

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

**California Independent System) Docket No. ER01-1531-000
Operator Corporation)**

**ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO MOTION FOR CLARIFICATION AND FOR STAY OF THE
COGENERATION ASSOCIATION OF CALIFORNIA
AND AERA ENERGY LLC**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.213, the California Independent System Operator Corporation (“ISO”) hereby answers the Motion for Clarification and for Stay of the Cogeneration Association of California (“CAC”) and Aera Energy LLC (“Aera”).

I. BACKGROUND

On December 9, 1997, the ISO filed a *pro forma* Participating Generator Agreement (“PGAs”) and a number of executed PGAs. Additional PGAs were filed on December 30, 1997, February 18, 1998, March 6, 1998, and other subsequent dates. Participating Generator Agreements govern the relationship between the ISO and Generators who participate in the ISO’s markets, and obligate the parties to comply with the ISO Tariff.

These and subsequent PGA filings were consolidated in Docket No. ER98-992-000, *et al.* In accordance with the procedural schedule established in

these proceedings, the ISO filed its Direct Testimony on September 1, 1998. The ISO's testimony indicated certain modifications the ISO was willing to make to the filed agreements to address concerns raised by intervenors in this proceeding. On October 20, 1998, one participant, CAC, submitted Answering Testimony. CAC recommended that "the Commission order the ISO to develop a separate and independent *pro forma* Participating Generator Agreement for Qualifying Facilities."¹ The ISO agreed to file a motion to sever the PGA dockets for certain Qualifying Facilities ("QF") from the other PGA dockets and to participate in settlement discussions regarding the possible development of a *pro forma* PGA for QFs.

On November 18, 1998, the ISO filed its motion to sever Docket Nos. ER98-997-000 and ER98-1309-000. The motion was granted by order of the Chief Judge dated November 19, 1998. On December 29, 1998, as amended on December 23, 1999, the ISO filed an Offer of Settlement regarding the *pro forma* PGA in the remaining dockets. The Offer of Settlement was accepted by the Commission by letter order dated February 24, 2000.²

Settlement efforts regarding a *pro forma* PGA for QFs were unsuccessful. Proceedings in Docket Nos. ER98-997-000 and ER98-1309-000 are currently pending before Judge Leventhal, whose initial decision is due to be issued on August 1, 2001.

¹ Direct Testimony of James A. Ross in Docket No. ER98-992-000 at 2. A copy of this testimony is appended to this answer as Attachment A.

² 90 FERC ¶ 61,176. On June 23, 2000, the ISO made a compliance filing involving the approximately 50 PGAs covered by the Offer of Settlement in ER98-992-000.

On March 14, 2001, the ISO filed with the Commission a Participating Generator Agreement (“PGA”) between the ISO and Aera. In the transmittal letter accompanying the PGA, the ISO explained that it was filing the agreement in an unexecuted form based on Aera’s unwillingness to comply with the ISO’s metering requirements and to abide by ISO Dispatch instructions relating to the curtailment of power except in a System Emergency, pending the outcome of the proceedings in Docket Nos. ER98-997 and ER98-1309. The Commission noticed the filing on March 19, 2001, and assigned it Docket No. ER01-1531. CAC and Aera moved to intervene in the proceeding on April 4, 2001.

On April 25, 2001, the Commission issued a letter order in Docket No. ER01-1531 accepting the Aera PGA for filing (“April 25 Order”). On June 15, 2001, CAC and Aera filed a motion in Docket No. ER01-1531 requesting that the Commission (1) clarify that the April 25 Order “does not preclude Aera from applying any determination of the common substantive issues from Dockets 98-997 and 98-1309 to Aera’s PGA”; and (2) stay the effect of the April 25 Order as to Aera’s PGA until a decision is rendered in Docket Nos. ER98-997 and ER98-1309.

II. DISCUSSION

A. Motion for Clarification

In their motion, CAC and Area request that the Commission “clarify that the April 25 Order was not intended to preclude later modification of the Aera PGA, dependent on the resolution of those substantive issues in [Docket Nos. ER98-997 and ER98-1309].” CAC/Aera at 3-4. The ISO fails to see the need for

any clarification. Nothing in the *pro forma* PGA purports to limit Aera's or the Commission's rights under Section 206 of the Federal Power Act. Moreover, the April 25 letter order itself states:

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; *and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).*

April 25 Order at 1 (emphasis added).

Further, the ISO, in the filing letter accompanying the Aera PGA, suggested that the Commission accept the PGA subject to the outcome of the proceedings in Docket Nos. ER98-997 and ER98-1309. The ISO has thus recognized that, to the extent that the Commission makes a finding in those proceedings that are applicable to Aera's circumstances, Aera's PGA should be modified accordingly.

B. Motion for Stay

CAC and Aera also request that the Commission stay the enforcement of the April 25 Order as it applies to the Aera PGA while their motion for clarification is being considered and until a decision is issued in Docket Nos. ER98-997 and ER98-1309. CAC and Aera argue that such a stay is necessary because enforcement of Aera's PGA "would inflict significant harm on Aera"; they assert that the ISO could force Aera to install "unnecessary and expensive" metering

equipment or “subject Aera to dispatch orders that may conflict with QF obligations to its thermal host.” CAC/Aera at 5.

