

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

California Independent System Operator Corporation	)	Docket No. ER01-313-004
Pacific Gas and Electric Company	)	Docket No. ER01-424-004

**ANSWER OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
TO THE MOTION TO CLARIFY  
THE SCOPE OF THE PROCEEDING OF THE  
COGENERATION ASSOCIATION OF CALIFORNIA AND  
THE ENERGY PRODUCERS AND USERS COALITION**

**To: The Honorable Bobbie J. McCartney  
Presiding Administrative Law Judge**

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") hereby submits its Answer to the Motion to Clarify the Scope of the Proceeding and Motion to Strike of the Cogeneration Association Of California and the Energy Producers and Users Coalition ("CAC/EPUC") in the above-identified proceeding.

CAC/EPUC filed its Motion on January 4, 2005. In its Motion, CAC/EPUC asks the Presiding Judge for four rulings:

- 1) that an exemption from the ISO's Control Area Services ("CAS") charge based on Control Area Gross Load ("CAGL") for Load served behind-the-meter at a single retail location, and which takes standby service from a

utility, is not an issue in this proceeding;

- 2) that an issue within the scope of this proceeding is whether the exemption set forth in Opinion No. 463-A should apply to Load that is not modeled by the ISO as opposed to un-modeled generators;
- 3) that the ISO will not be allowed to relitigate the issue of whether certain behind-the-meter loads should be exempt from the CAS charge at all, or, in the alternative, that ISO Witness Deane Lyon's testimony be stricken from Page 11, line 31 through Page 15, line 16, on the grounds that this testimony is not relevant to the limited issue presented by the Commission for hearing; and
- 4) that the Presiding Judge strike Mr. Lyon's testimony from page 12, line 13, through page 13 at line 3.

The ISO requests that the Motion to Strike be denied and that the Motion to Clarify the Scope be granted only to the extent that the Presiding Judge clarify only the factual issues regarding the exemption identified by the Commission in the November 16 Order, *California Independent System Operator Corp.*, 109 FERC ¶ 61,162 at P 17, are within the scope of this proceeding.

#### **I. Motions to Clarify Scope**

##### **A. The Issue of Whether Certain Behind-the-Meter Loads Should Be Excluded from Control Area Gross Load or Per Se Exempted from the ISO's Control Area Services Charge Is Not an Issue in This Proceeding, but *There Is Currently No Such Exemption or Exclusion.***

In requests 1) and 3), CAC/EPUC asks the Presiding Judge to determine that an exemption from the ISO's CAS charge based on CAGL for Load served

behind-the-meter at a single retail location, and which takes standby service from a utility, is not an issue in this proceeding and to preclude the ISO from “relitigating” such an issue. The ISO agrees that the meaning of CAGL and exemptions other than that specified in Opinion No. 463-A are not issues in this proceeding, as the Presiding Judge already ruled in response to the Motion of the Modesto Irrigation District to Clarify the Scope of the Proceeding and the Motion to Compel of the Sacramento Municipal Utility District.

By its motion, however, CAC/EPUC is asking the Presiding Judge to go outside the scope of the hearing and rule on just such a question. In reality, it is CAC/EPUC that is attempting to relitigate issues concerning the CAS charge and CAGL.

CAC/EPUC contends that as the result of Opinion No. 464, in Docket No. ER98-997, behind-the-meter load at a single retail location that takes standby service from a utility is exempt from the CAS. In making its arguments, CAC/EPUC quotes extensively from the Initial Decision by Judge Leventhal in that proceeding. Yet CAC/EPUC has already litigated this issue before the Presiding Judge and the Commission.

In the proceedings on the ISO’s 2001 Grid Management Charge (“GMC”) that gave rise to the current proceedings, CAC/EPUC argued to the Presiding Judge that the CAS should not apply to such Loads. Among other arguments, CAC/EPUC made the same arguments it makes here. It contended that the same reasoning of the same Initial Decision in Docket No. ER98-997 was controlling. The Presiding Judge rejected those arguments, and found the Initial

Decision in Docket No. ER98-997, which concerned the ISO's Participating Generator Agreement for Qualifying Facilities, was not relevant to the allocation of CAS. *California Indep. Sys. Operator Corp.*, 99 FERC ¶ 63,020 at 65,120 (2002). The Initial Decision in the GMC proceeding concluded that retail behind-the-meter load with standby service was part of CAGL. *Id.* at 65,120-22. The Commission affirmed the Initial Decision's allocation of CAS to retail behind-the-meter load. *California Indep. Sys. Operator Corp.*, Opinion No. 463, 103 FERC ¶ 61,114 at PP 29-35 (2003), *aff'd*, Opinion No. 463-A, 106 FERC ¶ 61,032 (2004). Opinion No. 464 simply affirmed the Initial Decision in Docket No. ER98-997. *California Indep. Sys. Operator Corp.*, Opinion No. 464, 108 FERC ¶ 61,273 (2004). It contains no new reasoning that would affect the conclusion of the Presiding Judge, as affirmed by the Commission in Opinions No. 463 and 463-A, that the reasoning of the Initial Decision was not relevant to the allocation of CAS.

It may well turn out that most, or all, behind-the-meter retail load receiving standby service is exempt from the CAS charge under the exemption proposed by the Commission (if the Commission maintains the exemption). If this is so, however, it will be a factual determination according to whether that load is served by modeled Generating Units, not because of a categorical exemption.

- B.** Whether the Exemption Set Forth in Opinion No. 463-A Should Apply to Load that Is Not Modeled by the CAISO As Opposed to Un-Modeled Generators is Not Within the Scope of the Proceeding.

