

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

**California Independent System) Docket No. ER01-724-000
Operator Corporation)**

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

I. INTRODUCTION AND SUMMARY

On December 21, 2000, the California Independent System Operator Corporation (“ISO”)¹ filed, in the above-referenced docket, an amendment to the Transmission Control Agreement (“TCA”) among the ISO and Participating Transmission Owners (“Participating TOs”).² The purposes of the TCA Amendment Filing were (1) to clarify responsibilities in the TCA concerning the ISO Maintenance Standards and to include a new Appendix F identifying the persons to contact at each party for notice purposes; (2) to address the Commission’s statement in *Mid-Continent Area Power Pool*³ that contractual arrangements involving regional transmission service should be crafted to ensure that responsibilities of all parties with respect to issues such as refunds are delineated in advance; (3) to clarify four provisions of the current TCA in response to issues raised by the City of Vernon, California (“Vernon”); and (4) to

¹ Capitalized terms not otherwise defined herein shall have the meaning as defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² The ISO’s December 21 filing will hereinafter be referred to as the “TCA Amendment

identify the transmission interests that Vernon would be turning over to the ISO's Operational Control if Vernon were to execute the amended TCA unconditionally.

A number of parties have moved to intervene in the present proceeding. Some of the motions to intervene include comments on or protests of the TCA Amendment Filing, as well as requests for specific relief.⁴ Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), the ISO now submits its Answer to the motions to intervene, comments, protests, and motion to consolidate submitted in the above-referenced docket. The ISO does not oppose the intervention of the parties that have sought leave to intervene in this proceeding.

Some of the parties note their qualified or unqualified support for the TCA Amendment Filing. Other parties request substantial modification or rejection of that filing. These requests are unsupported. As explained below, the TCA applies appropriate terms to all Participating Transmission Owners on a non-discriminatory basis. The TCA Amendment Filing should not be rejected or modified. Additionally, all of the provisions of the TCA Amendment Filing are appropriate and in accordance with the applicable legal precedent. Moreover, Vernon has unconditionally executed the TCA already. The ISO does not

Filing.”

³ 92 FERC ¶ 61,229 (2000).

⁴ Motions to intervene and consolidate, comments, and/or protests were filed by the California Department of Water Resources (“DWR”); California Electricity Oversight Board; Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency (“Cities/M-S-R”); The Metropolitan Water District of Southern California; Modesto Irrigation District (“MID”); Northern California Power Agency; Pacific Gas and Electric Company (“PG&E”); Sacramento Municipal Utility District; San Diego Gas & Electric Company (“SDG&E”); Southern California Edison Company (“SCE”); Transmission Agency of Northern California (“TANC”); Turlock Irrigation District; and Vernon. A notice of intervention was filed by the Public Utilities Commission of the State of California.

oppose the consolidation of the instant proceeding with Docket No. EL01-14, to allow the Commission to resolve expeditiously all issues associated with Vernon's application to join the ISO effective January 1, 2001.

II. ANSWER⁵

A. The TCA Applies to All Participating Transmission Owners Equally

The TCA establishes the terms and conditions under which Transmission Owners place certain transmission facilities and Entitlements under the ISO's Operational Control, thereby becoming Participating TOs. The TCA also describes how the ISO and each Participating TO will discharge their respective duties and responsibilities with respect to the operation of those facilities and Entitlements.⁶ Thus, the TCA applies the same provisions to all Participating Transmission Owners equally, an objective with which the Commission has concurred.⁷

DWR asserts that many provisions of the TCA are inapplicable to entities, such as DWR, that have Entitlements to transmission capacity but that do not currently own or operate transmission facilities. DWR contends that these

⁵ Some of the parties commenting on the TCA Amendment Filing do so in portions of their pleadings that are variously styled, without differentiation. Parties also request affirmative relief in pleadings styled as comments and protests. There is no prohibition on the ISO's responding to the assertions in these pleadings. The ISO is entitled to respond to these pleadings and requests notwithstanding the labels applied to them. *Florida Power & Light Co.*, 67 FERC ¶ 61,315 (1994). In the event that any portion of this Answer is deemed an Answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R. § 385.213) to permit it to make this Answer. Good cause for this waiver exists here given the nature and complexity of this proceeding and the usefulness of this Answer in ensuring the development of a complete record. *See, e.g., Enron Corp.*, 78 FERC ¶ 61,179, at 61,733, 61,741 (1997); *El Paso Electric Co.*, 68 FERC ¶ 61,181, at 61,899 & n.57 (1994).

⁶ Transmittal Letter for TCA Amendment Filing at 2.

