

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

California Independent System Operator Corporation)	Docket Nos. ER01-313-000 and ER01-313-001
)	
Pacific Gas and Electric Company)	Docket Nos. ER01-424-000 and ER01-424-001
)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION IN OPPOSITION TO MOTION FOR
RECONSIDERATION OF SAN DIEGO GAS AND ELECTRIC COMPANY,
OR, IN THE ALTERNATIVE, MOTION TO WITHDRAW MOTION TO
WITHDRAW TESTIMONY**

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

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.213, the California Independent System Operator Corporation ("ISO") respectfully requests that the Presiding Judge deny San Diego Gas & Electric Company's ("SDG&E") Motion for Reconsideration of Order Striking Portions of Testimony for the reasons presented below. Should the Judge decide to reinstate the SDG&E testimony in question, the ISO moves to withdraw its October 17 Motion to Withdraw Testimony and Supporting Exhibit.

I. BACKGROUND

On September 27, 2001, the Presiding Judge issued an Order granting the ISO's Motion to Strike Portions of the Cross-Answering Testimony of SDG&E witness S. A. Yari. In the September 27 Order, the Judge found that the portions

of Mr. Yari's testimony that the ISO sought to have stricken raised a new issue not previously raised in the case, namely, whether it was appropriate for the ISO to assess the Market Operations Charge element of its Grid Management Charge on the coordination by SDG&E of energy schedules of Arizona Public Service Company ("APS") and Imperial Irrigation District ("IID") over the Southwest Power Link ("SWPL"). For convenience, the ISO will refer to this as "SWPL Energy."

On the same day that the Judge's Order was issued, the ISO filed its Rebuttal Testimony in this proceeding. Among the issues addressed in the Rebuttal Testimony was the assessment of the Market Operations Charge on SWPL Energy. Since the sole purpose of this element of the ISO's Rebuttal was to rebut the stricken portions of Mr. Yari's testimony, the ISO filed a Motion to Withdraw this element of its Rebuttal Testimony, together with an exhibit designed to support this element of its rebuttal, on October 17, 2001.

On October 18, 2001, SDG&E filed a Motion for Reconsideration of the Judge's September 27 Order striking portions of Mr. Yari's testimony ("Motion"). On October 22, the Judge issued an Order shortening the time to respond to SDG&E's motion to October 24, and setting the matter for oral argument.

II. ARGUMENT

The ISO opposes SDG&E's motion for reconsideration. Contrary to SDG&E's argument, no new development has occurred in this proceeding to warrant the reinstatement of Mr. Yari's testimony.

A. It Is Irrelevant that SCE Has Submitted the Stricken Testimony as an Exhibit.

SDG&E argues that since Southern California Edison Company (“SCE”) has included the stricken Yari testimony as an exhibit to its own Additional Testimony filed on October 17, somehow it would be unfair for SDG&E not to be able to rely on it to “make its case here.” Motion at 2. SDG&E also mentions the fact that SCE’s discrimination case originated when SCE learned from (now stricken) Exh. No. SDO-6 that the ISO had answered an SCE discovery request incorrectly. *Id.* While this is true, it is irrelevant to the issue of whether Mr. Yari’s testimony should remain stricken. The subject matter of SCE’s Additional Testimony, and of the incorrectly answered discovery request, and of the portion of (former) Exh. No. SDO-6 that triggered SCE’s discrimination case, was the application by the ISO of the Control Area Services Charge component of the Grid Management Charge (“GMC”). The issue for which SDG&E seeks to have its testimony reinstated is the application of the Market Operations Charge component of the GMC. These simply are not the same issue.

While it is true that SCE has introduced the entire stricken testimony as an exhibit to its Additional Testimony, this was done in support of its Control Area Services Charge discrimination case. The description in Mr. Yari’s testimony regarding how the SWPL is organized is useful to SCE in comparing it with how the Mohave-Eldorado line is organized, which SCE finds useful in its Control area Services discrimination case. Nowhere does SCE re-introduce the issue of whether it is appropriate for the ISO to assess SWPL Energy the Market Operations Charge.

B. It Is Not True That “The Stricken Issue Will Be Necessarily Litigated Here” (Motion at 2).

As noted above, SCE did not re-introduce the issue of whether it is appropriate for the ISO to assess SWPL Energy the Market Operations Charge in its Additional Testimony. Nor does SCE discuss whether it is appropriate to assess anyone the Market Operations Charge. Instead, SCE discusses the application of the Control Area Services Charge only. Not only is it not necessary to litigate the issue of the proper application of the Market Operations Charge in order to resolve the issue of the Control Area Services Charge, it would be irrelevant even to discuss this completely unrelated matter. There is no need for the Commission to “weigh the merits of applying the Market Operations Charge to the Southwest Powerlink,” Motion at 3, to resolve any existing issue in this proceeding.

C. SDG&E Has Had Due Process.

SDG&E argues that it would deny them due process to keep the testimony in question stricken, because no other party has the incentive to argue the issue of applying the Market Operations Charge to SWPL Energy, and hence only SDG&E “can adequately represent its interests in this regard.” Motion at 4. SDG&E should have considered this problem before it allowed the proper time to raise new issues to pass it by. SDG&E had the opportunity to raise this issue by introducing testimony on April 2, 2001. The fact that it chose not to do so does not constitute a lack of due process.