In request 2), CAC/EPUC asks the Presiding Judge to determine that the issue of whether the exemption set forth in Opinion No. 463-A should apply to

load that is not modeled by the CAISO as opposed to un-modeled generators is within the scope of this proceeding. There is no question that the CAS is applied to Load; no clarification is necessary in that regard. The ISO also believes the Commission was fairly clear that the exemption it proposes is for Load served by unmodeled *Generation*, see Opinion No. 463-A at P 20; November 16 Order at P 14, although the Commission does make some reference to unmodeled Load, November 16 Order at P 15, and that this was affirmed by the Presiding Judge in the December 22, 2004, Order on Modesto Irrigation District's Motion to Clarify Scope.

Regardless of whether there is any ambiguity in the definition of the exemption, however, this issue is one on which CAC/EPUC has requested rehearing and the Commission has deferred ruling. November 16 Order at P 12. The Commission did not set this issue, or any other the other rehearing requests, for hearing, but only requested certain *factual findings*. The issue of whether the exemption *should* apply to unmodeled Loads is not a factual issue and is not within the scope of this proceeding.

## **II. Motions to Strike**

In request 3) CAC/EPUC asks the Presiding Judge to strike Mr. Lyon's testimony from Page 11, line 31 through Page 15, line 16, on the grounds that this testimony is not relevant to the limited issue presented by the Commission for hearing. In request 4), CAC/EPUC asks the Presiding Judge to strike a subset of the same testimony as contrary to Opinion No. 464.

To the extent CAC/EPUC's request is premised on its argument that the

Commission has exempted behind-the-meter retail Loads with standby service from the CAS charge, the ISO has already addressed the argument above. More generally, Mr. Lyon's testimony addresses the WECC requirements that affect the ISO's need for modeling generation, and are therefore directly responsive to the issues set for hearing by the Commission. See November 16 Order at P 17. Moreover, the majority of the discussion cited by CAC/EPUC is applicable to both wholesale and retail Load.

Further, contrary to CAC/EPUC's assertion, Mr. Lyon is not challenging the Commission's conclusions about the scope of the ISO's Control Area Firm Load for the purposes of the procurement of reserves, the requirements of metering and telemetry, or other matters determined under Opinion No. 464. Mr. Lyon specifically states, "*To the extent the behind-the-meter load has not self-provided or made appropriate arrangements (for example though an adequate standby service arrangement) for the required amount of operating reserve, the ISO must be prepared to maintain continuity of service to such load, and, therefore, must procure the required amount of operating reserve.*" Exh. ISO-54 at 13:20-14:2. (Emphasis added.) Moreover, the ISO has the limitations imposed by Opinion No. 464 admitted in response to data requests submitted by CAC/EPUC (attached). Mr. Lyon's testimony is addressing the ISO's understanding of its WECC responsibilities as they concern Control Area Services. For example, nothing in Opinion No. 464 suggests, nor could it, that the ISO's AGC would not have to respond in the event of a failure of behind-the-meter generation.

CAC/EPUC is certainly free to argue that the Opinion No. 464 should preclude the ISO from providing Control Area Service to behind-the-meter retail Load. Mr. Lyon's testimony, however, is simply a statement of the ISO's understanding of its reliability responsibilities under WECC requirements and does not contradict the Commission's conclusions about the ISO's authority to require reserves, metering, telemetry, or scheduling of Qualifying Facilities on a gross basis in Opinion No. 464.

Accordingly, there is no basis to strike the identified portions of the testimony of Mr. Lyon.

*Wherefore*, the ISO respectfully requests that Motion to Strike be denied and that the Motion to Clarify the Scope be granted only to the extent that the Presiding Judge clarify only the factual issues regarding the exemption identified by the Commission in the November 16 Order.

Respectfully submitted,

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Dated: January 11, 2005

**CAC/EPUC-CAISO-6: With respect to the testimony on Page 10 at Lines 6 through 13 of Exhibit ISO-54, admit or deny that this Commission ruled in Opinion No. 464 that for qualifying facilities purchasing standby, the CAISO's control area firm load should only include net loads. If deny, provide a detailed explanation including cites to all Commission orders in which the ISO supports its denial.**

Admit.

*Prepared by or under the supervision of John Doudna*



**CAC/EPUC-CAISO-7: With respect to the testimony on Page 10 at Lines 13 through 20 of Exhibit ISO-54, admit or deny that this Commission ruled in Opinion No. 464 that QFs that enter into PGAs are required to install telemetry at the point of interconnect with the UDC for reliability purposes (i.e., at the site boundary). If deny, provide a detailed description and explanation, and a copy of all supporting documentation pursuant to denial.**

Admit.

*Prepared by or under the supervision of John Doudna*

**CAC/EPUC-CAISO-8: With respect to the testimony on Page 11 at Lines 1 through 30 of Exhibit ISO-54, admit or deny that the functions enumerated in this testimony deal specifically with CAISO's responsibilities pertaining to the supplying of power to the CAISO-controlled grid and load that is taking that power off the grid at different electrical buses on the grid. If deny, provide a detailed description of the authority, responsibility and liability of the CAISO pertaining to each of the functions enumerated in the testimony for load on private property supplied over private wires from generation also located on private property and interconnected to the same private wires supplying the subject behind-the-meter load.**

Admit, to the extent that a particular function is associated only with management of the ISO controlled grid. Deny, to the extent that a particular function is an ISO Control Area function. The functions enumerated in the referenced testimony include both Control Area and Controlled Grid functions. For example, "Dispatching of resources in order to balance Load and resources in real time" is a Control Area function.

*Prepared by or under the supervision of Dean Lyon*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 11<sup>th</sup> day of January in the year 2005 at Folsom in the State of California.

/s/ Stephen A.S. Morrison  
Stephen A.S. Morrison