⁷ *See California Independent System Operator Corporation*, 91 FERC ¶ 61,205, at 61,722 (2000).

entities are transmission customers rather than transmission providers.⁸ DWR has made this argument before as to certain provisions of the ISO Tariff, and the ISO has previously responded to it.⁹ The ISO now reiterates, for the reasons it has detailed in its prior responses, that all Participating TOs that turn over to the ISO's Operational Control contractual rights to transmission capacity *have* transmission customers and are transmission providers. Therefore, such Participating TOs should be treated on an equal footing with one another under the TCA.¹⁰ All of them, for example, have Transmission Revenue Requirements ("TRRs"), and should be subject to Section 16.2 of the TCA.¹¹ These entities' payments under the Existing Contracts that create their Entitlements form the basis of their TRRs. Like other Participating TOs, the blending of the Participating TOs' TRRs means that these entities will have to make adjustments if the TRRs of other Participating TOs such as the IOUs are found to be unjust or unreasonable after the rate has been accepted subject to refund.¹²

B. Revised Section 4.1.5 of the TCA Should Be Accepted As Filed

Cities/M-S-R, MID, and TANC assert that revised Section 4.1.5 of the TCA should be further changed to replace the ISO-submitted words "subject to the

⁸ See DWR at 1-2.

⁹ See Answering Brief of the California Independent System Operator Corporation, Docket Nos. ER98-3760-000, *et al.* (Apr. 10, 2000), at 218-224; Motion for Clarification and Alternative Request for Rehearing of the California Independent System Operator Corporation, Docket No. ER98-3594-003 (Sept. 1, 1999) ("ISO Motion"). See *also* Request for Rehearing or Further Clarification of Southern California Edison Company, Docket No. ER98-3594-003 (Sept. 1, 1999).

¹⁰ Moreover, for the same reasons, there is no basis for creating a new category of entities under the TCA in addition to Participating TOs, as DWR proposes in the alternative. See DWR at 2-3.

¹¹ Section 16.2 of the TCA is discussed further in Section II.C of this Answer, below. In addition to the arguments that DWR has made in the instant proceeding, DWR has previously argued that Participating TOs that have contractual entitlements to transmission should not be subject to the provisions of the ISO Tariff concerning Access Charges, TRRs, or Transmission Revenue Balancing Accounts ("TRBAs"). ISO Motion, *supra* note 9, at 9-11.

terms and conditions of any agreements governing the use of such transmission lines and associated facilities” with “subject to the terms and conditions of any agreements, tariffs or judicial or regulatory orders governing the use of such transmission lines and associated facilities.” They state that, while they agree in principle with the language submitted by the ISO, they nevertheless think that the concept of “agreements” is “too narrow” and should be expanded to include “relevant ‘tariffs and judicial and regulatory orders.’”¹³

The ISO does not believe the change these parties propose is necessary. Even without the proposed modification to Section 4.1.5, the TCA makes it clear that Participating TOs turn over Operational Control of their transmission facilities and Entitlements subject to any applicable Encumbrances. An Encumbrance is defined to include:

A legal restriction or covenant binding on a Participating TO that affects the operation of any transmission lines or associated facilities and which the ISO needs to take into account in exercising Operational Control over such transmission lines or associated facilities if the Participating TO is not to risk incurring significant liability.¹⁴

Restrictions arising under “tariffs or judicial or regulatory orders” plainly fall within the scope of this definition (assuming they satisfy its other criteria). Accordingly, the change these parties seek is not necessary to assure any new Participating TO that it can identify Encumbrances arising from tariffs or judicial or regulatory orders and thereby incorporate such restrictions in the warranty it provides under Section 4.1.5.

¹² See Transmittal Letter for TCA Amendment Filing at 9.

¹³ Cities/M-S-R at 18-19; MID at 13-15; TANC at 13-15.

¹⁴ See TCA Amendment Filing, Appendix D.

