

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

California Independent System Operator Corporation))))	Docket Nos. ER98-997-000 ER98-1309-000
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**INITIAL BRIEF OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION**

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**To: The Honorable Jacob Leventhal,
Presiding Administrative Law Judge**

Pursuant to Rule 706 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.706 (2000), and the briefing schedule established by the Presiding Judge, the California Independent System Operator Corporation (“California ISO” or “ISO”) submits its Initial Brief in this proceeding.

I. PROCEDURAL HISTORY

Pursuant to the Presiding Judge’s instructions, the Parties¹ have submitted a Joint Procedural History, which sets forth the relevant procedural background in this proceeding.

¹ For purposes of this brief, the term “Parties” refers to the active parties in this proceeding, which includes those intervenors who have submitted testimony. This consists of the Independent System Operator Corporation (“ISO”), the Cogeneration Association of California (“CAC”), Southern California Edison Company (“Edison”), and Commission Trial Staff (“Staff”).

II. BACKGROUND

The ISO is a nonprofit public benefit corporation responsible under California law for the operation and reliability of the transmission systems of the California Investor Owned Utilities, Pacific Gas and Electric Company, Edison, and San Diego Gas & Electric Company (collectively, "IOUs") and such other transmission systems as are placed under ISO control. ² Ex. ISO-11A (Rebuttal Testimony of David A. Deluca) at 4:8-15. The ISO is also the Control Area operator for the entire system within its electrical boundaries (defined by interchange metering with adjacent Control Areas), which comprises the ISO Controlled Grid, the Distribution Systems of the IOUs and other Utility Distribution Companies, and other transmission and distribution systems within California, including the systems of municipal, state, and federal governmental entities. *Id.* at 4:17-24.³

The ISO operates the ISO Controlled Grid in accordance with the ISO Tariff and Protocols, which, with the exception of certain "unresolved issues", have been accepted by the Commission as just and reasonable. *See Pacific Gas & Electric Co., et al.*, 81 FERC ¶ 61,122 (1997); *California Independent System Operator Corp.*, 84 FERC ¶ 61,217 at 62,046 (1998)(noting that "a

² The City of Vernon, California became a Participating Transmission Owner on January 1, 2001, thereby expanding the ISO Controlled Grid. *City of Vernon, California*, 93 FERC ¶ 61,103 (2000).

³ Terms used herein with initial capitalization and not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, ISO Tariff Appendix A.

number of unresolved issues remain outstanding” from proceedings involving the initial operations of the ISO).⁴ Pursuant to the ISO Tariff, the ISO enters into agreements with various Market Participants that govern the relationship of those Market Participants with the ISO. Most relevant to this proceeding, the ISO enters into Participating Generators Agreements ("PGAS") and Meter Service Agreements for ISO Metered Entities with Generators that choose to make use of the ISO Controlled Grid or participate in the ISO's markets for various electrical services. See ISO Tariff §§ 5, 10.3.1. The heart of the Participating Generator Agreement is the requirement that the parties comply with the terms of the ISO Tariff applicable to Generators. See Ex. ISO-1 (Direct Testimony of Deborah A. Le Vine) at 4:15-17. The purpose of the Meter Services Agreement for ISO Metered Entities is to establish the terms and conditions upon which the ISO shall certify the revenue quality meters of ISO Metered Entities and the terms on which those ISO Metered Entities will make Meter Data available to the ISO revenue meter data acquisition and processing system. ISO Tariff § 10.3.1.

Qualifying Facilities ("QFs") are Generators that qualify for such designation under the terms of the Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. 824(a)(3), and Part 292 of the Commission's Rules and Regulations, 18 C.F.R. Part 292. The ISO Tariff does not distinguish between QFs and other Generators with regard to the requirement that the Generator enter a Participating Generator Agreement as a condition of participation in the ISO's markets. See ISO Tariff § 5 (stating that the

⁴ The ISO Tariff has been incorporated into the record by reference. Transcript

ISO shall not be obligated to accept Schedules or Bids from *any* Generating Unit unless that Generating Unit undertakes in writing to comply with all applicable provisions of the ISO Tariff).

III. SUMMARY OF ARGUMENT

Issue I.A: Is the *pro forma* Participating Generator Agreement (PGA) just and reasonable if applied to QFs?

The *pro forma* Participating Generator Agreement (“PGA”) is just and reasonable if applied to QFs. The essence of the *pro forma* PGA is the requirement that the Participating Generator abide by the applicable provisions of the ISO Tariff and Protocols, and there is no evidence in this proceeding, and no reason to believe that the ISO Tariff, and therefore the *pro forma* PGA, is any less just and reasonable as applied to the QF facilities at issue in this proceeding, or any other QF, than as applied to other Generators. Even if were the case that the *pro forma* PGA was unjust and unreasonable as applied to QFs, because of the wide variety of facilities that qualify as QFs, there is no reason to believe that QFs have sufficient common characteristics to justify a separate PGA.

Issue 1.B: If it is not just and reasonable, what changes to the existing terms and conditions of the *pro forma* PGA are required in order to create a just and reasonable QF PGA?

Because the *pro forma* PGA is just and reasonable as applied to QFs, no changes to the terms and conditions of the *pro forma* PGA are required.

Issue II.A: Is the Requirement of the PGA that QFs Abide by the ISO’s Tariff Provisions Regarding Metering, Telemetry, Scheduling,

(Le Vine) at 239:14-240:7.

Procurement and Cost Allocation of Ancillary Services on a Gross Basis Just and Reasonable?

See responses to sub-issues below.

Issue II.A.1: Does the ISO's "Control Area Firm Load" include a QF's gross behind the meter loads, as opposed to its net load, for the purposes of determining the ISO's responsibilities under relevant reliability criteria?

Both California Law and the ISO Tariff require that the ISO maintain the reliability of the ISO Controlled Grid in accordance with criteria promulgated by the Western Systems Coordinating Council ("WSCC"). The WSCC requires the ISO to procure reserves for all "firm" loads within the control area. According to the WSCC, QF behind-the-meter loads are "firm" loads, unless they can be simultaneously curtailed in the event of a QF Generator Outage. Therefore, the ISO must include QF behind-the-meter loads in its calculation of "Control Area firm load." This result is also logically compelled, because the impact on the ISO-Controlled Grid is the same whether a QF on-site Generator fails or a Generator that is connected to its Load through the ISO Controlled Grid fails.

Issue II.A.2: Is it Just and Reasonable to Procure Ancillary Services and Allocate Ancillary Services Costs for a QF's Gross Behind-the-Meter Loads, as Opposed to its Net Load?

The ISO satisfies its WSCC-imposed operating reserve requirements by running Day-ahead and Hour-ahead Markets for Ancillary Services, and allocates the costs of these services to Scheduling Coordinators. Because the WSCC requires the ISO to include QF behind-the-meter loads in calculating its operating reserve requirements, the ISO must procure Ancillary Services for behind-the-meter loads to the extent they are not self-provided by the QF or on its behalf.

Additionally, it is only fair that the ISO allocate a pro rata share of the costs associated with providing those services to the QF's Scheduling Coordinator.

Issue II.A.3: Is it Unjust or Unreasonable to Require QFs That Enter Into PGAs to Gross Meter (Including Telemetry, when Required by the ISO Tariff) Generation and Behind-the-Meter Load?)

The ISO requires gross telemetry on QF Generation in order to accurately forecast its Control Area firm load because it is that forecast which the ISO uses in determining its obligations to procure Ancillary Services in the Day-Ahead and Hour-Ahead scheduling processes. The ISO also requires gross telemetry in order to ensure that injections into the system match withdrawals from the system in real-time. Additionally, the ISO requires revenue meter data on QF behind-the-meter Loads in order to ensure that the costs of the services that the ISO provides are appropriately allocated to the responsible Market Participants.

Issue II.A.4: Is it Just and Reasonable to Require QFs That Enter Into PGAs to Gross Schedule Generation and Load?

It is essential that a QF entering into a PGA with the ISO be required to schedule all of their Loads and Generation with the ISO, including behind-the-meter Loads and Generation. This is necessary because it allows the ISO to properly allocate to QFs their share of real-time Energy charges and credits.

Issue II.A.5: Is it discriminatory vis-à-vis other customers if the ISO does not permit metering, scheduling, and cost allocation of Ancillary Services on a net basis for QFs.

The ISO Tariff sections regarding metering, scheduling, and cost allocation of Ancillary Services do not distinguish between QFs in general and other Generators, and are therefore per se non-discriminatory vis-à-vis other customers. Additionally, the ISO Tariff exemptions from telemetry and metering

requirements for certain distribution level Generating Units operate in favor of certain QFs, and therefore do not discriminate against them in favor of non-QFs.

Issue II.B: Are There Financial and Commercial Implications of the ISO's Proposed Policy That Affect the Justness and Reasonableness of the ISO's Proposed Policy, and, if Yes, What Are Such Effects?

