

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

California Independent System Operator Corporation	) ) )	Docket No. ER01-313-009
Pacific Gas and Electric Company	) )	Docket No. ER01-424-009

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

**I. INTRODUCTION AND SUMMARY**

As directed by Opinion No. 463-B, the Commission’s Order Denying Rehearing and Affirming in Part and Reversing in Part Initial Decision, dated November 7, 2005,<sup>1</sup> the California Independent System Operator Corporation (“ISO”) submitted a compliance filing to the Commission on February 8, 2007 in the above-captioned dockets. These consolidated dockets concern the Grid Management Charges (“GMC”) collected by the ISO during the period between January 1, 2001 and December 31, 2003.

In Opinion No. 463-A, the Commission held that Scheduling Coordinators whose load in the ISO’s Control Area is served in whole or in part by energy produced by generators that were included in the base cases used by the ISO for transmission planning and operating studies between 2001 and 2003 would be subject to the control area services (“CAS”) component of the GMC.<sup>2</sup> In Opinion No. 463-B, the Commission reaffirmed this standard and directed the ISO to submit a corrected list of such

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<sup>1</sup> *Calif. Indep. Sys. Operator Corp.*, Opinion No. 463-B, 113 FERC ¶ 61,135 (2005).

<sup>2</sup> *Calif. Indep. Sys. Operator Corp.*, Opinion No. 463-A, 106 FERC ¶ 61,032 at P 20 (2004).

generators.<sup>3</sup> On February 8, 2007, the ISO submitted a corrected compliance filing to the Commission containing an amended list of generators included in the base cases used by the ISO for transmission planning and operating studies between 2001 and 2003, as called for by Opinion No. 463-B (the “February 8 Compliance Filing”).

Through its protest, Santa Clara is seeking to relitigate the standard for application of the CAS charge, which was decided in Opinion No. 463-A and confirmed in Opinion No 463-B, requesting that the Commission reject the ISO’s compliance filing because its acceptance would subject them to CAS charges that they deem inappropriate. While Santa Clara cloaks its attack on the standard for application of CAS charges by questioning the process by which the ISO developed the amended list, the Commission should treat Santa Clara’s motion for what it is: a thinly veiled attempt to relitigate issues that have been decided by the Commission twice before, in Opinion No. 463-B and its subsequent Order Denying Rehearing.<sup>4</sup> Its protest, therefore, is without merit and the Commission should deny it.

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

Even a cursory examination of Santa Clara’s protest reveals that it requests affirmative relief. Its filing requests that the Commission reject the ISO’s compliance filing<sup>5</sup> and seeks to relitigate the inclusion of specified generators on the list of generators that were incorporated into the models used by the ISO for planning and operations

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<sup>3</sup> Opinion No. 463-B at PP 79 - 81.

<sup>4</sup> *California Independent System Operator Corp.*, Opinion No. 463-C, 116 FERC ¶ 61,224 at PP 26, 31-33, 36 (2006).

<sup>5</sup> Santa Clara Protest at 6, 9.

purposes.<sup>6</sup> Thus, though entitled “Protest,” the filing is in substance a motion to reject the February 8 Compliance Filing. The ISO is entitled to respond to Santa Clara’s request for relief under Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, regardless of the caption applied to it.

In the event that the Commission does not view the protest as in substance a motion to reject the filing, pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO hereby requests waiver of Rule 213 to permit it to file this answer and files this answer. Good cause for a waiver exists because this answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case.<sup>7</sup>

### **III. ANSWER**

#### **A. The ISO Compliance Filing Meets the Requirements of Commission Opinion No. 463-B**

Santa Clara argues that the ISO’s compliance filing is deficient because it provides too little data to the Commission and intervenors, is not supported by testimony or an explanation regarding the development of the compliance filing, does not explain the criteria for inclusion or exclusion from the list, does not clearly demonstrate that the PTOs vetted the list or how the ISO communicated with the PTOs and confirmed the

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<sup>6</sup> *Id.* at 4 - 6.

