

**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

**MOTION TO FILE ANSWER ONE DAY OUT OF TIME AND
ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO THE MOTION TO COMPEL OF THE
SACRAMENTO MUNICIPAL UTILITY DISTRICT**

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

Pursuant to Rule 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R., §§ 385.212, 385.213, the California Independent System Operator Corporation ("ISO") hereby moves to file an Answer one day out-of-time and submits its Answer to the Motion to Compel of the Sacramento Municipal Utility District ("SMUD"). The ISO does not request oral argument on SMUD's Motion.

MOTION

SMUD filed its motion on December 23, 2004. Under the rules established by the Chief Administrative Law Judge, in the absence of an order by the Presiding Judge, an Answer was due on January 3, 2005. Undersigned counsel mistakenly awaited an order on SMUD's requested schedule for oral

argument or answer, and neglected to file by the default deadline. Accordingly, the ISO requests that the Presiding Judge grant leave to file this Answer one day out-of-time. Counsel for SMUD has authorized the ISO to state that SMUD does not object to this motion. No other party will be prejudiced by this Motion.

ANSWER

SMUD seeks an order compelling the ISO's response to three groups of discovery requests. The ISO requests that SMUD's Motion be denied because none of these requests seeks information relevant to the issues that the Commission set for hearing in this proceeding.

I. Requests for Admission Regarding Content of Commission Orders

SMUD sought the following three admissions:

SMD-ISO-1

Admit or deny that the Commission, in Opinion 463-A, Paragraphs 18-20, and in the November 16 Order, applies the exemption for application of the CAS to CAGL for load served by generators which were not modeled by the ISO in its regular performance of transmission planning and operation, to wholesale and retail customers.

SMD-ISO-2

Admit or deny that the Commission did not in Opinion 463-A and in the November 16 Order expressly limit or restrict the application of the CAGL generation exemption to *standby* generation or *standby* load.

SMD-ISO-3

Admit or deny that the Commission did not in Opinion 463-A and in the November 16 Order expressly limit application of the CAGL generation exemption to retail load.

In each case, the ISO objected as follows:

1. The proceeding is a limited proceeding established by the Commission to provide the Commission with factual information regarding certain identified (and related) factual issues. Neither the content of Commission orders nor the ISO's opinion of the content of those orders is relevant to the issues identified by the Commission.
2. The proceeding is a limited proceeding established by the Commission to provide the Commission with factual information regarding certain factual issues. Inasmuch as the Commission is fully aware of the content of Commission orders, discovery regarding the content of Commission orders is not relevant to fact-finding proceedings established to provide the Commission with factual information.
3. The Commission's orders speak for themselves. The ISO's admission or denial of the content of a Commission order will neither serve to put the content of the order in dispute nor bind the Commission or the Presiding Judge regarding the meaning of the Commission's order. Therefore, the request for admission is irrelevant.

The ISO believes that these objections need no further elucidation. In support of its Motion, SMUD contends that it seeks information on the ISO's understanding of the Commission's Control Area Gross Load ("CAGL") exemption to the ISO's Grid Management Charge ("GMC") and its intended application to wholesale and retail customers. SMUD cites ISO witness Deane Lyon's testimony regarding his understanding of the Commission's use of the term "behind-the-meter." Requests for admission, however, are not a vehicle by which a party seeks information. They are a vehicle by which a party establishes facts for the purpose of a proceeding – indeed, admissions are only applicable during the proceeding in which they are made. See 18 C.F.R. § 385.408(c). The only "facts" that SMUD seeks to establish through these requests for admission are certain terms of Opinion 463-A and the November 16 Order. As the ISO

indicated in its objections, those Commission rulings speak for themselves and the ISO's "understanding" of the Commission's statements in these orders is not relevant to the limited factual matters this proceeding was established to investigate. Moreover, the appropriateness of requests for admissions by the ISO in this proceeding is itself questionable, because the ISO is not a party with a proposal on which it bears a burden of proof, and any "admission" by the ISO concerning the terms of the Commission's orders would have no binding effect on the Presiding Judge, let alone the Commission.

SMUD's citation of Mr. Lyon's testimony is in any case not relevant to the admission requested by SMUD. Mr. Lyon needed to explain his understanding of the Commission's use of "behind-the-meter" in order to respond to the Commission's questions regarding the services provided to behind-the-meter Load and Generation. This understanding is thus relevant to the issues stated by the Commission. The ISO's opinion of the content of the Commission's orders regarding the nature of the CAGL exemption, for the reasons stated in the ISO's objections, is not.

If SMUD were truly seeking information, it would have asked the ISO's understanding of certain terms, or how the ISO intended to apply rulings contained in the Commission's orders. It did not. It simply asked the ISO to admit what the Commission stated. Although the ISO acknowledges that admitting what the Commission states may have been less of a burden than responding to a motion to compel, the ISO firmly believes that the cumulative deleterious effect of acceding to such inappropriate discovery can be significant,

and therefore request that the Presiding Judge reject such requests.