The costs that would be imposed on QFs as a result of signing the ISO's *pro forma* PGA are justified and reasonable. Ancillary Services costs would be reasonable because the ISO must procure those services for QF behind-the-meter loads, and QFs can avoid some or all of those costs through self-provision. Additionally, the costs of complying with ISO metering and telemetry requirements will not be excessive because the ISO has specifically committed to working with QFs in order to limit those costs. Finally, the Presiding Judge should decline to address issues of cost implications to QFs with respect to the transmission Access Charge and Grid Management Charge, as those issues are before the Commission in other pending cases.

Issue III.A: Is the Requirement of the PGA that QFs Abide by ISO Tariff Provisions Governing the ISO's Ability to Dispatch or Curtail Generation Just and Reasonable.

There is nothing in the dispatch provisions of the ISO Tariff or Protocols that would unduly harm a QFs ability to provide for its on-site industrial processes while retaining the option to sell Energy into the market. Except in emergency situations, the ISO is limited to dispatching those units that submit bids into the ISO's Markets. QFs are also protected by their ability to identify operating "limitations" to the ISO through Schedule 1 of the *pro forma* PGA, and the ISO's obligation to act in accordance with Good Utility Practice. Although the

Commission, in Docket Nos. EL00-95-012, et al., recently adopted a “must-sell” requirement for Generators in California, any arguments concerning that requirement should be addressed in that docket.

Issue III.B: Is the Application to QFs through the PGA of the ISO Tariff Provisions Regarding Outages Scheduling Just and Reasonable?

The application to QFs, through the *pro forma* PGA, of ISO Tariff provisions regarding outage coordination is just and reasonable, as nothing in the ISO’s Outage Coordination Protocol denies QFs substantial flexibility in scheduling Outages. Under the Outage Coordination Protocol, the ISO can only deny a proposed Outage if it is requested or revised less than 7 days prior to the planned Outage date, and may only do so for reasons of System Reliability or security. Finally, most of CAC’s arguments concerning Outages have been rendered moot by the Commission’s April 26 order in Docket Nos. EL00-95-012, et al.

Issue III.C: Is the Application to QFs through the PGA of the penalties set forth in the ISO Tariff Just and Reasonable?

Neither the ISO Tariff nor the *pro forma* PGA provides for penalties in the situations that CAC has identified, and any amendment to include such penalties would be subject to Commission approval in a proceeding in which all interested parties could participate. Additionally, CAC does not propose that QFs be exempted from “non-punitive” charges such as transmission congestion charges and negative Imbalance Energy charges.

Issue IV.A.1: Is it Just and Reasonable for a QF to Have to Seek FERC Approval and/or ISO Approval to Terminate a PGA?

It is just and reasonable to retain the provision in the *pro forma* PGA requiring that FERC approve the termination of a PGA because this provision merely reaffirms the Commission's own requirement that it approve any modifications, including termination, of such agreements. Additionally, CAC has provided no justification for departing from federal law in this respect.

Issue IV.A.2. If a requirement for FERC approval is just and reasonable, must the PGA require, in order to be just and reasonable, that the ISO not protest or otherwise object to a QF's request to terminate its PGA in a FERC proceeding related to the termination?

A PGA between the ISO and a QF need not require, in order to be just and reasonable, that the ISO not protest or otherwise oppose the termination of that PGA before FERC or any other regulatory agency. CAC has offered no justification for providing QFs with greater rights in this respect than other Generators, and such a provision would therefore unduly discriminate against Generators who have not been offered similar guarantees.

Issue IV.B: Is the Provision of the PGA that States that the ISO Tariff Will Control in the Case of Conflict Between the ISO Tariff and the PGAs Just and Reasonable as Applied to QFs?

See response to Issue IV.C below

Issue IV.C: Is it Just and Reasonable for the ISO to Have the Unilateral Ability to Amend the ISO Tariff Requirements that are Incorporated into the PGA by Amending the ISO Tariff Pursuant to its Section 205 Rights under the FPA?

It is just and reasonable for the ISO to have the ability to amend the ISO Tariff requirements that are incorporated into the PGA by amending the ISO Tariff pursuant to Section 205 of the FPA. This is because any provision that mandated otherwise would significantly interfere with the ability of the ISO,

California, and the Commission to address changing circumstances in the California electricity markets. Moreover, to the extent that QFs believe that a proposed amendment to the ISO Tariff should not be applicable to them, they are free to protest that amendment. Finally, there are no reasons to treat QFs differently in this regard than other Market Participants who are subject to the terms of the ISO Tariff as they may be amended from time to time.

Issue IV.D: Is a PGA just and reasonable in the absence of a provision that nothing in the PGA or the ISO Tariff be construed as a waiver of any rights of QFs under federal or state law or a waiver of any rights under existing power purchase agreements such that the ISO must continue to honor existing power purchase agreements?

The ISO, as a corporation formed under the laws of the State of California, is required to abide by federal and state law, and therefore, no provision in the PGA is necessary to impose upon it that responsibility. Moreover, if a QF is concerned that, by signing a PGA, it is waiving some pre-existing right, or if a QF is seeking a requirement that the ISO honor some right of the QF that the ISO is not otherwise obligated to honor, the QF may identify such rights and obligations in Schedule 1 of the PGA.

IV. DISCUSSION OF ISSUES

In accordance with the agreement of the parties, the California ISO presents its discussion of the issues raised in this proceeding under the headings set forth in the Joint Statement of Issues for Briefing Purposes as submitted to the Presiding Judge on May 8, 2001.

Issue I.A: Is the *pro forma* Participating Generator Agreement (PGA) just and reasonable if applied to QFs?

1. *The ISO's Pro Forma PGA Is Just and Reasonable*

The essence of the *pro forma* PGA is the requirement that the Participating Generator abide by the applicable provisions of the ISO Tariff and Protocols. See Ex. ISO-1 (Le Vine) at 4:15-17. The ISO Tariff and Protocols, with the exception of certain unresolved issues, have been duly approved by the Commission. See *Pacific Gas & Electric Co., et al.*, 81 FERC ¶ 61,122 (1997); *California Independent System Operator Corp.*, 84 FERC ¶ 61,217 at 62,046 (1998). These facts, in themselves, are sufficient to establish a *prima facie* case that the *pro forma* PGA is just and reasonable as applied to any Generator that intends to engage in activities governed by the ISO Tariff.

The ISO's *pro forma* PGA has been accepted by the Commission. *Pacific Gas & Electric Co.*, 81 FERC ¶ 61,320 at 62,471 (1997). A wide variety of Generators have entered into PGAs in conformance with the *pro forma* PGA. See Ex. ISO-5 (Direct Testimony of Michael Dozier) at 9:9-12. Because the PGA serves primarily to ensure compliance with the ISO Tariff, a finding that the *pro forma* PGA is unjust or unreasonable as applied to a particular Generator or group of Generators could only be supported by evidence that applying the ISO Tariff to that Generator or group of Generators is unjust or unreasonable. There is no evidence in this proceeding, and no reason to believe, that the ISO Tariff – and therefore the *pro forma* PGA – is any less just and reasonable as applied to Midway Sunset, Texaco Midway, ARCO/CQC Kiln, or any other QF than as applied to other Generators, including the QFs that have already signed PGAs.

Although CAC, joined in some cases by Edison, has argued that certain changes are necessary to accommodate their special needs, *see, e.g.*, Ex. CAC-1 (Direct Testimony of James A. Ross) at 9:11-12:9, as is discussed below, none of these changes is necessary in order to render the *pro forma* PGA just and reasonable with regard to Midway Sunset, Texaco Midway, ARCO/CQC Kiln, or any other QF.

The ISO does not doubt that certain QFs would prefer the changes to the PGA proposed by CAC. Moreover, a PGA that included some of these changes might still be just and reasonable. Such considerations, however, are not relevant to the issue of whether the *pro forma* PGA is just and reasonable as applied to those QFs: the issue is not whether there are other just and reasonable PGAs that might make certain QFs happier. *See, e.g.*, OXY USA, Inc. v. FERC, 64 F.3d 679, 692 (D.C. Cir. 1995) (“[T]he Commission may approve the methodology proposed in the settlement agreement if it is ‘just and reasonable’; it need not be the only reasonable methodology, or even the most accurate.”); New England Power Co., 52 FERC ¶ 61,090 at 61,336 (1990) (concluding that a rate design was “just and reasonable” despite the fact that the design was not perfect, and that more desirable alternatives may have existed). Thus, even if the *pro forma* PGA could be modified to accommodate all of CAC’s concerns without interfering with the ISO’s performance of its obligations – which, as shown below, it could not – that would not be sufficient reason in itself to find that the application of the *pro forma* PGA in the three instances that are at issue

in this proceeding, or with regard to any other QF, would be unjust or unreasonable.

