

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

California Independent System Operator Corporation	)	Docket No. ER05-346-000
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**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
TO MOTIONS TO INTERVENE, CONDITIONAL PROTEST AND MOTION TO  
REJECT**

**I. INTRODUCTION AND SUMMARY**

On December 15, 2004, the California Independent System Operator Corporation (“ISO”) filed revisions to its Grid Management Charge (“GMC”) rates with the Federal Energy Regulatory Commission (“FERC” or the “Commission”). The GMC is the rate through which the ISO recovers its administrative and operating costs, including the costs incurred in establishing the ISO prior to the commencement of operations. The proposed GMC rates reflect the straightforward application to the ISO’s budgeted costs for 2005 of the rate formula that the ISO submitted to the Commission for the 2004 GMC, which the Commission accepted, subject to refund in Docket No. ER04-115-000, *et al.*<sup>1</sup>

The ISO filed the 2005 GMC filing on a conditional basis. On July 29, 2004, the ISO, together with Pacific Gas and Electric Company (“PG&E”), filed an offer of partial settlement in Docket Nos. ER04-115-000, *et al.* (the “2004 Settlement”), which resolved, among other issues, the level and design of GMC rates for 2004 (except with respect to one reserved issue). The 2004 Settlement, which was not opposed or contested by any party, is pending before the

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<sup>1</sup> *California Independent System Operator Corp.*, 105 FERC ¶ 61,406 (2003).

Commission. Among other provisions, the pending unopposed 2004 Settlement provides that, if the ISO's budgeted revenue requirement for 2005 declines from the settled 2004 level (or does not increase by more than a specified amount), GMC charges designed to collect the 2005 revenue requirement may go into effect with prior notice posted on the ISO's internet site, but without the need for a filing under Section 205. Inasmuch as the ISO's revenue requirement for 2005 does indeed reflect a decline from the settled 2004 revenue requirement, the Commission's acceptance of the pending unopposed Settlement therefore would render the ISO's 2005 GMC filing moot. The ISO accordingly requested that the Commission act promptly to accept the pending 2004 Settlement, and further requested that, if the Commission did so, it thereafter treat the 2005 GMC filing as withdrawn.

A number of parties have moved to intervene in this proceeding. The ISO does not oppose any of the motions to intervene that have been filed.

Without exception, all of the intervenors that submitted substantive comments support the ISO's request that the Commission act promptly to accept the 2004 Settlement, so that the GMC rates for 2005 may reflect the settlement's rate design. If the Commission acts in accordance with the unanimous request, the December 15, 2004 filing will be mooted. The ISO continues to believe that the prompt acceptance of the 2004 Settlement would better serve the public interest than consideration of the merits of the December 15 filing. In the event the Commission's delay in acting on the 2004 Settlement is attributable to uncertainty regarding the treatment of the reserved issue, the ISO offers a suggestion on the appropriate treatment of this issue below.

If the Commission does not accept the 2004 Settlement in lieu of the 2005 GMC rates filed on December 15, the Commission should accept those 2005 GMC rates, subject to the outcome of the proceedings in Docket Nos. ER04-115-000, *et al.* The motion of Modesto

Irrigation District (“MID”) to reject the 2005 GMC rates filed on December 15, 2004 is unfounded and should be denied.

## **II. MOTION FOR LEAVE TO ANSWER PROTESTS**

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 hereby requests leave to file an answer, and files this answer, to the protests submitted in this proceeding. The ISO notes that no leave is required for it to respond to the comments, the Motion to Reject, requests for hearing or other affirmative relief that were included with some of the interventions. To the extent any part of this answer is deemed also to constitute 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 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 P 6 (2002); *Duke Energy Corp.*, 100 FERC ¶ 61,251 at P 10 (2002); and *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098 at 61,259 (2000).

## **III. ANSWER**

### **A. The Commission Should Accept the 2004 Settlement, Which Would Allow the ISO To Implement Agreed GMC Rates For 2005.**

All intervenors who addressed the issue join in and support the ISO’s request that the Commission promptly accept the 2004 Settlement in Docket Nos. ER04-115-000, *et al.*, which has been pending before the Commission since August 23, 2004. Seven parties requested that

the Commission approve the 2004 GMC settlement. No party indicated any opposition to Commission approval of the settlement.

