the Electricity Consumers Resource Council ("ELCON"), the United States Combined Heat and Power Association, the American Iron and Steel Institute, the American Forest & Paper Association, the American Petroleum Institute ("API"), the National Petrochemical & Refiners Association ("NPRA"), the Fertilizer Institute, and the Chemical Industry Council of California (collectively, "Industrial Associations"). The Commission should deny both requests.

BACKGROUND

This proceeding concerns the ISO's Grid Management Charge for 2001. One of the more controversial issues in the proceedings before the Presiding

Judge was the ISO's proposal to allocate the Control Area Services ("CAS") portion of the Grid Management Charge to Control Area Gross Load, including Load served "behind-the-meter" by Qualifying Facilities.

During the proceeding, the interests of qualifying facilities were defended by counsel for the Cogeneration Association of California and the Electricity Producers and Users Coalition (jointly, "CAC/EPUC"), associations of industrial cogenerators. Counsel for CAC/EPUC thoroughly explored the issues regarding the allocation of CAS to Load service behind-the-meter by Qualifying Facilities. Although the Joint Stipulation identified 14 major issues and ten parties conducted cross-examination adverse to the ISO, the cross-examination of ISO witness on this one issue by counsel for CAC/EPUC consumed 25 percent of the transcript of cross-examination of ISO witnesses. CAC/EPUC filed a motion for summary disposition, and later lengthy briefs, devoted almost solely to this issue.

In her Initial Decision in this proceeding, Judge Bobby J. McCartney found that the ISO's proposal to allocate CAS to Load served behind-the-meter by Qualifying Facilities is just and reasonable. CAC/EPUC, Southern California Edison Company, and the California Public Utilities Commission have filed Exceptions. In addition, however, CCC and Industrial Associations have filed requests to intervene out of time and Briefs on Exceptions.

DISCUSSION

I. Industrial Associations Have Not Shown Good Cause for Late Intervention

Industrial Associations only explanation for their failure to intervene in a timely manner is that the Commission has "reversed course" with respect to the assessment of ISO charges on parties with retail customer generation. To demonstrate this "reversed course," Industrial Associations refer to Judge Leventhal's Initial Decision in the "QF-PGA" case, *California Independent System Operator Corporation*, 96 FERC ¶ 63,015 (2001). This argument is unavailing. First, Judge Leventhal's Initial Decision is before the Commission on Exceptions. It is not a final Commission order, and therefore not a "course" for the Commission to reverse. Second, Judge Leventhal's Initial Decision had not been issued during the appropriate period for interventions in this proceeding; it cannot therefore constitute a basis for failure to intervene. Third, the only time that the Commission *has* spoken regarding the assessment of ISO charges on retail behind-the meter load, it has approved those charges.[1] *See San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services,* 97 FERC ¶ 61,293 (2001). Industrial Associations' reliance on the Commission's "reversed course" is baseless.

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[1] In addition, in its order regarding the ISO's revised transmission Access Charge, the Commission addressed the ISO's proposal to allocate costs stating, "Our review indicates that the continued use of gross load as the billing units as proposed by the ISO is appropriate." The Commission went on to address the ISO's proposed allocation of costs to new, but not existing, Loads served behind-the-meter by Qualifying Facilities according to Gross Load: "With respect to the exceptions for existing [Qualifying Facilities] and cogeneration facilities, we generally agree with the ISO's criteria used to support its proposal. However, the record should be further developed to demonstrate that the criteria are applied in a non-discriminatory manner in order to

Indeed, there is good reason for Industrial Associations to have been fully cognizant of all aspects of this proceeding. All of the members of EPUC identified in its Motion to Intervene are members of, subsidiaries of members of, or have been acquired by members of various Industrial Associations – Atlantic Richfield Company (acquired by BP, plc, member of ELCON, API and NPRA), Chevron USA, Inc., and Texaco, Inc. (now ChevronTexaco Corporation, member of ELCON, API and NPRA), Tosco Corporation (acquired by Phillips Petroleum Company, a member of API and NPRA), Equilon Enterprises, LLC (formerly a joint venture of Texaco, Inc. and Shell Oil Company, and now Shell Oil Products US, a subsidiary of Shell Oil Company, which is a member of API), and Aera Energy LLC (jointly owned by Shell Oil Company and ExxonMobil, also a member of ELCON and API).

Industrial Associations do not even attempt to demonstrate that their interests have not been adequately represented by counsel for CAC and EPUC. Yet, because their arguments solely concern cogeneration, there is no reason that they would not have been.

Industrial Associations' intervention would also disrupt the proceeding and prejudice other parties. Their Brief attempts to introduce arguments on matters that are not even at issue in this proceeding. For example, they take exception to the Initial Decision's "approval" of a "gross metering" policy, Industrial Associations' Brief at 3, whereas the Initial Decision includes no ruling regarding the scheduling or metering of behind-the-meter Generation or Load. Despite their supposed willingness to take the record as it stands, Industrial Associations introduce arguments regarding national

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avoid possible future claims of discrimination." *California Independent System Operator Corp.,* 91 FERC ¶ 61,205 at 61,729 (2000).

energy policy, citing a Report of the National Energy Policy Development Group and the U.S. Department of Energy's May 2002, National Transmission Grid Study. The ISO did not have an opportunity to explore the relevance and significance of those reports or the nature of the "policy" they represent in either cross-examination or brief; neither did the Presiding Judge have an opportunity to consider these arguments.

In short, under the considerations outlined in Rule 214(d)(1), 18 C.F.R. § 385.241(d)(1), Industrial Associations should not be allowed to intervene at this late stage.

II. CCC Has Not Shown Good Cause for Late Intervention

CCC contends that it has good cause for it's failure to file a timely intervention because it could not have known the potential impact of the Initial Decision until it was issued. This assertion defies credibility. The Initial Decision simply approves the ISO's CAS charge *as filed.* The details have been publicly available since the ISO filed its Grid Management charge on November 1, 2000. Notice of the filing was published on November 6, 2000. The Commission specifically identified the controversy surrounding the gross load billing determinate in its order accepting the filing, *California Independent System Operator Corporation,* 93 FERC ¶ 61,337 at 62,143 (2000), and again when it accepted the ISO's 2002 Grid Management Charge for filing, *California Independent System Operator Corporation,* 97 FERC ¶ 61, 303 (2001). The ISO's proposal was also available on its web site and went through a lengthy

stakeholder process in California. An unfounded belief that the ISO's filing would be rejected does not qualify as good cause for a failure to intervene.

CCC also contends that its interests are not otherwise adequately represented. It asserts that the Qualifying Facilities it represents differ from those represented by CAC because of location, generating capacity, end industrial use, and cogeneration capacity. It does not, however, provide any facts or explanation about the relevance of those considerations to the ability of CAC/EPUC to represent them, to the impact of the Initial Decision or to the arguments that could be raised against the Initial Decision. Moreover, because CCC does not even bother to provide a list of the members of its "ad hoc" coalition, it is impossible to evaluate in any manner, if any, in which their interests might not have been represented by CAC.

In light of this complete failure to show good cause, even if CCC has confined itself to legal arguments, the Commission should not condone CCC's failure to intervene earlier by granting its motion at this time.

CONCLUSION

For the reasons described above, the Commission should deny the requests to intervene out of time.

Respectfully Submitted,

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