2. *There is No Basis for Concluding that a Pro Forma PGA, Applicable Only to QFs, Is Necessary or Appropriate.*

Even if there were evidence, which there is not, that the ISO Tariff is not just and reasonable as applied to certain QFs, that evidence would not justify a special *pro forma* PGA for QFs (a "QF-PGA"). In this regard, it is important to review the scope of this proceeding. The ISO initiated these dockets by filing PGAs for the Midway Sunset project (filed in Docket No. ER98-997) and the Texaco North Midway Project (filed in Docket No. ER98-1309). Although those dockets were initially consolidated with the docket concerning the ISO's *pro forma* PGA, Docket No. ER98-992, they were severed from that proceeding. *Order of Chief Judge Severing Certain Dockets for Separate Hearing and Designating Presiding Judge*, Docket Nos. ER98-992-000, et al. (Nov. 19, 1998).

The ISO did engage in settlement discussions regarding the potential for a *pro forma* QF-PGA, but those discussions were terminated without agreement. *Order of Chief Judge Terminating Settlement Judge Procedures*, Docket Nos. ER98-997-000, et al. (Aug. 11, 2000). The ISO has not proposed, and has not filed, a *pro forma* QF-PGA. Moreover, the Commission has not, pursuant to a complaint or *sua sponte*, initiated a proceeding regarding a *pro forma* QF-PGA. It has not, other than subjecting the ARCO/CQC Kiln PGA (filed in Docket No. ER00-2206) to the outcome of this proceeding, expanded the scope of the proceeding beyond the originally filed PGAs. The only issue in this proceeding,

therefore, is whether the *pro forma* PGA is just and reasonable as applied to Midway Sunset, Texaco Midway, and ARCO/CQC Kiln.

Further, because the *pro forma* PGA is itself just and reasonable, the only justification of a *pro forma* QF-PGA would be if the *pro forma* PGA were rendered unjust and unreasonable merely because the Generator at issue is a QF. Nothing in this proceeding supports such a conclusion. There is also no reason to believe that QFs have sufficient common characteristics to justify a separate *pro forma* QF-PGA. QFs include not only cogenerators, but also certain hydroelectric facilities and certain small power production facilities using such varied energy sources as biomass, waste, renewable resources, and geothermal resources. See 18 C.F.R. §§ 393.203, 392.204. Even the category of cogenerators spans a wide variety of facilities. In this proceeding, for example, over 200 MW Midway Sunset can be contrasted with approximately MW Texaco Midway. Tr. (Ross) at 490:25-491:10.

To date, a number of QF cogenerators have executed the ISO's *pro forma* PGA, which have been filed with the Commission and accepted by it. See, e.g. Letter Order in AEP Operating Companies, et al., Docket Nos. ER01-253-000, et al. (Dec. 5, 2000). These QF cogenerators have not found it necessary to insist on special modifications. Ex. ISO-5 (Dozier) at 9:7-17.

Finally, if there were evidence – which, again, there is not -- that the ISO Tariff, as applied to certain QFs, is unjust and unreasonable, the appropriate course of action would be an amendment to the ISO Tariff to provide necessary accommodations for exemptions. The various provisions governing participation

in the ISO's markets and transmission on the ISO Controlled Grid should be contained in one document. See Tr. (Dozier) at 187:5-8. ISO Operators, and others, should not need to search various documents in order to determine applicable tariff requirements.⁵

* * *

WHEREFORE, the ISO requests that the Presiding Judge determine (1) that the only PGAs at issue in this proceeding are the PGAs for Midway Sunset, Texaco Midway, and ARCO/CQC Kiln; (2) that regardless of whether this proceeding applies only to the PGAs for those three facilities or more broadly to PGAs for QFs generally, that the ISO's *pro forma* PGA is just and reasonable as applied to the QFs at issue in this proceeding.

Issue 1.B: If it is not just and reasonable, what changes to the existing terms and conditions of the *pro forma* PGA are required in order to create a just and reasonable QF PGA?

As indicated above, the ISO believes that the *pro forma* PGA is just and reasonable as applied to the QFs at issue. Therefore, no changes to the terms and conditions of that agreement are required. The specific changes recommended by CAC and others, and the reasons why they are unnecessary, are discussed below.

⁵ The ISO recognizes that the requirements of Sections 2.4.4 and 5.1.5 of the ISO Tariff, which require the ISO to honor certain contracts in existence at the time the ISO commenced operations, are exceptions to this result. This is not a reason, however, to aggravate the situation by creating even more exceptions in documents external to the ISO Tariff.

WHEREFORE, the ISO requests that the Presiding Judge conclude that no changes to the *pro forma* PGA are necessary to render it just and reasonable as applied to the QFs at issue in this proceeding.

Issue II.A: Is the requirement of the PGA that QFs abide by the ISO's Tariff provisions regarding metering, telemetry, scheduling, procurement and cost allocation of Ancillary Services on a gross basis just and reasonable?

The *pro forma* PGA's requirements that QFs abide by the ISO Tariff provisions regarding metering, telemetry, scheduling, and procurement and cost allocation of Ancillary Services on a gross basis are just and reasonable. The ISO sets forth its reasons for this conclusion in the sub-headings below.

Issue II.A.1: Does the ISO's "Control Area Firm Load" include a QF's gross behind the meter loads⁶, as opposed to its net load, for the purposes of determining the ISO's responsibilities under relevant reliability criteria?

California law and the ISO Tariff require the ISO, in its role as Control Area operator, to maintain the reliability of the ISO Controlled Grid in accordance with criteria promulgated by the Western Systems Coordinating Council ("WSCC"). Specifically, Section 345 of the California Public Utilities Code requires the ISO to "ensure the efficient use and reliable operation of the transmission grid consistent with the achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Reliability Council." Cal. Pub. Util. Code § 345 (West 2001). Similarly, the ISO Tariff states that the ISO "shall

⁶ All references to "behind-the-meter" loads also include "over-the-fence" loads.

exercise Operational Control over the ISO Controlled Grid to meet planning and Operating Reserve criteria no less stringent than those established by WSCC and NERC as those standards may be modified from time to time.” ISO Tariff § 2.3.1.3.1.

The ISO is located within the WSCC region of NERC. WSCC defines a Control Area as “[a]n area comprised of an electric system or systems, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other control areas, and contributing to frequency regulation of the interconnection.” Ex. ISO-11A (Deluca) at 5:14-20. WSCC promulgates several sets of Reliability Criteria, one of which is the Minimum Operating Reliability Criteria (“MORC”). MORC requires that “[e]ach control area shall maintain minimum operating reserve” *Id.* at 5:21-26.

MORC also states that:

[e]ach entity operating transmission, generation or distribution facilities shall either operate a control area or make arrangements to be included in a control area operated by another entity. All generation, transmission and load operating within the Western Interconnection shall be included within the metered boundaries of a WSCC control area. Control areas are ultimately responsible for ensuring that the total generation is properly matched to total load of the interconnection.

Id. at 5:27-6:8.

Thus, the ISO has the responsibility to match Generation and load within the Control Area. To meet this responsibility, MORC requires that Control Areas maintain as a Contingency Reserve the sum of five percent of load responsibility served by hydro generation and seven percent of the load responsibility served by thermal generation. Ex. ISO-14 at 10:5-12. Load responsibility is defined in

MORC as “[a] control area’s firm load demand plus those firm sales minus those firm purchases for which reserve capacity is provided by the supplier.” *Id.* at 11:8-17.

Under the WSCC criteria, QF behind-the-meter loads are defined as “firm” unless they can be simultaneously curtailed in the event of a QF Generator Outage (i.e. they cannot draw power from the ISO Controlled Grid when a behind-the-meter Generator suffers an Outage). A representative of the WSCC, Mr. Joseph Comish, confirmed this interpretation in this proceeding. Mr. Comish unequivocally testified that “control area firm load” includes QF behind-the-meter loads, and therefore, that control area operators such as the ISO must include those loads in their calculation of operating reserves. Ex. ISO-14 at 12:8-13:20; Tr. (Comish) at 156:11-23 According to Mr. Comish’s uncontradicted testimony, he is authorized to speak on behalf of the WSCC regarding interpretations of reliability criteria. Ex. ISO-14 at 31:9-20; Tr. (Comish) at 159:4-8. Moreover, he confirmed this interpretation with the other person so authorized, Mr. Dennis Eyre, the Executive Director of WSCC Tr. (Comish) at 158:13-159:3.

In sum, the ISO, consistent with its Tariff and state law, must follow the WSCC criteria “as they may be modified from time to time.” Cal. Pub. Util. Code § 345, ISO Tariff § 2.3/3.1. Therefore, until such time as the WSCC informs the ISO of a different set of criteria or interpretation of the present criteria, the ISO must, as a matter of law, include behind-the-meter QF Load in its calculation of “control area firm load.”

