

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

California Independent System) Docket No. ER05-292-000
Operator Corporation)

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER TO
PROTESTS OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

Pursuant to Rules 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 requests leave to file an answer, and files its answer, to the Protests of the City of Corona, California (“Corona”), Modesto Irrigation District (“MID”), and Southern California Edison Company (“SCE”).¹ In support whereof, the ISO states as follows.

I. Background

On December 2, 2004, the ISO² filed three unexecuted agreements between itself and Corona: a Meter Service Agreement for ISO Metered Entities (“MSA”), a Participating Generator Agreement (“PGA”), and a Utility Distribution

¹ The ISO requests waiver of Rule 213(a)(2) (18 C.F.R § 385.213(a)(2)) to permit it to make this answer to this protest. 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 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

² Capitalized terms not otherwise defined herein have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

Company Operating Agreement (“UDCOA”) (together, “Corona Agreements”). As noted in the December 2 transmittal letter, the Corona Agreements were filed in order to allow Corona’s new Clearwater Power Plant to begin participating in the ISO’s markets at the time it was energized, which was scheduled to be mid-December 2004 (although that scheduled on-line date has subsequently been delayed to early January 2005), and to allow the ISO to recognize Corona’s commencement of operations as an independent electric utility.

On December 23, 2004, Corona, MID,³ and SCE filed Motions to Intervene and Protests of the ISO’s December 2 filing.⁴

II. ANSWER TO PROTESTS

A. Corona is not Eligible to Become an MSS Operator Under the Commission-Approved ISO Tariff

Corona contends that, rather than the three agreements filed by the ISO, it should be bound by the terms of a Metered Subsystem Agreement (“MSSA”). Corona states its belief that there is no operational reason that it should not be an MSS Operator, and that it is similarly situated to the other MSS Operators that currently exist. Corona Protest at 10. As Corona is aware, however, under the ISO Tariff definition of “Metered Subsystem,” an entity eligible to become an MSS must have “been operating as an electric utility for a number of years prior to the ISO Operations Date [March 31, 1998]” The Commission initially

³ MID’s Protest is limited to an expression of support for Corona, and presents no additional arguments. For this reason, the ISO’s response to Corona’s arguments should be read as responding to MID, as well.

⁴ The ISO does not object to these entities’ Motions to Intervene.

approved this portion of the definition of an MSS in the ISO Tariff in its acceptance of that aspect of ISO Tariff Amendment No. 27 effective May 30, 2000,⁵ and reaffirmed its approval by letter order on January 3, 2003 in Docket No. ER02-2321.

As noted in the ISO's December 2 filing, Corona expressed an interest in becoming a Metered Subsystem, and Corona and ISO staff negotiated and signed a document that they expected would constitute a MSSA, in anticipation of Corona's new Generating Unit coming on-line in December. Prior to filing the MSSA with Corona, however, the ISO realized that Corona would not satisfy the ISO Tariff definition of an MSS, since Corona did not operate as an electric utility prior to the ISO Operations Date. For this reason, other agreements were necessary to ensure Corona would be able to participate in the ISO's markets at the time that its Generating Unit was scheduled to be energized.

Corona contends that "[a]ll that apparently stands in the way of MSS status for Corona is an unsupported Tariff provision." Corona Protest at 14. In making this argument, Corona briefly discusses the ISO's proposal in Amendment No. 46 to change the time period referenced in the definition to 10 years, the Commission's rejection of this proposal, and the ISO's subsequent reinstatement of the current timing requirements. Corona neglects to mention, however, that prior to the filing of Amendment No. 46, the time period required in the definition of MSS was exactly as it is today (i.e., "a number of years prior to the ISO Operations Date"). The language was proposed as part of Amendment

⁵ *California Independent System Operator Corp.*, 109 FERC ¶ 61,301 (2004).

No. 27, and it was fully discussed by interested parties before it was made effective as of May 30, 2000 in Docket No. ER00-2019. Moreover, in the discussions associated with Amendment No. 46 the issue of timing of utility status was thoroughly vetted and, to achieve a settlement, the MSS option was limited only to entities that were vertically integrated utilities prior to the commencement of ISO operations. The primary reasoning was that new utilities formed after the ISO Operations Date would not have operated under the prior electric industry paradigm nor would new utilities have Existing Contracts providing for operations, scheduling or settlements inconsistent with the restructured electric industry and the ISO Tariff. Consistent with Commission orders that Market Participants abide by the same rules, there was no reason to allow new utilities the special treatment allowed for vertically integrated utilities that had existed for a number of years prior to the ISO Operations Date. Thus Corona does not have a foundation for special treatment as it did not exist under the previous paradigm or the rules associated with it.

