UNITED STATES OF AMERICA

BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Corporation	))	Docket No. ER01-313-003;
Pacific Gas and Electric Company	)	Docket No. ER01-424-003;
San Diego Gas & Electric Company v. California Independent System Operator Corporation,	)))	Docket No. EL03-131-000

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

I. INTRODUCTION AND SUMMARY

On November 1, 2000, the California Independent System Operator Corporation ("ISO") filed at the Commission a revised Grid Management Charge ("GMC") for 2001 (the "2001 Rate Case"). The GMC is the rate through which the ISO recovers its administrative and operating costs, including the costs incurred in establishing the ISO prior to the commencement of operations. The 2001 Rate Case unbundled the GMC to allocate costs fairly among the ISO system users and minimize cost subsidization among market participants. The 2001 Rate Case proceeded to hearing resulting in an Initial Decision that was followed by several requests for re-hearing and the recent issuance by the Commission of its *Order on Rehearing and Clarification and Dismissing Complaint*, 106 FERC ¶ 61,032 (2004)("Opinion No. 463-A" or "Order on Rehearing"). The ISO submitted to the Commission a refund plan in compliance with Opinion No. 463-A on February 23, 2004. The ISO currently is in the process of calculating the revised customer bills in a manner consistent with that refund plan and the policy established by the

Commission in *Opinion No. 463-A*. Several parties have protested the manner in which the ISO is implementing the Commission's policy, and through this Answer, the ISO responds that most of the issues raised in the Protests are misplaced, and requests Commission guidance regarding one issue with respect to which the Commission's Orders were ambiguous.

II. MOTION FOR LEAVE TO ANSWER PROTESTS

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 leave to file an answer, and files this answer, to the protests submitted in this proceeding. The ISO requests waiver of Rule 213 (18 C.F.R § 385.213) to permit it to make this answer. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. *See, e.g.*, Entergy Services, Inc., 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251 at 61,886 (2002); and *Delmarva Power & Light Company*, 93 FERC ¶ 61,098 at 61,259 (2000).

III. ANSWER

A. The Modesto Irrigation District and the Cogeneration Association of California and the Energy Producers and Users Coalition's Protests Are More Appropriately Addressed in Requests for Rehearing of the Commission's Order Than in a Protest of the ISO's Implementation of That Order

Though the Modesto Irrigation District ("MID") purportedly protested the ISO's implementation of Opinion No. 463-A, a careful examination of its protests reveals that it actually is a thinly disguised attack on the substance of that order. As such, their comments are more appropriately addressed in the parties' Request for Rehearing of the Commission's Order

on Rehearing and not an appropriate protest of the manner in which the ISO is implementing the Order on Rehearing.

MID's protest asserts that the ISO's process of identifying the load served by generation that was modeled by the ISO is inconsistent with the "behind-the-meter rate treatment set forth in Opinion No. 463." In fact, the ISO's calculation of GMC rates for behind-the-meter generation is governed by the Commission's decision set forth in the Commission's subsequent *Opinion No. 463-A*, which states that "that generators which are not modeled by the ISO in its regular performance of transmission planning and operation should be exempted from the CAGL charge." MID clearly believes that the bright line policy that the Commission established in its Order on Rehearing to effectuate its intent that generation that does not impose burdens on the ISO not be subject to the GMC was poorly drawn. That concern, however, expresses a disagreement with the Commission's policy and not the manner in which the ISO is implementing it.

MID then cites the manner in which the ISO is complying with the Commission's Order on Rehearing as evidence that the ISO is not "even considering an evaluation of the generators owned and controlled by non-PTOs such as MID to find that they would be eligible for the behind-the-meter rate treatment set forth in Opinion No. 463." Once again, MID is actually complaining that the manner in which the ISO is complying with Commission's directive in Opinion No. 463-A is not consistent with the Commission's intent in Opinion No. 463, even though the subsequently issued Opinion No. 463-A represents the Commission's final word on the matter.