In addition, the inclusion of a QF's behind-the-meter Load within the ISO's firm Load requirements is logically compelled. If a QF is connected to the ISO Controlled Grid, and the on-site Generator fails, the Generation under the ISO's control will respond immediately to serve the QF's behind-the-meter Load. Ex. ISO-11A (Deluca) at 12:19-13:6. The ISO must be prepared serve the behind-the-meter Load *one hundred percent of the time*. See Tr. (Minick) at 436:15-437:3. Accordingly, the ISO must have adequate reserves to serve such Load 100% of the time; in this regard, a QF's behind-the-meter Load is no different in this regard than any other Load.⁷ The impact on the ISO-Controlled Grid is the same whether a QF on-site Generator fails or a Generator – such as that of an Energy Service Provider – that is connected to its Load through ISO Controlled Grid fails. Tr. (Minick) at 451:7-10.

Stand by service provided by an IOU like Edison, see, e.g., Tr at 516:4-10, is not a substitute for the Operating Reserves that the ISO must provide. It is the ISO, not the IOUs, that has responsibility to maintain adequate reserves to ensure reliable service, and maintain reserves, for Control Area firm Load, including firm on-site Load. Tr. 435:7-20. Equally importantly, Edison has specifically testified that, when it was Control Area operator, it did not set aside reserves for the full on-site Load, but only for the amount of Load equivalent to

⁷ That the ISO must carry Operating Reserves to meet behind-the-meter Load one hundred percent of the time does not imply that the ISO is assuming, contrary to 18 C.F.R. § 292.305(c), that Forced Outages by all QFs will occur simultaneously. Were the ISO to do so, it would have to maintain Operating Reserves equal to one hundred percent of the behind-the-meter Load. Instead, the criteria requires the ISO to maintain reserves equivalent to 5% to 7% of the behind-the-meter Load depending upon the type of Generation.

the QF Generation that, based on probability, Edison estimated would be out of service at a particular time, approximately 80 MW. Tr. at 448:15-451:10, In other words, although the WSCC requires that 35 MW of reserves be maintain in order to address the possibility that a Generator serving some portion of the approximately 400 MW of behind-the-meter Load saved by Edison will be unavailable (i.e., 7% of 400 MW), *Edison only set aside 5.6 MW (i.e., 7% of 80 MW)*. Id. Moreover, there is no testimony that Edison is currently setting aside even that amount of capacity for those Loads to which it provides standby service. QFs simply cannot rely upon standby service as a substitute for Ancillary Services.

WHEREFORE, the ISO requests that the Presiding Judge rule that it is just and reasonable for the ISO to include QF behind-the-meter Loads in its calculation of “control area firm load” pursuant to its obligations to comply with WSCC reliability criteria.

Issue II.A.2: Is it Just and Reasonable to Procure Ancillary Services and Allocate Ancillary Services Costs for a QF’s Gross Behind-the-Meter Loads, as Opposed to its Net Load?

As explained above, the WSCC’s MORC requires that Control Areas maintain Operating Reserves based on a percentage of their Load responsibility. To the extent possible, the ISO satisfies this requirement using a market based approach by running Day-ahead and Hour-ahead Markets for Ancillary Services, including Regulation, Spinning Reserve, Non-Spinning Reserve, and Replacement Reserve. Ex. ISO-11A (Deluca) at 8:5-10. The ISO makes payments for Ancillary Services to Scheduling Coordinators whose bids for those

services are selected by the ISO, and the ISO then assigns the costs of these services to Scheduling Coordinators based on the metered Demand of the Loads they represent. Ex. ISO-11A (Deluca) at 8:12-16., ISO Tariff § 2.5.20. The ISO also allows Scheduling Coordinators to self-provide the Ancillary Services required by WSCC criteria to meet their represented Loads. Ex. ISO-11A (Delcua) at 8:16-18; ISO Tariff § 2.5.20.2.

Because the WSCC requires that the ISO include QF behind-the-meter loads in its calculation of “load responsibility,” the ISO must procure Ancillary Services for those Loads to the extent that they are not self-provided by the QF or on its behalf. Moreover, on-site Loads secure the benefit of reliable service through the operation of the ISO Ancillary Service markets (unless they choose to forgo this benefit by agreeing to disconnect in the event the associated Generator ceases to operate, in which case the ISO does not assess to such on-site Load Ancillary Service requirements and charges). Therefore, it is only fair that the ISO allocate a pro rata share of the costs associated with providing those services to the Scheduling Coordinator for the QF’s on-site Loads. Ex. ISO-7A (Le Vine) at 6:13-17; Tr. (Le Vine) at 220:24-225:7. To do otherwise would unfairly shift costs from the beneficiaries of the services – in this case the Scheduling Coordinator for the QF's on-site Loads – to other Market Participants.

WHEREFORE, the ISO requests that the Presiding Judge to find that it is just and reasonable for the ISO to procure Ancillary Services and allocate Ancillary Services costs for a QF’s gross behind-the-meter Loads, as opposed to its net Load.

Issue II.A.3: Is it Unjust or Unreasonable to Require QFs That Enter Into PGAs to Gross Meter (Including Telemetry, when Required by the ISO Tariff) Generation and Behind-the-Meter Load?)

Gross metering of QF Loads, including gross telemetry on behind-the-site-boundary generation, is necessary so that the ISO can meet its obligations as a Control Area operator, especially to the extent that this involves satisfying applicable Reliability Criteria, as well as fairly allocating the costs of these services

The ISO's determination of its Load responsibility for the purposes of Operating Reserves is based on its Load forecast. Ex. ISO-11A (Deluca) at 13:21-24. That forecast is based on real time measurements of Generation and net interchange with other Control Areas (i.e., imports less exports). *Id.* at 13:14-17. The ISO measures Generation because it would be impractical to meter individual Loads in real time. *Id.* at 14:6-10. Thus, during real time, the ISO's Energy Management System (EMS) scans the individual points of interchange with other Control Areas and the output from individual Generators to determine the ISO's total firm Load obligation. *Id.* at 13:17-20. This information is then trended forward, and, with appropriate adjustments made for weather and other circumstances, provides the ISO with a "forecast" of what its Control Area Load will be at any particular day and time. *Id.* at 13:21-24. It is this forecast that the ISO uses to determine its obligations to procure Ancillary Services in the Day-Ahead and Hour-Ahead scheduling processes. *Id.*

Therefore, to the extent that the ISO lacks accurate information on Generation and Loads within its Control Area, for which Applicable Reliability

Criteria require the ISO to procure Operating Reserves, the ISO is unable to fulfill its obligations as a Control Area operator consistent with WSCC and NERC requirements. *Id.* at 13:25-27. Attempting to compensate by guessing at the QF behind-the-meter Load -- which is estimated to total at least 1000 MW, Tr.

(Deluca) at 343:14-24 – can not ensure adequate Operating Reserves and therefore risks the reliability of the Control Area. Alternatively, estimating could result in overprocurement, for which the entire Control Area would pay the cost,

Additionally, the ISO, as the Control Area operator, has the responsibility to maintain system balance in real-time. Ex. ISO-11A (Deluca) at 6:6-8, 8:22-9:6. This requires that the ISO to constantly monitor the system to ensure that injections into the system (from units located within the Control Area and imports from external Control Areas) match withdrawals from the system (Demand from Loads located within the Control Area and exports to external Control Areas). *Id.* at 8:22-25. To the extent that there are net deviations from that balance in real-time, the ISO must adjust resources, both through automatic generation control and the dispatch of Imbalance Energy from capacity reserves. *Id.* at 8:25-9:3.

A QF that is interconnected, directly or indirectly, with the ISO Controlled Grid will have an inherent effect on the grid. Ex. ISO-11A (Deluca) at 12:16-18. As describe above, in the event that a QF Generator suffers an unannounced Outage, the effect on the grid is the same as if any other type of Generator were to suffer such an Outage, and the ISO must respond appropriately in real-time as described above to ensure that system balance is maintained. Tr. (Minick) at 451:7-10; Ex. ISO-11A (Deluca) at 12:19-13:6. Therefore, it is critical that the

ISO possess accurate, real-time telemetered data on QF Generation that is interconnected, directly or indirectly, with the ISO Controlled Grid in order to ensure that the system is adequately balanced under real-time conditions.

Additionally, the ISO requires revenue meter data on QF behind-the-meter Loads in order to ensure that the costs of the services that the ISO provides are appropriately allocated to the responsible Market Participants. Ex. ISO-11A (Deluca) at 17:28-18:3. The ISO allocates costs for the Control Area Services portion of the Grid Management Charge, and other ISO charges such as Ancillary Services and Imbalance Energy, based on metered Demand as polled by the ISO's Meter Data Acquisition System ("MDAS"). *Id.* at 17:17-18, 24-28. Although the issue of the applicability of the Grid Management Charge to QF behind-the-meter Loads is, as explained below, before the Commission in another proceeding, the ISO must, at the very least, procure Ancillary Services based on QF behind-the-meter Loads. Therefore, because at least some of these charges apply to QF behind-the-meter Loads, the ISO must have accurate revenue Metering Data on those Loads in order to ensure that costs to *all* Market Participants are accurately assessed. To the extent that the ISO does not have this information, substantial cost shifting is likely to occur, a result that no party to this proceeding has suggested would be appropriate. See Ex. ISO-11A (Deluca) at 17:28-18:8.