<sup>7</sup> *See, e.g., Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251 at 61,886 (2002); and *Delmarva Power & Light Company*, 93 FERC ¶ 61,098 at 61,259 (2000).

accuracy of their review, does not explain how the first list was in error.<sup>8</sup> Santa Clara requests that the Commission:

find the February 2007 Compliance Filing to be deficient . . . and require the CAISO to submit a further revised compliance filing which explains and justifies the changes made which resulted in the currently-proposed Second Revised Exh. ISO-55 and which established by testimony or some other proof or data that the currently proposed [list] accurately identifies the generators which should be reflected in Exh. ISO-55.<sup>9</sup>

Santa Clara's arguments are without merit. The ISO was not required in its compliance filing to justify the standard for application of the CAS that the Commission approved in Opinion No. 463-A. Rather, it was required only to comply with the Commission's directive in Opinion No. 463-B.<sup>10</sup> The ISO's February 8 Compliance Filing did so.

In Opinion 463-B, the Commission concluded that "the concerns some parties raise[d] about the accuracy of Exh. ISO-55 [were] well-founded,"<sup>11</sup> and "reverse[d] the judge's finding that Exh. ISO-55 was sufficiently accurate in and of itself to provide the basis for the CAGL [control area gross load] exemption."<sup>12</sup> The Commission then "direct[ed] the ISO, in cooperation with the Participating Transmission Owners, to correct the deficiencies of Exh. ISO-55 and make a compliance filing reflecting the total

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<sup>8</sup> Santa Clara Protest at 4 - 6.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *See, e.g., Xcel Energy Services Inc., et al.*, 117 FERC ¶ 61,180 at P 37 (2006) ("The only issue in a compliance filing proceeding is whether the company has complied with the directives of the Commission's prior order."); *Union Light, Heat and Power Co.*, 111 FERC ¶ 61,341 at P 11 (2005) and *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,336 at P 5 (2004).

<sup>11</sup> Opinion 463-B at P 80.

<sup>12</sup> *Id.* at P 81.

universe of modeled generation for the locked-in period.”<sup>13</sup> That is exactly what the ISO did in the compliance filing.

Applying the criteria for inclusion on the list that the Commission itself confirmed in Opinion No. 463-B -- “generators [that] were included in the models which the ISO examine[d] and on which it base[d] its studies”<sup>14</sup> – the ISO developed the amended list based on the same process that it described in Exh. S-81, which “described in detail how the list of generating units was compiled.”<sup>15</sup> Though the ISO must rely on the PTO’s review of the list to ensure its accuracy because the list essentially a compilation of the lists of generators that the PTOs include in their own base cases, any Scheduling Coordinator that believes its generators were mistakenly included on the list may bring that possible error to the Commission’s attention (as Santa Clara itself has done at least three times), thus providing a process to ensure the accuracy of the list. Finally, as Santa Clara itself noted, the ISO provided a blacklined version of the list of generators which identified each difference between the original Exh. ISO-55, which the Commission directed the ISO to correct, and the amended list, and provided a reason for each change.

It is therefore clear that Santa Clara’s real complaint does not concern the accuracy or adequacy of the February 8 Compliance Filing, but goes to the standard for application of the CAS that was adopted in Opinion No. 463-A. Santa Clara’s arguments

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<sup>13</sup> *Id.* at P 81.

<sup>14</sup> *Id.* at P 75.

<sup>15</sup> *Id.* at P 80.

go well beyond the only relevant issue at this stage of these proceedings: whether the February 8 Compliance Filing was consistent with the Commission's orders.<sup>16</sup> It was.