The 2004 Settlement resolves all issues in the 2004 GMC proceeding, with the exception of a single reserved issue. Among many other uncontested provisions, the 2004 Settlement modifies the GMC rates initially proposed by the ISO for 2004 and provides that, if the ISO's revenue requirement for the calendar 2005 budget year does not exceed a specified level, the ISO may modify the GMC charges to collect that revenue requirement without a filing under Section 205 of the Federal Power Act. See Settlement Section 4.4.1. As the ISO explained in its December 15, 2004 filing, the ISO's budgeted revenue requirement for 2005 represents a decrease from the 2004 level. Accordingly, had the 2004 Settlement been in place, the ISO would have been authorized to implement lower GMC rates for 2005 without a Section 205 filing. By accepting the 2004 Settlement in accordance with the request of the ISO and the intervenors, the Commission would render the ISO's conditional December 15, 2004 filing of 2005 GMC rates would become moot. The ISO would charge reduced 2005 GMC rates designed in accordance with the 2004 Settlement's rate design, rather than the rate design proposed by the ISO in the 2004 GMC filing.

The ISO is encouraged by the continued support of the intervenors for the 2004 Settlement and renews its request for the Commission to accept the pending settlement, rather than rule on the 2005 GMC Rates. The ISO notes that the 2004 Settlement has remained pending before the Commission since August 23, 2004, which is longer than the period the Commission typically requires to consider settlements. While the ISO remains uncertain regarding the cause of the Commission's delay in ruling on the 2004 GMC Offer of Settlement, it speculates that the Commission may be undecided regarding how to address the single

reserved issue in the 2004 Settlement. In the event that this is the consideration that has led to the delay in action on the 2004 Settlement, the ISO offers the following suggestion as to how this issue may be most easily and appropriately addressed.

The only issue that was not resolved in the 2004 Settlement concerns the objection of San Diego Gas & Electric Company (“SDG&E”) to the application of certain GMC charges to Energy Schedules of the Arizona Public Service Company and the Imperial Irrigation District on their respective shares of the Southwest Power Link (“SWPL”). SDG&E also raised the same issue in connection with the ISO’s GMC rates proposed for 2001 through 2003. In her Initial Decision, the Presiding Administrative Law Judge addressed SDG&E’s objection and ruled that the GMC charges were appropriately applied to Energy Schedules on the SWPL.<sup>2</sup> The Commission affirmed this ruling in Opinion No. 463, where it affirmed all rulings in the Initial Decision that were not explicitly modified in the opinion.<sup>3</sup> In Opinion No. 463-A, the Commission denied SDG&E’s request for rehearing of this aspect of Opinion No. 463.<sup>4</sup> SDG&E has filed a petition for review of Opinion Nos. 463 and 463-A with the Court of Appeals for the District of Columbia.<sup>5</sup> It would be inconsistent with the Commission’s settled policy against relitigation of issues to institute further proceedings in Docket Nos. ER04-115-000, *et al.*, to consider SDG&E’s claims regarding SWPL yet again.<sup>6</sup> The ISO and SDG&E are currently in discussions exploring options to resolve this matter.

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<sup>2</sup> *California Independent System Operator Corporation, et al.*, 99 FERC ¶ 63,020 at 65,135-7 (2002).

<sup>3</sup> *California Independent System Operator Corporation, et al.*, 103 FERC ¶ 61,114 (2003).

<sup>4</sup> *California Independent System Operator Corporation, et al.*, 106 FERC ¶ 61,032 (2004).

<sup>5</sup> *San Diego Gas & Electric Co v. FERC*, Docket 04-1092 was consolidated into *Western Area Power Administration v. FERC*, Docket No. 04-1090 on April 14, 2004 and is being held in abeyance pending the resolution of the requests for rehearing of Order No. 463-A, pursuant to a court order dated July 29, 2004.

<sup>6</sup> *Dynegy Power Marketing, Inc, et al.*, 101 FERC ¶ 61,369 (2002) (“Because we find that Dynegy’s argument is yet another attempt to relitigate the issues raised in these prior proceedings, we will dismiss its

( . . . continued)

In these circumstances, the most appropriate approach to the issue reserved in the 2004 Settlement is to make the application of the 2004 GMC (and the 2005 GMC) to SWPL Energy Schedules subject to any decision by the Court of Appeals on SDG&E's challenge to Opinion No. 463 and No. 463-A, and any rulings, if any, by the Commission on remand or subject to any supervening agreement on these matters between the parties. Accordingly, and absent any changes in the status of the matter, the Commission should accept the 2004 Settlement as the fair and reasonable resolution of the issued addressed in the settlement and make the SWPL issue subject to any further rulings on SDG&E's challenge to the Commission's rulings on that issue in Opinion No. 463 and No. 463-A. This approach would not prejudice the rights of SDG&E, the ISO, or any other party, and would allow the other Scheduling Coordinators using the ISO Controlled Grid to begin reaping the benefits of the 2004 Settlement at the earliest possible date.