WHEREFORE, the ISO requests that the Presiding Judge rule that it is just and reasonable for the ISO to require that QFs entering into a PGA with the

ISO provide revenue and telemetered data on behind-the-meter Loads and Generation.

Issue II.A.4: Is it Just and Reasonable to Require QFs That Enter Into PGAs to Gross Schedule Generation and Load?

It is also essential that QFs entering into a PGA with the ISO be required to schedule all of their Loads and Generation with the ISO, including behind-the-meter Loads and Generation. The primary rationale for this is that the scheduling of QF Loads and Generation, along with revenue metering and telemetry, on a gross basis allows the ISO to properly allocate to QFs their share of real-time Energy charges and credits. See Tr. (Le Vine) at 323:11-22. During the settlement process, the ISO compares Meter Data from Loads and Generators with the Final Schedules submitted by the Scheduling Coordinator representing those Loads and Generators. The ISO then uses such differences as may exist between the Schedules and Meter Data as the basis measuring performance of Load and Generation and can assign for any real-time credits or charges that apply to these entities causing the needs in real time. ISO Tariff § 11.2.4; ISO Settlement and Billing Protocol, Appendix D; see Tr. (Le Vine) at 323:11-22; Tr. (Deluca) at 367:2-5. Therefore, without Schedules that identify the commitments and Energy requirements of all of a QF's Generating Units and Loads, the ISO will be unable to accurately determine what real-time charges and credits, if any, should be allocated to that QF or its Loads.

WHEREFORE the ISO requests that the Presiding Judge rule that it is just and reasonable for the ISO to require that QFs entering into a PGA with the ISO Schedule their Load and Generation on a "gross" basis.

Issue II.A.5: Is it discriminatory vis-à-vis other customers if the ISO does not permit metering, scheduling, and cost allocation of Ancillary Services on a net basis for QFs.

The ISO Tariff sections regarding metering, scheduling, and cost allocation of Ancillary Services do not distinguish between QFs in general and other Generators. Therefore, these sections are *per se* nondiscriminatory vis-à-vis other customers. The ISO Tariff does include two exceptions for distribution-level Generating Units⁸ that do not participate in the ISO's Ancillary Services or Supplemental Energy markets. Such Generating Units that are under 10 MW are exempt from having to install telemetry and direct control equipment, and those that are under 1 MW are permitted to undertake "net" metering configurations. ISO Tariff §§ 5.1.3-5.1.4. However, because these exceptions operate in favor of certain QFs, they cannot be said to discriminate against them in favor of non-QFs.⁹

WHEREFORE, the ISO requests that the Presiding Judge rule that application of ISO Tariff provisions regarding metering, scheduling, and cost allocation of Ancillary Services on a net basis through the PGA does not discriminate against QFs vis-à-vis other customers.

⁸ A "distribution-level" unit is one that is "directly connected" to the system of a Utility Distribution Company. ISO Tariff § 5.1.4.

⁹ The ISO understands that Edison or CAC may contend that the ISO Tariff discriminates against large QFs in favor of small QFs. The ISO will respond to this assertion if it is raised on brief. It is the ISO's position that such discrimination is not an issue in this proceeding and that the Commission has already approved the ISO Tariff's distinction between large and small QFs.

Issue II.B: Are There Financial and Commercial Implications of the ISO's Proposed Policy That Affect the Justness and Reasonableness of the ISO's Proposed Policy, and, if Yes, What Are Such Effects?

Both CAC and Edison have argued that requiring a QF to sign a *pro forma* PGA as a condition of participating in the ISO's markets will impose excessive and unreasonable costs and charges on QFs. Ex. CAC-2 (Ross) at 16:24-17-23; Ex. SCE-2 (Minick) at 4:14-19. CAC and Edison assert that as a result, QFs will be discouraged from interconnecting or continuing their interconnection with the ISO. Ex. CAC-2 (Ross) at 18:17-23; Ex. SCE-2 (Minick) at 4:19-5:2. To the contrary, however, the costs that would be imposed on QFs are justified and reasonable. To the extent that QFs wish to participate in the ISO's markets, as either suppliers or consumers or both, it would be unfair to allow them the benefits of such participation without requiring them to assume their pro rata share of the costs of those benefits. See Ex. ISO-7A (Le Vine) at 6:13-17, 10:4-14, 15:1-12; Ex. ISO-11A (Deluca) at 16:25-8. The pro forma PGA simply seeks to insure that Generators, including QFs, that wish to participate in or benefit from the ISO's markets comply with the ISO Tariff and Protocols. These in turn ensure that costs are allocated to Scheduling Coordinators pro rata based on benefits received.

With respect to Ancillary Services, because the ISO must procure Operating Reserves based on calculations that include all firm Load, including QF behind-the-meter Loads, and because it is the operation by the ISO of its Ancillary Service markets that provides for reliable service to all firm Load, including QF behind-the-meter Load, it is appropriate that the ISO allocate the

costs of those services in a pro rata fashion to those Loads. As explained above, the ISO does this by assessing Ancillary Services charges to Scheduling Coordinators based on the metered Demand of the Load represented by each Scheduling Coordinator, which would include Scheduling Coordinators representing QF Loads.¹⁰ To do otherwise would unfairly shift costs to other Scheduling Coordinators. Ex. ISO-7A (Le Vine) at 6:13-17.

Significantly, under the ISO Tariff, QFs can avoid costs associated with Ancillary Services that are procured through the ISO's markets by self-providing some or all of their Ancillary Services requirements. . Ex. ISO-11A (Delcua) at 8:16-18; ISO Tariff § 2.5.20.2; *c.f. also* Tr. (Minick) at 443:16-445:5 (witness arguing that self-provision does not allow entities other than QFs to avoid costs). For example, Midway Sunset has a capacity of 265 MW, and an estimated behind-the-meter Load of only 65 MW. Ex. ISO-17 (Schedule 1). By withholding only 6 MW of excess capacity from the market, Midway Sunset could satisfy its Operating Reserve requirements.

In addition, a QF could under certain circumstances self-provide Regulation services. This would require the installation of a Remote Intelligent Gateway, with one-time installation costs in the range of \$38,000 plus \$25,000 to

¹⁰ The ISO does not determine the manner in which the Scheduling Coordinator passes those costs through to its end-use customers. Although the ISO has, in other proceedings, indicated its belief that allocation to end-users should avoid cost-shifting, it is the responsibility of the relevant regulatory body to determine the appropriate allocation method. Ex. ISO-7A (Le Vine) at 6:17-7:5.

\$100,000 for installation.¹¹ Having installed this equipment, a QF could recover these costs through the sale of additional Regulation services in the ISO's markets. See ISO Tariff §§ 2.5.6, 2.5.8, 2.5.14. Because sellers of Regulation can limit the extent to which the ISO can adjust operating levels, QFs can participate in the Regulation market without concern for the impact on behind-the-meter Load or any operational limitations that may need to be addressed due to the host process. See ISO Tariff § 2.5.14.

Regardless of whether a QF self-provides Ancillary Services for its Loads or those Loads purchase them, it would be unjust to excuse Scheduling Coordinators for QFs Loads from responsibility for those costs. As long as the WSCC requires the ISO to maintain Operating Reserves on behalf of QF behind-the-meter Load, and as long as such Load benefits from the Ancillary Services provided through the ISO, those costs should be born by the beneficiaries thereof. See, e.g., *Orange and Rockland Utilities, Inc. v. FERC*, 905 F.2d 425, 428 (D.C. Cir. 1990). (noting the principle that regulators should allocate costs to those who cause them to be incurred).

The metering and telemetry requirements of the Metering Protocols of the ISO Tariff will also impose additional costs on QFs. The Metering Protocols, however, have been accepted by the Commission. Furthermore, the ISO's Meter

¹¹ Tr. (Dozier) at 169:2-8; Ex. SCE-7. QFs would not be required to bear this cost if the QF does not wish to provide Regulation. The ISO has developed a lower-cost alternative for obtaining telemetry known as a Data Processing Gateway, the one-time installation costs of which are estimated to be \$10,000 to \$15,000 for the equipment, plus installation costs in the range of \$20,000 to \$50,000. Tr. (Dozier) at 169:8-14; Ex. SCE-7.

Service Agreement for ISO Metered Entities, which requires compliance with those protocols, was the subject of an Uncontested Settlement, to which CAC was a party.¹² As part of that Settlement, the ISO explicitly agreed to work with CAC in order to bring CAC QF projects into compliance with those requirements while observing certain cost restraints. *Offer of Settlement*, filed in Docket No. ER98-1499 (Sept. 10, 1999) at 1.7. That Settlement also provides that if the parties are unable to reach agreement, that a QF may seek relief from the Commission pursuant to Section 206 of the Federal Power Act. *Id.* In addition, subsequent to the Settlement, the ISO has taken steps to relieve certain small Generators from costs where the ISO concluded that the benefits of telemetering or metering those Generators did not justify the costs. Amendment No. 35 to the ISO Tariff provided that Generating Units under 10 MW are exempt from having to install telemetry and direct control equipment, and those under 1 MW are permitted to undertake “net” metering configurations.