II. Requests for Admission Regarding 1997 Letter

SMUD also sought the following three admissions:

SMD-ISO-30

Admit or deny that the ISO committed to SMUD by letter dated December 31, 1997 that “Unlike most entities, which will be assessed the GMC based on the power delivered to end use meters, SMUD’s SC will be assessed the GMC only for the amount of power delivered to or transported from the SMUD service area, an arrangement which would “net out” the substantial amount of load served by generation in your service area.”

SMD-ISO-31

Admit or deny that the ISO’s commitment to SMUD by letter dated December 31, 1997, referenced above, does not allow or sanction the assessment of GMC by the ISO to SMUD’s SC on the basis of CAGL.

SMD-ISO-32

Admit or deny that the ISO’s reference in its December 31, 1997 letter to SMUD to the “arrangement which would “net out” the substantial amount of load served by generation in your service area” is equivalent to or means the same thing as behind-the-meter load netted against “unmodeled” or “not modeled” generation, as the FERC uses the terms.

The ISO provided the following objection:

The proceeding is a limited proceeding established by the Commission to provide the Commission with factual information regarding certain identified (and related) factual issues. The content of any ISO letters regarding the extent of SMUD’s legal liability for the GMC is not relevant to issues identified by the Commission, and this is particularly so with regard to letters written six years prior to the Commission’s formulation of the factual issues in Opinion No. 463-A. Indeed, the Commission specifically stated that its order “shall not be treated as an opportunity for the parties to relitigate any other aspect of our decision with respect to CAGL.”

Again, the ISO does not believe that its objection requires elucidation.

SMUD attempts to justify its request by asserting that the ISO's "binding" commitment not to charge SMUD the GMC is evidence that the ISO did not in fact model SMUD's generation. First, SMUD's characterization of the letter, which described the effect of the then-existing ISO Tariff provisions (prior to the filing of the 2001 GMC provisions), as a "binding commitment" is without basis. A copy of the 1997 letter is attached. Second, the Presiding Judge, as affirmed by the Commission, has already ruled that SMUD's behind-the-meter Load is part of the CAGL. *California Indep. Sys. Oper. Corp.*, Opinion No. 463, 103 FERC ¶ 61,114 at PP. 24-28 (2003), *reh'g denied in relevant part*, Opinion No. 463-A, 106 FERC ¶ 61,032 (2004). Finally, as the Commission acknowledges, the idea of tying the allocation of GMC to ISO's modeling process was conceived by the Commission sua sponte. *California Indep. Sys. Oper. Corp.*, 109 FERC ¶ 61,162 at P. 14. The suggestion that the ISO since 1998 (the beginning of operations) has determined its modeling procedures according to its GMC charges is baseless, fanciful, and absurd. Finally, to the extent the 1997 letter could have any relevance to the limited issues set for investigation in this proceeding, that letter speaks for itself; SMUD is free (subject to any valid objections) to present arguments about the implications of that letter for the issues pending before the Presiding Judge and does not require the ISO's concurrence in SMUD's unwarranted interpretation of that letter.

III. Requests for Personnel Information

SMUD asked the following interrogatories:

SMD-ISO-45

Please identify the principal ISO employee author or authors of the ISO "Five Year RMR Technical Study of 1998," as prepared by the ISO Planning Department, and identify the author(s) of such study prepared for any other years.

SMD-ISO-46

Provide a current list of (1) ISO employees in and (2) an organizational chart for the ISO's Grid Planning Department.

SMD-ISO-47

Provide a list of (1) ISO employees in and (2) an organizational chart for the ISO's Grid Planning Department for each of the years 1998 until the present time.

SMD-ISO-52

What positions did Mr. Steven Mavis hold with the ISO?

SMD-ISO-53

What position does Mr. Larry Tobias presently hold with the ISO?

The ISO generally objected to the questions on grounds of relevance.

With regard to SMD-ISO-45, the ISO indicated that the request addressed documents outside the time period at issue. The ISO has informed SMUD that the 1998 study identified is the only such study. SMUD has the burden of showing the relevance of the information it seeks. *Mojave Pipeline Co.*, 38 FERC ¶ 61,247 (1987). SMUD's assertion that "[p]robing the responsible ISO Grid Planning employee(s) on the ISO five year study's explanation released in 1998-9 goes squarely to the Commission-directed inquiry here into the 'manner and extent to which behind-the-meter generation was included' in the ISO's

transmission planning study process, and its investigation of ‘all relevant factors the ISO has considered when modeling behind-the-meter generators’ in its transmission planning studies” is unfounded. SMUD does not provide any basis for a conclusion that probing the author of a 1998 study regarding Reliability Must Run needs (only one aspect of ISO planning) will provide relevant information regarding the ISO’s modeling processes in 2001-present.