The Cogeneration Association of California and the Energy Producers and Users Coalition's ("CAC/EPUC's) protest acknowledges that CAC/EPUC is in fact protesting the

policy established in Opinion No. 463-A and not the manner in which the ISO is implementing the Commission's directions. CAC/EPUC states that the ISO's "time consuming and arcane process for identifying load which may qualify for the exemption contained in Paragraph 20 of Opinion No. 463-A demonstrates the flaws that are inherent in the criterion for the exemption," and that in order to meet the Commission's objective of reflecting "the usage of the grid and the benefits received in cost allocation . . . cost causation principles require that all loads be allocated costs based on actual withdrawals of energy from the grid." CAC/EPUC's criticism of the criteria for the exemption established in Opinion No. 463-A and its assertion that the Commission's policy is not consistent with cost causation principles, as it notes, are really criticisms of the policy established by the Commission, and therefore are more appropriately addressed in the CAC/EPUC's Request for Rehearing.

B. The Sacramento Municipal Utility District's Contention That its Generators Are Not Modeled By the ISO Is Unsupported and its Assertion that Imposition of CAS Charges Based on Control Area Gross Load Violates ISO Commitment Is Misplaced

In its protest, the Sacramento Municipal Utility District ("SMUD") seeks confirmation from the Commission that "SMUD's generation and that of Western delivered over Western's lines to serve SMUD bubble native load is, in fact, not modeled by the ISO in its regular transmission planning and operation," and that much of the SMUD bubble's native load should, therefore, "be exempted from CAGL-based CAS charges . . . because they do not cause the ISO to incur any expenses in regularly-performed modeling for its transmission planning and operations functions." The Commission, however, does not have evidence before it, and SMUD offers no such evidence, to determine whether the ISO modeled any of SMUD's generation facilities during the period for which the 2001 GMC was applicable. Such a conclusion may be reached only after an examination of the records of the ISO's plans and models, an examination

that the ISO is conducting in order to comply with the Commission's policy. Accordingly, SMUD's request that the Commission simply conclude that the ISO never modeled SMUD's generators, without examining any evidence, is misplaced.

SMUD also asserts that any policy that allows imposition of the GMC on SMUD's behind-the-meter generation would contradict what SMUD describes as previous ISO assurances to SMUD that "SMUD was *never* to be assessed GMC on the basis of CAGL." (Emphasis in original.) In fact, the ISO has provided no such assurance to SMUD or to any other Scheduling Coordinator and the document SMUD cites for its assertion does not support it.

SMUD cites a letter from the ISO to SMUD dated December 31, 1997, in which the ISO, describing the initial GMC, indicated that SMUD would not be charged GMC on the basis of power delivered to end-users, but instead on the basis of power delivered to SMUD by the ISO. This letter was simply a description of the manner in which the initial GMC charge would apply to SMUD pursuant to the ISO's initial tariff. Nowhere in the letter did the ISO either state or imply that it would never amend its tariff to modify the application of the GMC. In fact, as the Commission is aware, the ISO has, in fact, modified the application of the GMC several times since this letter was sent, each time with the express approval of the Commission through a process in which SMUD has been free to participate. Accordingly, imposition of the GMC on load served by SMUD's behind-the-meter generation in accordance with Opinion No. 463-A does not violate of any commitment made by the ISO to SMUD.

C. Southern California Edison's Protest Identifies Ambiguity in the Commission's Order That the Commission Should Clarify Prior to the ISO Recalculating Bills As Ordered By the Commission

Southern California Edison's ("SCE") protest challenges the ISO's failure to refund to SCE charges imposed on the Mohave Participants' exports ("MPE"), which SCE believes was

ordered by the Commission. The ISO agrees with SCE that the issue of whether to refund charges levied on the Mohave Participants was addressed by the ALJ in her initial decision in the docket (in a portion that the Commission affirmed without discussion in Opinion No. 463), but the ISO disagrees that the ALJ's ruling clearly entitled SCE to the refunds it seeks. In the Initial Decision, the ALJ found that the ISO had given SDG&E an exemption from the CAS charge on Southwest Power Link ("SWPL") for 2001 and that "SWPL and MPE are similarly situated for purposes of allocation of the CAS charge." *California Independent System Operator Corporation: Initial Decision***,** 99 FERC ¶ 63,020 at 65,135 (2002) ("Initial Decision"). The ALJ then stated, however, that "this ruling should be prospective only, *i.e.*, applied in 2002 and forward, as to MPE." *Id*. The express ruling of the Initial Decision, therefore, was that SWPL and Mohave should be treated similarly, but only from 2002 forward. Because SWPL received an exemption from the GMC in 2001, and similar treatment was not required by the Initial Decision until 2002, by which time the ISO had ceased the CAS exemption for SWPL, Mohave was not entitled to a refund for the GMC charges is paid in 2001.