Nonetheless, rather than work through the procedures established by the settlement, CAC in this proceeding attempts to obtain a blanket exemption of QFs from the applicability of the Metering Protocols. CAC has stipulated that it has the burden of proof in challenging the existing Metering Protocols as applied to QFs. *Joint Stipulation of the California Independent System Operator Corporation, the Cogeneration Association of California, and ARCO CQC Kiln and Withdrawal of Motion to Strike by the California Independent System Operator Corporation*, filed in Docket Nos. ER98-997-000, et al. (Dec. 1, 2000) at

¹² The ISO’s Meter Service Agreements were before the Commission in Docket

(3). Neither CAC nor Edison, however, have introduced any evidence in this proceeding that the costs of installing the metering and telemetry required by the ISO Tariff are excessive in the context of any QF's revenues and operating costs, particularly taking into account additional revenues a QF may receive through its expanded ability to participate in the ISO markets after signing a PGA.

The most that CAC has attempted to show is that the ISO, under the ISO Tariff, *could* require the installation of multiple meters at a facility. Tr. (Le Vine) at 261:12-264:12; Tr. (Ross) at 505:12-19. Not only does CAC ignore the avenues open through the settlement agreement, however, but it also ignores the fact that nothing in the ISO Metering Protocols themselves requires the installation of a separate meter on each Generating Unit or generating output. See ISO Metering Protocol. The ISO can, in fact, allow the aggregation of certain portions of a facility, reducing significantly the number of meters. . Tr. (Le Vine) at 261:12-262:16. CAC further ignores the fact that, if a QF wishes to contest the reasonableness of the ISO decision to require additional meters, the ISO Tariff provides for arbitration of the issue. ISO Metering Protocol § 5.1.7; Tr. (Ross) at 506:8-13. In essence, CAC's case boils down to a request that the Presiding Judge conclude (1) in the absence of any information about the costs and revenues of QFs, that the metering costs will be excessive; (2) that the ISO will unreasonably require more meters than are necessary, and (3) that an arbiter or the Commission will uphold the ISO's unreasonable requirements. There is

simply no basis for concluding that the ISO metering and telemetry requirements impose excessive costs.

The two other primary charges that the ISO levies on Market Participants, the transmission Access Charge, and the Grid Management Charge, are before the Commission in Docket No. ER00-2019 and ER01-313 respectively. Ex. ISO-7A (Le Vine) at 13:3-4, 18:2-3; *California Independent System Operator Corp.*, 91 FERC ¶ 61,205 (2000) (accepting the ISO's Access Charge methodology as proposed in Amendment No. 27 for filing, and establishing hearing and settlement judge procedures); *California Independent System Operator Corp.*, 93 FERC ¶ 61,337 (2000) (accepting the ISO's Grid Management Charge methodology for filing, and establishing hearing procedures). Both CAC and Edison are parties to those proceedings, and have raised arguments concerning the justness and reasonableness of those charges as applied to QFs therein. *Id.* These issues concern charges under the ISO Tariff that impact numerous Market Participants, and thus, they are more properly resolved in proceedings concerning the ISO Tariff than in a proceeding concerning an agreement that primarily serves a vehicle to ensure compliance with the ISO Tariff. Ex. ISO-7A (Le Vine) at 4:13-17. Moreover, exemptions from the ISO Tariff provisions in this regard, like most other exemptions that CAC requests, will impose additional costs on other Market Participants. Such exemptions should therefore be considered in proceedings, such as Docket Nos. ER00-2019 and ER01-313, in which the various parties affected by the charges are participating and the Commission can have the benefit of all such viewpoints.

WHEREFORE, the ISO requests that the Presiding Judge rule that there are no financial or commercial implications for QFs that mitigate in favor of a finding that the ISO policies at issue in this proceeding are unjust and/or unreasonable.

Issue III.A: Is the Requirement of the PGA that QFs Abide by ISO Tariff Provisions Governing the ISO's Ability to Dispatch or Curtail Generation Just and Reasonable.

There is nothing in the provisions of the ISO Tariff or Protocols that address dispatch or curtailment of Generation that would unduly harm a QFs ability to provide for its on-site industrial process, while at the same time retaining the option to sell Energy into the market. In its testimony submitted in this proceeding, CAC argues that QFs must be protected from "undue ISO interference" with Energy needed to serve their behind-the-meter Load and steam obligations, and obligations under Power Purchase Agreements ("PPAs"). CAC-1 (Ross) at 9:12-15. CAC suggests that this could be accomplished by modifications to the pro forma PGA that limit the ISO's ability to dispatch and curtail QF Generation. CAC-1 (Ross) at 9:15-10:18; CAC-2 (Ross) at 27:14-21, 29:17-24. CAC's assertions that the ISO can curtail or dispatch QFs in a manner that would unduly interfere their operations are, however, without basis.

CAC acknowledges that the ISO must be able to dispatch Participating Generators, including QFs, in order to address emergency conditions. Tr. (Ross) at 500:18-21. Outside of System Emergencies, however, the ISO can only dispatch or curtail units, including QFs, to the extent that they place bids

allowing for such curtailment. Indeed, this is true for each of the ISO Tariff and Protocol sections cited in CAC's testimony.

Section 5.1.3 of the ISO Tariff allows the ISO, only when it has used Ancillary Services available to it under Ancillary Services bids, to "assume supervisory control over other Generating Units." ISO Tariff § 5.1.3. However, as CAC's witness Mr. Ross admitted at hearing, the ISO would only expect to exercise such authority when "operational circumstances [are] so severe that a real-time system problem or emergency condition could be in existence or imminent." Tr. (Ross) at 500:12-13; ISO Tariff § 5.1.3.

Section 8.1.1 of the ISO's Dispatch Protocol, states that the ISO has the responsibility to dispatch Generating Units in order to "meet real time imbalances between actual and scheduled Demand and Generation and to relieve Congestion, if necessary, to ensure System Reliability and to maintain Applicable Reliability Criteria." ISO Tariff § 8.1.1. In exercising this responsibility, however, the ISO is limited, by Section 8.1.2 of the Dispatch Protocol, to utilizing the merit order stack of available resources that have been bid into the ISO's markets. ISO Dispatch Protocol § 8.1.2; Tr. (Ross) at 501:5-21. The ISO's authority to dispatch resources for balancing purposes, pursuant to Section 8.6 of the Dispatch Protocol, to satisfy reserve requirements pursuant to Section 8.7 of the Dispatch Protocol, and to alleviate congestion pursuant to Section 8.3, is similarly limited to using the merit order stack of available resources that have been bid into

the market to provide such services. ISO Dispatch Protocol at §§ 8.3.2-8.3.3, 8.6.2, 8.7.1-8.7.5; Tr. (Ross) at 501:22-502:16.

Finally, CAC notes concern with respect to Section 8.5 of the Dispatch Protocols, which allows the ISO to reallocate scheduled transmission capacity on a pro-rata basis when there are insufficient bids to alleviate congestion. As Mr. Ross admitted at hearing, a QF that operated to maintain its minimum operating level despite having its schedule cut in such circumstances would not be penalized; in fact, the QF would be paid the Imbalance Energy price for that unscheduled Energy. Tr. (Ross) at 502:25-503:14.

The ISO does recognize that QF cogenerators may have certain specific operating characteristics that must be recognized. The *pro forma* PGA, however, accommodates this concern. A cogenerator, like any other Generator, may identify to the ISO through Schedule 1 of the *pro forma* PGA both a “minimum operating limit” and any operating “limitations” applicable to the Generator. Ex. ISO-5 (Dozier) at 7:9-23; Ex. ISO-6 (Rebuttal Testimony of Michael Dozier) at 8:7-8. This allows the cogenerator to indicate to ISO operating personnel the operating limits on the cogenerator’s ability to deliver power to the ISO. See Ex. ISO-5 (Dozier) at 7:14-16; Ex. ISO-17.

Also, in recognition of the fact that cogenerators and other QFs have pre-existing contractual commitments under PPAs executed prior to the creation of the ISO, the ISO Tariff requires the ISO to honor the terms of those PPAs for “Regulatory Must-Take Generation.” Section 5.1.5 of the ISO Tariff requires the

ISO to honor the terms of those contracts to the extent that the ISO is provided with “protocols or other instructions” that describe the terms of those PPAs as they relate to the technical operating limitations of the QF Generator. ISO Tariff § 5.1.5; Ex. ISO-5 (Dozier) at 7:25-8:2.