C. Section 16.2 of the TCA Fully Accords With the Applicable Legal Precedent

The ISO based Section 16.2 to the TCA, which concerns the refund obligations of both FERC-jurisdictional and non-jurisdictional entities, on the direction that the Commission provided in a series of cases concerning the Mid-Continent Area Power Pool (“MAPP”). Moreover, as the ISO has explained, Section 16.2 is necessary to ensure that non-jurisdictional Participating TOs adjust rates in accordance with the ISO Tariff, and to ensure that these Participating TOs refund, either directly or through rate adjustments resulting from changes in their TRBAs, revenues received in excess of those to which they are entitled under the ISO Tariff.¹⁵

Cities/M-S-R, MID, and TANC contend that the ISO has “over-emphasiz[ed]” the Commission’s statement in one of the MAPP cases that its decision did not affect MAPP members’ rights to “propose amendments to the Restated Agreement that would contain explicit contract provisions to ensure that all pool members – non-public utility as well as public utility members – assume obligations as well as benefits of pool membership.”¹⁶ This is not so. The ISO is proposing an amendment to the TCA – an agreement that, like the MAPP Restated Agreement, was submitted to and approved by the Commission.¹⁷ The amendment to the TCA contains explicit contract provisions to ensure that all Participating TOs assume the obligations as well as the benefits of the TCA. Section 16.2, for example, concerns refund obligations, which was also the

¹⁵ See Transmittal Letter for TCA Amendment Filing at 8-10. See also PG&E at 4-6.

¹⁶ Cities/M-S-R at 14; MID at 10; TANC at 10 (each quoting *Mid-Continent Area Power Pool*, 91 FERC ¶ 61,353, at 61,183 (2000)).

context in which the Commission made the statement quoted above. In short, the TCA Amendment Filing is exactly the kind of filing the Commission meant when it provided its guidance. It is Cities/M-S-R, MID, and TANC, not the ISO, that have placed inappropriate emphasis on inapplicable cases.¹⁸

Cities/M-S-R also assert that the Commission should not issue any ruling on Section 16.2, on the grounds that “the subject of the Commission’s jurisdiction over municipal utilities’ rates is an issue that has already been set for settlement judge procedures” in Docket No. ER00-2019.¹⁹ Cities/M-S-R are simply incorrect. The Commission, in its order on the compliance filing submitted in that same docket, noted that Cities/M-S-R, MID, and TANC had argued that “the ISO’s proposal to permit Commission review of the justness and reasonableness of non-public utilities’ TRRs violates Section 201(f) of the FPA.”²⁰ In response, the Commission said that its “review of the TRRs of non-public utility entities is to determine whether their proposed rate methodology, in the context of participation in a Commission jurisdictional public utility ISO, will result in a just and reasonable component of the ISO’s rates.”²¹ Moreover, in an order issued that same day, the Commission stated as follows with regard to Vernon’s proposed TRR:

The Commission does not have jurisdiction under Sections 205 and 206 of the Federal Power Act (FPA) over municipal utilities such as Vernon. However, the Commission does have the authority to

¹⁷ See Transmittal Letter for TCA Amendment Filing at 2, 8.

¹⁸ See Cities/M-S-R at 7-15; MID at 8-11; TANC at 8-11. Moreover, as discussed below in this section of the Answer, the arguments of Cities/M-S-R, MID, and TANC concerning permissible Commission action under the Federal Power Act (“FPA”) are wrong-headed.

¹⁹ See Cities/M-S-R at 15-17. See also MID at 11-12; TANC at 11-12.

²⁰ *California Independent System Operator Corporation*, 93 FERC ¶ 61,104, at 61,287-88 (2000).

²¹ *Id.* at 61,289.

evaluate non-jurisdictional activities to the extent they affect the Commission's jurisdictional activities. Here, Vernon seeks to become a Participating TO in the ISO, which is subject to our jurisdiction, by turning over operational control of its transmission entitlements to the ISO²²

Thus, the Commission's authority to evaluate the activities of Vernon was not the result of any waiver on Vernon's part, as Cities/M-S-R, MID, and TANC would have it.²³ Rather, the Commission has inherent authority to evaluate activities of non-jurisdictional Participating TOs as described above.

Additionally, the issue of a contractual commitment to make necessary refunds is required even if Cities/M-S-R, MID, and TANC prevail regarding the scope of the Commission's jurisdiction over the TRRs of governmental entities that participate in public utility ISOs. As noted above, the ISO's new Access Charge methodology implemented on January 31, 2001 consists of a blending of ten percent (10%) of the Participating TOs' TRRs into each TAC Area rate. The blended TRR will require the adjustment of the governmental entity in the event that the TRR of a jurisdictional Participating TO is modified by the Commission. Thus, it is reasonable and appropriate for there to be a contractual commitment to make this adjustment.

Cities/M-S-R, MID, and TANC also contend that, if the Commission accepts Section 16.2, it should limit the language in that section that requires every Participating TO to "do all other things required" to implement any Commission order related to the ISO Tariff.²⁴ The quoted language was included in the amendment to the TCA in recognition of the Commission's authority to

²² *City of Vernon, California*, 93 FERC ¶ 61,103, at 61,285 (2000) (footnotes omitted).