**B. The Commission Should Reject Santa Clara's Arguments that Loads Served by Specified Generators Should Not Be Subject to the CAS Component of the GMC and Should Not Be on the List of Generators Incorporated Into Models Used by the ISO**

In its protest, Santa Clara also seeks to relitigate issues that the Commission has resolved in this proceeding. Santa Clara asserts that the ISO's list erroneously includes certain generators that were not modeled by the ISO. It argues that its four generators should be exempt from the charge because: 1) the ISO acknowledged that Santa Clara's generators were "behind-the-meter," 2) the Commission found that the evidence in this proceeding supports an exemption from the GMC for behind-the-meter generation that the ISO does not model, and 3) Santa Clara's four generators were not included in any ISO transmission and planning studies and were therefore not modeled by the ISO.<sup>17</sup>

Once again, Santa Clara's arguments go well beyond the only relevant issue at this stage of these proceedings: the consistency of the February 8 Compliance Filing with the Commission's orders.<sup>18</sup> Instead, Santa Clara's protest seeks to challenge the Commission's conclusion that loads served by generators modeled either by the ISO or by a PTO in a model provided to the ISO are properly charged a CAS charge. In Opinion No. 463-B, the Commission considered the very arguments raised by Santa Clara in its

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<sup>16</sup> See, e.g., *California Independent System Operator Corp.*, Order on Rehearing and Compliance Filing, 111 FERC ¶ 61,074 at P 31 (2005); *California Independent System Operator Corp.*, Order on Rehearing and Clarification and Compliance Filing, 110 FERC ¶ 61,071 at P 19 (2005).

<sup>17</sup> See Santa Clara Protest at 6 - 9.

<sup>18</sup> See, e.g., *California Independent System Operator Corp.*, Order on Rehearing and Compliance Filing, 111 FERC ¶ 61,074 at P 31 (2005); *California Independent System Operator Corp.*, Order on Rehearing and Clarification and Compliance Filing, 110 FERC ¶ 61,071 at P 19 (2005).

latest protest and explicitly found that “the ISO, using models provided by the Participating Transmission Owners, conducted studies concerning transmission planning and operation during the locked-in period,” that “the generating units included in these studies were modeled by the ISO during the locked-in period,” and that loads served by such generators were appropriately assessed the CAS under the standard articulated in Opinion No. 463-A.<sup>19</sup> The Commission reaffirmed this conclusion in Opinion No. 463-C.<sup>20</sup> Thus, for the limited purpose of determining which loads are subject to the CAS component of the GMC, a generator was considered modeled by the ISO if it was included in models prepared by the PTOs and given to the ISO so that the ISO could use models to conduct transmission and planning studies. The Commission specifically rejected the contention that “because the ISO does not actually construct the base-case models, but rather employs for its studies those assembled by the Participating Transmission Owners, it does not ‘model’ generation,”<sup>21</sup> affirming the Initial Decision’s recognition “that ‘the relevant factor’ was ‘*whether* a particular Generating Unit was modeled, and not *who* modeled the Generating Unit in question.”<sup>22</sup>

Santa Clara’s disagreement with these rulings provides no valid basis for the rejection of the ISO’s compliance filing implementing them.<sup>23</sup> The Commission should accordingly deny its protest and accept the ISO’s February 8 Compliance Filing.

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<sup>19</sup> Opinion No. 463-B at P 61.

<sup>20</sup> Opinion No. 463-C at P 26.

<sup>21</sup> *Id.* at P 74.

<sup>22</sup> *Id.* (emphasis in original).

<sup>23</sup> *See, e.g., California Independent System Operator Corp.*, Order on Rehearing and Compliance Filing, 111 FERC ¶ 61,074 at P 31 (2005); *California Independent System Operator Corp.*, Order on Rehearing and Clarification and Compliance Filing, 110 FERC ¶ 61,071 at P 19 (2005).

**IV. CONCLUSION**

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission reject Santa Clara's protest and accept the ISO's February 8 Compliance Filing.

Respectfully submitted,

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Dated: March 16, 2007



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California, on this 16<sup>th</sup> of March, 2007.

/s/ Judith Sanders  
Judith Sanders