D. The ISO Will Be Unduly Prejudiced if This Issue is Reintroduced.

SDG&E argues that “[g]iven that the merits of the Market Operations Charge’s application to Southwest Powerlink schedules will be tried here in any event, there is no compelling administrative efficiency rational for striking Mr. Yari’s testimony.” Motion at 4. This premise is far from “given.” As discussed above, the issue of the application of the Market Operations Charge is not in this case is Mr. Yari’s Testimony remains stricken. Nothing in SCE’s testimony regarding the application of the Control Area Services Charge requires any discussion regarding, let alone resolution of, the Market Operations “issue.” Therefore, if Mr. Yari’s testimony is reintroduced the ISO will have to prepare cross-examination on and brief an entirely distinct issue. Nor would SDG&E’s offer to allow the ISO to “amplify” its existing testimony on this matter (currently subject to a motion to withdraw), should the ISO take advantage of it, be without “administrative inconvenience.” The ISO does not believe it is appropriate for it to undertake additional work in this proceeding because SDG&E could not present its issues in a timely manner.¹

E. The Judge’s Order Striking Mr. Yari’s Testimony Is Sound.

SDG&E’s final argument is that the Judge’s Order striking Mr. Yari’s testimony is based on a faulty premise – that SDG&E should have raised this issue earlier in the proceeding. SDG&E argues that the August 4, 2000 (former Exh. No. SDO-6) letter in which the ISO informs SDG&E how the GMC will be

¹ Even SDG&E’s Motion for Reconsideration comes three whole weeks after the Judge’s order striking Mr. Yari’s testimony, and quite at the eleventh hour of this proceeding.

applied to SWPL Energy “did not suggest to SDG&E that it actually would be assessed any GMC.” Motion at 5. SDG&E also states that it did not know “the ISO had *finally* determined it would assess such charges until July 5, 2001.” *Id.* That “finally” is very revealing – clearly, SDG&E knew before July 5 that the ISO might assess the Market Operations Charge on SWPL Energy. Any doubt on the matter should have spurred them to serve discovery on the ISO in this proceeding to get a definitive answer. Moreover, the language of the August 4 letter itself is quite clear on the matter:

transactions by APS or IID over its respective owned portion of SWPL will not be assessed either the Control Area Services Charge or Inter-Zonal Scheduling Fee components of the unbundled GMC, but *will* be assessed the Market Operations Charge to the extent those transactions represent the purchase or sale of ancillary services or imbalance energy.

August 4, 2000 letter at 1 (emphasis added). Clearly, the ISO put SDG&E on notice that SWPL Energy would be assessed the Market Operations Charge. To the extent that there was any doubt, SDG&E had ample time to ask the ISO to clarify its meaning. The Judge’s Order granting the ISO’s Motion to Strike on this basis is sound, and should stand.

III. MOTION TO WITHDRAW TESTIMONY AND SUPPORTING EXHIBIT

As noted above, the ISO filed a Motion to Withdraw the portions of its Rebuttal Testimony and a supporting exhibit designed to rebut Mr. Yari’s Cross-Answering Testimony on October 17. If the Presiding Judge decides to reinstate

Mr. Yari's Testimony, the ISO requests that its Motion to Withdraw itself be considered withdrawn.

IV. CONCLUSION.

For the reasons described above, the ISO requests that the Presiding Judge deny SDG&E's Motion for Reconsideration of the Order striking Mr. Yari's Cross-Answering Testimony. In the event that the Judge decides to reinstate Mr. Yari's Testimony, the ISO requests that its October 17, 2001 Motion to Withdraw Testimony and Supporting Exhibit itself be considered withdrawn.

Respectfully submitted,

Charles F. Robinson
General Counsel
Stephen Morrison
Regulatory Counsel
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7135
Fax: (916) 608-7296

J. Phillip Jordan
Julia Moore
Theodore J. Paradise
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, DC 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Counsel for the California Independent
System Operator Corporation

Dated: October 24, 2001

CERTIFICATE OF SERVICE

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

Dated at Washington, DC, this 24th day of October, 2001.

Julia Moore
(202) 295-8357

October 24, 2001

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

Re: *California Independent System Operator Corporation*
Docket Nos. ER01-313-000 and ER01-313-001

Pacific Gas and Electric Company
Docket Nos. ER01-424-000 and ER01-424-001

Dear Secretary Boergers:

Enclosed are an original and fourteen copies of the California Independent System Operator Corporation's Answer in Opposition to Motion For Reconsideration, Or, in the Alternative, Motion to Withdraw Motion to Withdraw Testimony in the above-captioned proceeding. Two courtesy copies of this filing are included to be hand delivered to Judge Bobbie J. McCartney. Also enclosed are two extra copies of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Sincerely,

Julia Moore
(202) 295-8357

Counsel for the California
Independent System Operator Corporation

Enclosures

cc: The Honorable Bobbie J. McCartney
Service List