Finally, the ISO is obligated to undertake its responsibilities as a Control Area operator in a manner that comports with good utility practice, as that term is commonly understood in the electric industry.¹³ This obligation clearly precludes engaging in behavior that would deleteriously affect the industrial processes of a QF generator that is interconnected with the ISO. Tr. (Dozier) at 195:6-8.

Indeed, in a previous order, the Commission stated that:

We find that the requirement that participants comply with all ISO orders except those that would result in impairment to public health and safety to be reasonable. With regard to intervenor concerns about potential damage to their facilities, we note that the ISO will follow good utility practice, in operating the system and will comply with all NERC, WSCC and other reliability criteria.

Pacific Gas & Electric Corp., et al., 81 FERC ¶ 61,122 at 61,456 (1997).

As indicated, all of these avenues of protection are currently available under the ISO Tariff and current *pro forma* PGA. Therefore, there is no need for additional provisions in a QF-specific PGA to ensure that QF obligations to behind-the-meter loads and existing contractual arrangements are protected from “undue interference” by the ISO.

¹³ ISO Tariff § 2.3.1.1.3(d) The ISO Tariff defines “Good Utility Practice” as “any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been

CAC also proposes to allow QFs to override operating instructions previously submitted to the ISO through a QF's bids and schedules. Ex. CAC-2 (Ross) at 31:11-21. Such a program would be administratively difficult to implement and confusing to the ISO operators. Ex. ISO-6 (Dozier) at 9:8-13. More importantly, CAC does not explain why QFs should be given special treatment in this regard, and without such, the proposal raises serious issues of discrimination with respect to other Generators, and therefore should not be adopted. *Id.* at 9:13-16.

Recent events, however, are relevant to the arguments on these issues. In its recent order on Market Mitigation and Monitoring for the California Wholesale Market, issued on April 26, 2001, 95 FERC ¶ 61, 115, the Commission established a requirement that all non-hydroelectric Generators in the state offer to sell all available capacity to the ISO in real time, and directed the ISO to amend the ISO Tariff in conformity with those orders. The ISO filed such amendments on May 11, 2001. The ISO's transmittal letter is attached as Appendix A. By separate motion, the ISO is requesting that the Presiding Judge take official notice of this filing. The Commission's order, and the tariff revisions, apply only to available capacity; they do not authorize the ISO to dispatch QF capacity that is committed to serving behind-the-meter Load, and thus impose no greater burden on QFs than the ISO's current tariff provisions regarding dispatch.

CAC has filed a request for a stay of the April 26th order with regard to QFs and has requested rehearing of the application of the must-sell requirement

expected to accomplish the desired result at a reasonable cost consistent with

to QFs, which are attached as Appendix B, and are also the subject of the ISO's motion. To the extent that the Commission concludes that CAC's arguments have merit, it will address them in that proceeding. Regardless of the outcome, there is no reason to modify the PGA in a manner that may contravene the Commission rulings on the ISO Tariff amendments.

WHEREFORE, the ISO requests that the Presiding Judge rule that the application to QFs, through the *pro forma* PGA, of the ISO Tariff provisions regarding the ISO's dispatch and curtailment authority, is just and reasonable.

Issue III.B: Is the Application to QFs through the PGA of the ISO Tariff Provisions Regarding Outages Scheduling Just and Reasonable?

In its testimony, CAC indicates concern with a number of the provisions of the ISO's Outage Coordination Protocol ("OCP"), and asserts that QFs must be allowed greater flexibility in the scheduling of Outages in order to take into account a QF's on-site steam obligations, safety and health concerns, and the production schedules of the on-site industrial process. Ex. CAC-1 (Ross) at 5:18-6:13, 11:1-11. Under the current provisions of the OCP, however, CAC's concerns are largely fanciful. None of the OCP provisions cited by CAC in its testimony deny Generators, including QF Generators, substantial flexibility in scheduling Outages.

Section 2.2.1 and 2.2.2 of the OCP require a Generator to provide certain information on an annual and quarterly basis concerning Outages, but do not require that the ISO approve any such Outages, except as discussed further

good business practices, reliability, safety, and expedition. . . ."

below. ISO Tariff §§ 2.2.1, 2.2.2. Indeed, as admitted by CAC's witness at hearing, the *only* provision that requires a Generator to obtain ISO approval prior to taking a maintenance Outage is OCP Section 2.2.3, which provides that the ISO must approve any Outage that is scheduled less than seven days after providing notice to the ISO or any revisions to an Outage date submitted less than seven days prior to the planned Outage date. ISO OCP § 2.2.3; Tr. (Ross) at 492:24-493:22. Moreover, the ISO may only withhold approval for such Outages "for reasons of System Reliability or security." ISO OCP § 2.2.3 Also, as explained in the foregoing discussion concerning Dispatch and curtailment provisions, the ISO is obligated to follow Good Utility Practice and to honor the terms of existing PPAs for which the ISO has received appropriate instructions. These provisions provide QFs with further reassurances that the ISO will not deny requested Outages to the extent that such refusal would result in damage to a QF facility. Because the current ISO Tariff provisions do not impose an unreasonable or unjust burden on QF with regard to Outage coordination, there is no reasons to amend the *pro forma* PGA to exempt QFs from these provision.

Moreover, the Commission's order discussed above has rendered most of CAC's argument regarding the current OCP irrelevant. In the April 26th order, the Commission explicitly recognized the need of the ISO to balance the need for generator flexibility in scheduling outages with the necessity of maintaining System reliability, stating that "it is important for the ISO and generators to work cooperatively to schedule generating unit maintenance and outages in ways that will provide sufficient energy resources when needed while

also providing for reliable plant operation.”¹⁴ To accomplish this objective, the Commission directed the ISO to propose a mechanism for coordination and control of Outages. In compliance with the Commission’s order, the ISO on May 11, 2001, proposed an amendment to the OCP that would provide the ISO with the authority to approve and modify Outage schedules for all Participating Generators. See Appendix A. CAC has submitted comments requesting that the Commission reject the amendments as applied to QFs, as well as a motion to stay the order’s applicability to QFs. In a request for rehearing, CAC also requests that the Commission defer consideration of the applicability of the amendments. See Appendix B. The Commission will address CAC’s concerns when it rules on the ISO’s proposed amendments, and will do so taking into account the Commission’s goals in issuing the April 26th order. Whether the Commission provides exemption for QFs or determines that the Outage schedules of all Participating Generators, including QFs, should be subject to ISO approval and modification, the Commission will resolve this issue. There is therefore no reason to modify the *pro forma* PGA in this regard.

WHEREFORE, the ISO requests that the Presiding Judge rule that the application to QFs, through the *pro forma* PGA, of ISO Tariff provisions regarding outage coordination, is just and reasonable.

Issue III.C: Is the Application to QFs through the PGA of the penalties set forth in the ISO Tariff Just and Reasonable?

CAC argues that a QF should not be subject to any penalties or sanctions for operating at its minimum operating level in cases where the QF’s Final

¹⁴ 95 FERC ¶ 61,115 at 61,355 (2001) (“April 26 Order”).

Schedule requires that it operate below that limit. Ex. CAC-2 (Ross) at 30:1-7. Neither the ISO Tariff nor the *pro forma* PGA provides for penalties for Generators that choose to operate at their minimum operating level. Tr. (Ross) at 503:5-9. The PGA cannot be unilaterally modified by the ISO to impose such penalties. See Ex. ISO-17 at 8, § 10.8. Any amendment to the ISO Tariff to include penalties must be approved by the Commission through a process that allows interested parties, including CAC, full and fair opportunity to intervene and comment. There is no reason to modify the *pro forma* PGA to preclude the Commission from determining that such penalties are just and reasonable.

At hearing, CAC further suggested that QFs should be exempt from “non-punitive” charges such as transmission congestion charges and negative Imbalance Energy prices. Ex. CAC-12 (Rebuttal Testimony of James A. Ross) at 14:20-15:14; Tr. (Ross) at 525:1-13. As in most of its contentions, CAC’s real argument here is with the ISO Tariff, not the *pro forma* PGA. These costs are simply part of the costs of operating in ISO markets, as established in the ISO Tariff and approved by the Commission. CAC has not explained why these otherwise just and reasonable costs are either unjust or unreasonable when applied to QFs as a class, or why exempting QFs as a class from these charges would not be unduly discriminatory.

WHEREFORE, the ISO requests that the Presiding Judge rule that the application to QFs, through the *pro forma* PGA, of relevant penalties set forth in the ISO Tariff, is just and reasonable.

Issue IV.A.1: Is it Just and Reasonable for a QF to Have to Seek FERC Approval and/or ISO Approval to Terminate a PGA?