The Commission, in reviewing a request for stay, applies the standard in the Administrative Procedure Act, 5 U.S.C. § 705, i.e. a stay will be granted if the Commission determines that “justice so requires.” *See, e.g., Williston Basin Interstate Pipeline Co.*, 53 FERC ¶ 61,068 (1990). In applying this standard, the Commission considers: “(1) whether the moving party will suffer irreparable injury in the absence of a stay, (2) whether issuing the stay will not substantially harm other parties, and (3) whether a stay is in the public interest.” *See Robin Pipeline Co.*, 92 FERC ¶ 61,217 (2000) at 61,710. By way of additional guidance, the Commission has also noted that its “general policy is to refrain from granting a stay of its orders” and that “[i]f the party requesting a stay is unable to demonstrate that it will suffer irreparable harm absent a stay, the Commission need not examine the other factors.” *Id.*

CAC and Aera have failed to make any showing that would justify a Commission departure from its general policy of refraining from granting stays of its orders. CAC and Aera merely offer the conclusory statement that irreparable injury will result because “Aera will be required to install expensive metering and it *may* be required to operate its unit in a manner in conflict with the needs of its thermal host.” CAC/Aera at 6 (emphasis added). With respect to metering, CAC and Aera offer no evidence of the cost of compliance with ISO metering requirements or the impact such costs on Aera’s operations. Even if they had, the contention that the ISO will require Aera to install “expensive metering,” is

patently inaccurate in light of the fact that the ISO has granted Aera a temporary exemption until December, 2001 from the ISO's metering requirements.³

CAC and Aera also fail to cite any provision of the ISO Tariff under which the ISO could require a QF to operate in a manner that has caused the loss of industrial production or serious damage to an industrial process. Indeed, in testimony before Judge Leventhal, CAC's witness was unable to point to any provision of the ISO Tariff that authorizes the ISO to dispatch a QF in such a manner. As of this date, numerous QFs are participating in the ISO's markets pursuant to the *pro forma* PGA, but CAC and Aera cite no instances in which an ISO dispatch order has harmed, damaged, or caused the loss of a QF industrial process. The ISO itself is unaware of any such occurrence.

Moreover, granting a stay of the April 25 Order would not be in the public interest, as it would negatively affect the ISO's ability to operate its system reliably. With the existing crisis in California, all excess Energy will be needed to avoid rolling blackouts. Pursuant to Section 5 of the ISO Tariff, the ISO may not accept Schedules or bids into the ISO's markets for Energy from a Generator that has not signed a PGA.⁴ The PGA seeks to ensure that Generators comply on a non-discriminatory basis with *all* of the relevant sections of the ISO Tariff

³ The ISO's letter granting Aera this exemption is appended to this answer as Attachment B. Moreover, the ISO, in Sections 1.7.1 and 1.7.2 of its Uncontested Offer of Settlement in the Meter Service Agreement proceeding, Docket No. ER98-1499-000, agreed to work with CAC to bring CAC QF projects into compliance with the ISO's revenue metering requirements while observing certain cost restraints. A copy of that Settlement is appended to this answer as Attachment C.

⁴ The only exceptions to this general requirement are for those units that operate under pre-existing Power Purchase Agreements with one of the Investor Owned Utilities, which the ISO is obligated to honor, ISO Tariff § 5.1.5, and those units directly connected to a UDC system that are less than 1 MW and do not participate in the ISO's markets for Ancillary Services and Imbalance Energy ISO Tariff § 5.1.4.1.

and Protocols, including many provisions not at issue in the proceedings in Docket Nos. ER98-997 and ER98-1309, because such compliance is critical to the ISO's ability to effectively operate the ISO-Controlled Grid.⁵ If Aera wishes to submit bids into the ISO's markets or to transmit Energy over the ISO-Controlled Grid, then it is essential that the ISO have the assurances and information provided for in the PGA.

⁵ The PGA also requires a Generator to provide the ISO with certain technical data relating to its Generating Units, including minimum operating limits, which allows the ISO to dispatch units in a manner that does not interfere with the reliable operation of the ISO Controlled Grid or the safe operation of the Generating Units themselves. Thus, granting CAC and Aera's request for stay, which would prohibit the ISO from enforcing these provisions, may result in the very harm to Aera that CAC and Aera fear.

III. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission deny CAC and Aera's Motion for Clarification and for Stay.

Respectfully submitted,

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Counsel for the
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Dated: July 2, 2001

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 2nd day of July, 2001.

Michael Kunselman

July 2, 2001

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket No. ER01-1531-000**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Answer of the California Independent System Operator Corporation to the Motion for Clarification and for Stay of the Cogeneration Association of California and Aera Energy LLC. Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,

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Independent System Operator Corporation

Enclosures

cc: Service List

ATTACHMENT A

ATTACHMENT B

ATTACHMENT C