With regard to the remaining requests, SMUD is simply on an overbroad fishing expedition. The ISO should not be obligated to turn the personnel lists of its entire planning department over to a newly formed neighboring Control Area. The ISO offered to answer requests regarding the persons most knowledgeable about particular areas of ISO operations and planning, and has in response to these questions, notwithstanding the objections, provided the names of persons most knowledgeable about the ISO Grid Planning process and the Local Area Reliability Service. The ISO would note that a counsel for SMUD was present at and questioned Mr. Mavis at a previous extensive deposition (see attachment to SMUD’s request for rehearing of Opinion No. 463-A), which included significant discussion of RMR studies, so it certainly has enough information to determine whether it needs to further depose him in connection with the limited issues presented now.

Wherefore, the ISO respectfully requests that the Presiding Judge deny SMUD’s Motion.

Respectfully submitted,

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Counsel for the California Independent
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January 4, 2005

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 4th day of January 2005, at Folsom in the State of California.

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

ATTACHMENT

CALIFORNIA ISO

California Independent
System Operator

December 31, 1997

Rick Minter
Director, Energy Management
Sacramento Municipal Utility District
P. O. Box 15830
Sacramento, CA 95852

Dear Mr. ^{Rick}Minter:

I appreciate the opportunity to address the questions in your December 16 letter about how SMUD's operating rights, as documented in the SMUD-PG&E Interconnection Agreement, will be honored after the ISO Operations Date. The ISO stands ready to accommodate your current arrangements with PG&E, and we see no reason why the operating functions described in your letter cannot continue as before.

In this letter, I would like to explain to you the arrangements that are needed to maintain your existing service under the ISO structure. As you know, we have been participating in intensive discussions with SMUD and others in similar circumstances in an effort to work out the arrangements necessary to facilitate this outcome.

In order for the ISO to accommodate the current arrangements in accordance with the ISO tariff, PG&E and SMUD will have to ensure that the scheduling and other operational information now provided to PG&E by SMUD come to the ISO through a certified scheduling coordinator (SC). The ISO tariff designates SCs as the entities that provide the ISO with schedules for transmitting power on behalf of market participants, such as end-users, generators, and municipal entities like SMUD.

The tariff also requires the SC to pay the ISO Grid Management Charge (GMC). Unlike most entities, which will be assessed the GMC based on the power delivered to end-use meters, SMUD's SC will be assessed the GMC only for the amount of power delivered to or transported from the SMUD service area, an arrangement which would "net out" the substantial amount of load served by generation in your service area.

PG&E and the ISO have negotiated an agreement (the Responsible Participating Transmission Owner agreement (RPTO)) to allow exceptions to the ISO tariff and protocols necessary to honor the terms and conditions of existing contracts that other entities have with PG&E. The RPTO agreement provides for PG&E to act as SC for those entities, arranging transactions with the ISO in such a manner that their service from PG&E would continue contractually as before.

While SMUD and PG&E do not believe that some of your current arrangements meet the definition of an "existing contract" as defined by the ISO tariff, the ISO is willing to

apply the terms and conditions of the RPTO to your arrangements with PG&E if PG&E acts as your SC. If you designate another SC (or act as your own), the ISO will provide that SC with the same operational flexibility needed to accommodate your current operating rights that we would have afforded PG&E under the RPTO.

I understand that PG&E and SMUD do not agree with some or all of the above interpretation. PG&E does not believe that it bears responsibility for seeing that SC services are provided to SMUD (i.e., that SMUD's schedules are accepted by the ISO) in order to honor the existing arrangements between the two of you. SMUD does not believe that it is required, under either its existing arrangements or the ISO tariff, to designate an SC at all.

We have had a number of conference calls with SMUD, PG&E and other parties in similar circumstances. I believe that we have made substantial progress in developing an interim solution that would meet the following criteria:

- provide for acceptance by the ISO of SMUD's schedules, in compliance with the ISO tariff and SMUD-PG&E arrangements;
- allow all parties to be heard, and all relevant issues addressed, in the appropriate FERC regulatory forum; and
- share equitably the financial exposure and cost while we are awaiting FERC's ruling.

The parties plan to reconvene the discussion in early January. The ISO understands the importance of this issue to SMUD, and we will do what we can to bring about an expeditious resolution.

Please feel free to call me at (916) 351-2210 with any other questions. I'm looking forward to resolving this issue, at least on an interim basis, in the continuing discussions.

Thanks


Susan R. Schneider
Vice President, Client Services

cc: Wallace L. Duncan
Steve Metague, PG&E
Brian Jobson, SMUD
Jerry Toenyes, WAPA

bcc: Jeff Tranen
Beth Emery
Terry Winter
Don Fuller

Chuck Smart
Byron Woertz
Bill Bojorquez