CAC contends that the *pro forma* PGA should be modified in order to permit a QF to terminate its PGA without seeking prior FERC approval. Ex. CAC-1 (Ross) at 12:3-9. Such a modification would be inappropriate, as the provision in the *pro forma* PGA requiring that the ISO file a notice of termination with the Commission is derived directly from the mandate in the Federal Power Act that FERC approve all changes to jurisdictional contracts, including terminations. Ex. ISO-5 (Dozier) at 14:24-25; Ex. ISO-6 (Dozier) at 11:8-12:4. The Commission addressed this exact issue in an order issued on December 17, 1998, in which it clarified that:

Certain parties raise concerns that the pro forma Agreements would require non-public utilities to file a notice of termination with the Commission. We clarify that non-public utilities would not have to make a filing with the Commission. Only the ISO, as a jurisdictional entity that is party to the agreement, would be required to timely file, under Section 205 of the FPA, a notice of termination with the Commission. The ISO is directed to clarify that it has the responsibility to file a timely notice of termination with the Commission.

Pacific Gas & Electric Co., et al., 81 FERC ¶ 61,320 at 62,473-74 (1998).

Because CAC has provided no justification, either from a legal or policy standpoint, for departing from federal law in this respect, it would be discriminatory to afford QFs such special treatment. Ex. ISO-6 (Dozier) at 12:1-4.

WHEREFORE, the ISO requests that the Presiding Judge rule that it is just and reasonable for the ISO to require that the Commission approve the termination of any PGA entered into by a QF.

Issue IV.A.2. If a requirement for FERC approval is just and reasonable, must the PGA require, in order to be just and reasonable, that the ISO not protest or otherwise object to a QF's request to terminate its PGA in a FERC proceeding related to the termination?

CAC also requests that a provision be included in a QF-specific PGA that prohibits the ISO from protesting or otherwise opposing a QF's request to terminate its PGA before FERC or any other regulatory agency. Ex. CAC-2 (Ross) at 34:1-3. However, CAC has offered no justification for providing QFs as a class with greater rights in this respect than are provided other Generators, or why doing so would not constitute undue discrimination. Such a provision would do nothing to promote the "unique requirements" of QFs, and would therefore unduly discriminate against Generators who are not offered similar guarantees. Ex. ISO-6 (Dozier) at 12:1-4.

WHEREFORE, the ISO requests that the Presiding Judge rule that the PGA is not unjust and unreasonable as applied to QFs because it lacks a provision requiring that the ISO not protest or otherwise object to a QF's request to terminate its PGA in a FERC proceeding related to that termination.

Issue IV.B: Is the Provision of the PGA that States that the ISO Tariff Will Control in the Case of Conflict Between the ISO Tariff and the PGAs Just and Reasonable as Applied to QFs?

See discussion of Issue IV.C below.

Issue IV.C: Is it Just and Reasonable for the ISO to Have the Unilateral Ability to Amend the ISO Tariff Requirements that are Incorporated into the PGA by Amending the ISO Tariff Pursuant to its Section 205 Rights under the FPA?

Issues IV.B and IV.C are integrally related. CAC argues that if the provisions of the ISO Tariff control in the case of conflict between the PGA and the ISO Tariff, then the ISO will be able to modify the terms and conditions that are applicable to QFs participating in the ISO's markets by exercising its right to file amendments to the ISO Tariff under Section 205 of the FPA. Ex. CAC-1 (Ross) at 11:18-12:2. In this regard, CAC is correct. Where CAC errs is in its conclusion that such a circumstance is unjust or unreasonable. Significantly, no other party shares CAC's position. Ex. ISO-5 (Dozier) at 11:20-12:32; ISO-6 (Dozier) at 13:7-14:11; Ex. SCE-1 (Shockey) at 19:6-9. This may be because a contractual requirement that the PGA – to the extent it includes provisions other than requiring compliance with the ISO Tariff – prevails over the ISO Tariff would significantly interfere with the ability of the ISO, California, and the Commission to address changing circumstances in the California electricity markets. Ex. ISO-5 (Dozier) at 12:12-32.

The Commission has described in recent orders the many changes that the California electricity markets have undergone since restructuring, and the current crisis that prevails in those markets. *See, e.g., San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 93 FERC ¶ 61,121 (2000); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 93 FERC ¶ 61,294 (2000); April 26 Order. The circumstances demand continued efforts to develop better mechanisms to ensure an adequate and reliable supply of reasonably priced Energy for Californians.

CAC's proposal would effectively tie the ISO's and Commissions' hands with regard to issues concerning an entire segment of the California markets. For example, the Commission has recently concluded that the ISO must have a greater ability to coordinate Outages, 95 FERC at 61,355. and the ISO has proposed amendments to the ISO Tariff to implement the Commission's directives, see Appendix A. Further, the ability of the Commission to modify the PGAs as necessary to implement its plans would be severely limited. See United Gas Pipeline Co v. Mobile Gas Serv. Co., 350 e.g., 332 (1956); FPC v. Sierra-Pacific Power Co., 350 U.S. 348 (1956).

CAC offers no valid justification for excusing QFs from the obligations imposed upon other California Generators. It argues that cogenerators are not primarily in the business of selling power, but rather of serving their thermal host. Ex. CAC-1 (Ross) at 4:22-5:4; Ex. CAC-2 (Ross) at 4:21-5:1. This assertion strains credulity with a facility such as Midway Sunset, with 265 MW of capacity, only a small portion of which serves behind-the-meter Load. See ISO-Ex. 17 (Schedule 1) Even to the extent that the assertion is true, however, it does not explain why a QF that chooses to sell Energy for profit, and which already enjoys special privileges – such as a requirement that local utilities purchase the Energy – should not otherwise play by the rules.

To the extent that QFs believe that a proposed amendment to the ISO Tariff should not be applicable to QFs, they are free to protest the amendment. 16 U.S.C. § 824d. That way the Commission can determine whether the arguments are valid. Instead, CAC would deny the Commission that opportunity

– setting in stone the provisions applicable to QFs, regardless of changed circumstances. CAC argues this is necessary because QFs lack the resources to monitor amendments to the ISO Tariff. Tr. (Ross) at 523:15-21. However, the very existence of CAC and its participation in this proceeding, and numerous other proceedings before the Commission, belies this claim. CAC is an organization of QFs, at least some of whom are owned by parent corporations such as Texaco and ARCO. . Ex. CAC-1 (Ross) at 1:20-26. The purpose of organizations such as CAC is so that entities can pool their resources in order to monitor regulatory developments and participate in litigation. The burden placed on QFs in this regard is no greater than that placed on other businesses of similar size, none of whom enjoy special exemptions from the cost responsibilities imposed by the ISO Tariff. There is no reason to treat QFs differently in this regard than other Market Participants.

WHEREFORE, the ISO requests that the Presiding Judge find that it is just and reasonable for the provisions of the ISO Tariff to prevail over the PGA in the case of conflict, and for the ISO to retain the ability to modify such provisions of the ISO Tariff pursuant to section 205 of the FPA.

Issue IV.D: Is a PGA just and reasonable in the absence of a provision that nothing in the PGA or the ISO Tariff be construed as a waiver of any rights of QFs under federal or state law or a waiver of any rights under existing power purchase agreements such that the ISO must continue to honor existing power purchase agreements?

The ISO is a corporation under the laws of the State of California. As such, it is required to abide by federal and state law, and no provision in the PGA is necessary to impose that responsibility. In addition, under section 5.1.5 of the

ISO Tariff, the ISO is obligated to respect contractual rights and final regulatory treatment regarding QFs that are under existing power purchase agreements. ISO Tariff § 5.1.5. Therefore, no special provision in the PGA is necessary to that effect, either.

Nonetheless, if CAC believes that a QF, by signing a PGA and agreeing to abide by the terms of the ISO Tariff, is waiving some pre-existing right, or if CAC is seeking a requirement that the ISO honor some right of a QF that the ISO is not otherwise obligated to honor, it is incumbent upon CAC to identify such rights. . Ex. ISO-5 (Dozier) at 7:25-8:16. Significant Commission and participant resources have been expended in settlement discussions and litigation of this case. It would be a waste of these resources to add to the *pro forma* PGA a provision that CAC might then use in the future raise additional issues based on federal or state law which it could have, but neglected to raise, at this time. The *pro forma* PGA cannot be deemed unreasonable because it might interfere with some hypothetical right. Moreover, the ISO cannot reasonably, through the PGA, assume new responsibilities of which it is unaware. As discussed above, to the extent a QF has special rights and obligations that it believes the ISO should accommodate, it may include such rights and obligations in Schedule 1 of the PGA.

WHEREFORE, the ISO requests that the Presiding Judge find that a PGA is just and reasonable in the absence of a provision that nothing in the PGA or the ISO Tariff be construed as a waiver of any rights of QFs under federal or

state law or a waiver of any rights under existing power purchase agreements such that the ISO must continue to honor existing power purchase agreements.

III. CONCLUSION

WHEREFORE, the California ISO requests that the Presiding Judge rule on the issues in this proceeding in accordance with the discussion above.

Respectfully submitted,

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Dated: May 30, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the restricted service list compiled by the Presiding Administrative Law Judge in the above-captioned proceeding.

Dated at Washington, D.C. this 30th day of May, 2001.

Michael Kunselman