In any event, the ISO Tariff definition of MSS has not changed since the Corona Agreements were filed, and thus the ISO has no ability to enter into a valid MSSA with Corona. Moreover, the Corona Agreements provide Corona the essential capabilities it needs with regard to scheduling power from its Generating Unit, participating in the ISO's markets, and operating as an independent utility using the same rules as other Market Participants.

B. The Agreements Should Be Accepted As Filed, Apart from the Minor Revisions Discussed Herein

SCE expresses general support for the ISO's December 2 filing, but notes "certain provisions of the Agreements [that] are troubling and should be modified." SCE Protest at 2.

First, SCE complains that it is not appropriate to net Corona's primary loads against Corona's generation, because Corona's loads and generation are not physically interconnected. SCE at Protest at 3. SCE claims that this is not authorized under the ISO Tariff, SCE accuses the ISO of allowing the netting as a means to provide Corona with the equivalent of an MSS Operator status for which Corona would not otherwise qualify. SCE Protest at 4.

SCE misunderstands the terms of the MSA. There is nothing in Schedule 1 of the MSA, or any other provision of the MSA, that would entitle Corona to "net" its primary Loads against its Generation under the terms of the ISO Tariff to any different extent than any other entity with both Loads and Generation. It is unclear how SCE reaches the conclusion that it does, as SCE makes only a general reference to Schedule 1 as the source of its conclusion.

SCE argues that it should be included on Schedule 3 of the MSA as an Authorized User with access to meter data. SCE claims that it needs such data to bill Corona properly for the distribution service Corona receives under SCE's Wholesale Distribution Access Tariff. SCE Protest at 5. The ISO does not disagree with SCE. Section 5.1 of the MSA provides that "[t]he ISO Metered Entity shall include in Schedule 3 as authorized users the relevant UDCs and TOs." This was an oversight by the ISO and the ISO will include a revision to the

MSA to add SCE as an Authorized User in its filing in compliance with the Commission order approving the Corona Agreements.

Finally, SCE states that certain Corona loads do not have ISO-certified metering, and thus should be included on Schedule 2 to the MSA. The ISO does not disagree with SCE. Section 3.4 of the MSA provides that exemptions granted by the ISO for metering shall be set forth in Schedule 2. As the status of the installation of ISO-certified metering for Corona was dynamically changing at the time the ISO determined that it needed to file the MSA for Corona, the ISO did not incorporate the current exemptions in Schedule 2. The ISO is willing to file a revision to the MSA to list the exemptions from ISO metering requirements applicable to the Corona metering for which installation has not yet been completed in a filing in compliance with the Commission order approving the Corona Agreements.⁶

C. Confidential Treatment of the UDCOA

SCE requests access to an unredacted version of the UDCOA, and notes that it reserves the right to raise any additional concerns that come to light as a result of such review. SCE Protest at 3, 6. The ISO objects to providing such access without the consent of the party that has provided the information to the ISO, as all UDCs are afforded this similar treatment, including SCE. The confidential information consists of Corona's operational contacts, notification procedures in the event of a System Emergency, Underfrequency Load

⁶ Once the Corona Agreements are finally approved by the Commission, the ISO would make any similar changes using the Commission's EQR procedures.

Shedding program, and Electrical Emergency Plan, all of which should be treated as confidential given their sensitivity for reliable system operations. To ensure that the ISO can continue to obtain this critical information, prior to release, approval from Corona must be obtained. Moreover, a Protective Order or similar mechanism needs to be in place to control access to the information contained therein.

III. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept the Corona Agreements as filed, subject to the revisions proposed above.

Respectfully submitted,

/s/ **John Anders**
Charles F. Robinson
General Counsel
John Anders
Corporate Counsel
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7049
Fax: (916) 608-7296

/s/ **Julia Moore**
David B. Rubin
Michael E. Ward
Julia Moore
Swidler Berlin, LLP
3000 K Street, Suite 300
Washington, DC 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Date: January 7, 2005

CERTIFICATE OF SERVICE

I hereby certify I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA, on this 7th day of January, 2005.

/s/ **John Anders**
John Anders