**B. If the Commission Does Not Accept the 2004 Settlement, It Should Accept the ISO's Proposed 2005 GMC Rates, Subject to the Outcome of Its Proceedings on the 2004 GMC Rates.**

A number of parties include conditional protests of the ISO's proposed 2005 GMC rates, for consideration in the event the Commission does not accept the 2004 Settlement. None of the protests identifies particular defects in the proposed 2005 GMC rates. Rather, the parties generally express their preference for the 2004 Settlement's rate design and other provisions and refer to the objections their previously lodged to the 2004 GMC rate proposal.

If the Commission does not accept the 2004 Settlement, which, as noted above, would moot the ISO's conditional filing of the proposed 2005 GMC rates, the Commission should

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claims."); *Alamito Company*, 41 FERC ¶ 61,312 at 61,829 (1987) citing *Central Kansas Power Co.*, 5 FERC ¶ 61,291, at 61,621 (1978) ("The Commission's position on relitigation of issues is one where in the absence of new or changed circumstances requiring a different result, 'it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined.'"); *Minnesota Power and Light Co.*, 11 FERC ¶ 61,312, at 61,643 n. 35 (1980) ("There is no reason why an agency any more than a court should be required to squander limited and overtaxed resources of decisional and staff personnel by reconsidering matters already fairly heard and determined.").

accept the 2005 GMC rates, subject to refund and the outcome of proceedings in Docket Nos. ER04-115-000, *et al.*, on the 2004 GMC rates. As the ISO explained in its December 15, 2004 transmittal, the reduced GMC rates proposed for 2005 represent the straightforward application of the GMC rate formula filed in Docket No. ER04-115-000 to the ISO's 2005 budgeted costs. As the intervenors' comments make clear, the issues raised regarding the proposed 2005 GMC rates are the same as those raised with respect to the 2004 GMC rates, and resolved in the 2004 Settlement. No purpose would be served by establishing duplicative proceedings in this docket to investigate the same issues.<sup>7</sup>

**C. MID's Motion to Reject the Proposed 2005 GMC Rates Should Be Denied.**

In its Conditional Protest of the ISO's 2005 GMC filing, MID requests that the 2005 GMC rates conditionally proposed by the ISO be rejected and replaced by rates designed in accordance with the alternative rate design originally proposed by MID in an attachment to its 2003 protest in Docket No. ER04-115-000. MID made an identical request in that protest. In its answer to MID's protest of the 2004 GMC, the ISO explained that MID's attempt to propose an alternative rate design in its protest was procedurally defective and substantively unfounded.<sup>8</sup> The Commission denied MID's motion to reject the ISO's 2004 GMC filing in its order

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<sup>7</sup> In the alternative, the ISO recommends that the Commission set the 2005 GMC for settlement judge procedures. Based on the parties' successful conclusion of a settlement resolving all issues concerning the 2004 GMC (with one exception), the ISO believes there would be a strong prospect for amicable resolution of the issues raised by the 2005 GMC.

<sup>8</sup> In the event that the Commission does not approve the 2004 Settlement or otherwise establishes procedures for investigation of the ISO's proposed 2005 GMC rates, the ISO incorporates by reference pages 10 through 11 of its Answer to Motions to Intervene, Protests, and Motion to Reject in Docket No. ER04-115-000, filed December 8, 2003, wherein the ISO responded to MID's alternative proposal.

accepting that filing.<sup>9</sup> If the issue is not mooted by the Commission's acceptance of the 2004 Settlement, it should deny MID's identical motion in this case.

## VI. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission approve the 2004 GMC Offer of Partial Settlement, or, in the alternative, accept the 2005 GMC rates proposed by the ISO, and make the rate subject to the outcome of the proceedings on the 2004 GMC.

Respectfully submitted,

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<sup>9</sup> *California Independent System Operator Corporation*, 105 FERC ¶ 61,406 (2003).



**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 21<sup>st</sup> day of January in the year 2005 at Folsom in the State of California.

/s/ Stephen A.S. Morrison  
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