²³ See Cities/M-S-R at 15-16; MID at 11-12; TANC at 11-12.

evaluate the activities of both jurisdictional and non-jurisdictional Participating TOs. Therefore, this language should be accepted as submitted by the ISO.

D. Vernon Has Unconditionally Executed the TCA Already

PG&E claims that Vernon has not become a party to the TCA, because Vernon has made only what PG&E calls a “conditional signature” of the TCA, and thus has created a counteroffer to the ISO and the Original Participating TOs rather than a binding contract. PG&E asserts that Vernon has yet to sign the same TCA that the ISO and the Original Participating TOs signed.²⁵ SCE makes similar arguments.²⁶

On December 27, 2000, the ISO submitted Vernon’s signature page concerning the TCA. The ISO made this filing after Vernon made repeated assurances that it had unconditionally committed itself to the TCA. These statements included the following:

- Vernon stated that it had executed the TCA, and noted that this act “fully binds Vernon to the TCA as it is or as it may be changed by the Commission.”
- Vernon stated that it was “absolutely, legally committed to the TCA as it would be finally approved by the Commission.”
- Vernon assured the ISO that “Vernon had stated no counter-offer” to the proffered TCA, and that “Vernon is as bound by the TCA as is any other signatory of the TCA.”²⁷

²⁴ Cities/M-S-R at 17-18; MID at 12-13; TANC at 12-13.

²⁵ PG&E at 6-14.

²⁶ SCE at 2-3.

²⁷ See December 27, 2000 Filing of the California Independent System Operator

Vernon echoes these statements in its filing submitted in the instant proceeding.²⁸ After making such assurances, Vernon could hardly put forward a colorable argument that its signature was only conditional.

PG&E also attempts to show that Vernon, unlike the Original Participating TOs, has only conditionally agreed to Section 16.2 of the TCA, because Vernon has stated that it will be bound by Section 16.2 if it is finally accepted by the Commission.²⁹ PG&E's argument is unpersuasive, however, for two reasons. First, as described in the ISO's December 27, 2000 filing, Vernon has unconditionally executed the TCA, not just certain parts of the TCA. While it is true that Vernon requests that the Commission provide clarification regarding Section 16.2,³⁰ that is a different thing from a refusal to agree to the provision pending future Commission action.³¹ Second, according to PG&E's broad definition of a conditional agreement, the Original Participating TOs have also agreed to Section 16.2 only "conditionally," because they too will be bound by that provision only if the Commission accepts it. Thus, even under PG&E's definition, Vernon and the Original Participating TOs have all signed the TCA on the same terms.

Corporation, submitted in the instant docket.

²⁸ See Vernon at 3.

²⁹ See PG&E at 10-11.

³⁰ Vernon at 7-9

³¹ Vernon itself has stated that it "intends to be bound to make refunds to the same extent an investor-owned utility would be when such refund provisions are required by the Commission." Letter from Bruce V. Malkenhorst, City Clerk / City Administrator for the City of Vernon, California, to Deborah A. Le Vine, Director of Contracts & Compliance for the California Independent System Operator Corporation (Dec. 20, 2000), at 4, included as Attachment C to PG&E's January 11, 2001 filing in the instant proceeding. See also Vernon's filing in the instant proceeding, at 8 (Vernon states that it is "willing to agree to Federal Power Act and Commission regulation liability that would apply by law to investor-owned utilities.").

E. The ISO Does Not Oppose Consolidation of the Instant Proceeding With Docket No. EL01-14

Vernon and SDG&E assert that the present docket should be consolidated with Docket No. EL01-14.³² The ISO does not oppose consolidation of the two dockets. The ISO hopes that the Commission will act expeditiously to resolve all issues associated with Vernon's application to join the ISO effective January 1, 2001. The Commission has already accepted the ISO's application submitted under Section 203 of the FPA to assume Operational Control over Vernon's interests.³³ The ISO respectfully requests that the Commission accept the TCA amendment filed in the instant docket, including the modified Section 16. The Commission should find that all Participating TOs, including Vernon, should be bound by the previously approved alternative dispute resolution provisions and should reject Vernon's complaint submitted in Docket No. EL01-14. The Commission should also conditionally accept Vernon's Transmission Owner Tariff, on which a final determination is pending in Docket No. EL00-105-001.

³² Vernon at 5-7; SDG&E at 3-4.

³³ See *California Independent System Operator Corporation*, 94 FERC ¶ 62,016 (2001).

III. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission accept the TCA Amendment Filing without further procedures, and that it take the additional actions described in this Answer.

Respectfully submitted,

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