SCE interprets the Initial Decision's ruling to provide that SWPL and Mohave both should be charged the GMC, but that the application of that charge to both parties is what should be delayed until 2002. If this interpretation were accepted, it would therefore require that the ISO refund the SCE the GMC charges associated with Mohave exports.

The ISO does not believe that SCE's interpretation is correct, but it acknowledges that language of the Initial Decision is somewhat ambiguous. Accordingly, the ISO respectfully requests that the Commission indicate to the parties which interpretation is correct so that the ISO will know whether to include a refund to SCE for the CAS associated with Mohave exports in its refund calculation.

D. San Diego Gas & Electric Company's Protest Reinterprets the Commission's Order Representing An Expansion of the Issue That Is Without Foundation In the Record

San Diego Gas & Electric Company (SDG&E) has consistently argued throughout this proceeding that it was inappropriate for the ISO to pass on any GMC charges to SDG&E for schedules that SDG&E submits on behalf of the Arizona Public Service (APS) and Imperial Irrigation District (IID) as co-owners of the Southwest Power Link (SWPL). Separately, SDG&E argued that it was entitled to specific relief, via the Commission, from parts of the GMC on the basis of an arrangement between the ISO and SDG&E regarding "self-provision of Imbalance Energy."

On the matter of the general applicability of GMC charges to SDG&E schedules submitted on behalf of APS & IID, the Commission has spoken loud and clear, time and again, such charges are appropriate. On the more specific claim of SDG&E to be exempt from the then Market Operations charge (MO) for the administrative costs of providing Imbalance Energy for losses associated with SWPL Energy, the Presiding Judge found such charges to be reasonable, *Initial Decision* at 65,136, and the Commission summarily affirmed the Initial Decision on that matter. *Order No. 463-A*, at P 63.

The remaining matter still outstanding, in terms of the Commission's Order in Opinion No. 463-A, pertained, therefore, to the details of the arrangement between the ISO and SDG&E to account for "self-provided Imbalance Energy." That arrangement was properly described by the Commission in Opinion No. 463-A in the following terms:

> Through the load accommodation, the ISO allows SDG&E to schedule additional load to match the generation for the SWPL schedules. The additional load and accompanying generation serve *to offset actual line losses* by allowing SDG&E to accurately estimate and self-provide the imbalance energy necessary to cover *the line losses.*

Order No. 463-A, at P 62 (Emphasis added).

The view of this arrangement now advanced by SDG&E in their protest, that the Commission required the ISO to refund the difference between net and gross MO charges on all "purchases and sales arising out of energy scheduled by APS or IID on their respective shares of SWPL," is unsupported by the record. The ISO-SDG&E arrangement referred to SDG&E efforts to minimize SDG&E exposure to the Imbalance Energy market as a result of *line losses*, nothing more. SDG&E now seeks to include the operational adjustments that its co-ownership relationship with APS & IID make it subject to, and pass the cost of such adjustments on to, the rest of the market. That would be an unwarranted and unsupported expansion of the original SDG&E argument as well as Commission direction on this matter. The fact that APS and IID may additionally, by virtue of arrangements they may have with SDG&E, require Imbalance Energy (and incur Imbalance Energy MO charges) because of changes in real time schedules they pass to SDG&E does not qualify such Imbalance Energy as "line losses," and such actions were never contemplated at the time SDG&E sought and reached the load accommodation agreement with the ISO.

IV. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission: 1) provide guidance regarding the application of the GMC to service provided over the Mohave line, and 2) otherwise, accept the ISO's February 23, 2004 refund plan as submitted to the Commission.

Respectfully submitted,

/s/ Charles F. Robinson
Charles F. Robinson
General Counsel
Anthony J. Ivancovich
Senior Regulatory Counsel
Stephen A. S. Morrison
Corporate Counsel
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7049
Fax: (916) 608-7296

/s/ Ronald E. Minsk
Kenneth G. Jaffe
Michael E. Ward
Ronald E. Minsk
Swidler Berlin Shereff Friedman, LLP
3000 K Street, Suite 300
Washington, DC 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Date: March 30, 2004

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 30th of March, 2004.

/s/ *Stephen A.S. Morrison*
Stephen A.S. Morrison