

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

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

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

I. INTRODUCTION AND SUMMARY

In accordance with Opinion No. 463-B, the Commission’s Order Denying Rehearing and Affirming in Part and Reversing in Part Initial Decision, dated November 7, 2005, the California Independent System Operator Corporation (“ISO”) submitted a compliance filing to the Commission on October 23, 2006 in the above-captioned dockets.¹ 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-B, the Commission directed the ISO to submit a corrected list of generators that were incorporated into the base cases used by the ISO for transmission planning and operations studies between 2001 and 2003.² Pursuant to a series of orders in this proceeding, Scheduling Coordinators whose load in the ISO’s Control Area is served in part by generators on the list would be subject to the control area services (“CAS”) component of the GMC while Scheduling Coordinators whose load is served

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

² *Id.* at PP 80-81.

entirely by generators not on the list would be exempt from the charge. After examining the evidence produced in the 2005 hearing in this proceeding, the Commission concluded that the list was not sufficiently accurate to provide the basis for excluding some generators from the CAS charge and directed the ISO to review it and correct it as necessary.³ The October 23, 2006 compliance filing contained an amended list as called for by Opinion No. 463-B (the “October 23 Compliance Filing”).

On November 13, 2006, the Modesto Irrigation District (“MID”), the Sacramento Municipal Utility District (“SMUD”) and the City of Santa Clara (“Santa Clara”) filed protests of the compliance filing at the Commission. MID’s protest identified an error in the list that the ISO is correcting and which will be addressed in a forthcoming amended compliance filing. The Commission should refrain from acting on MID’s protest until the ISO submits a corrected compliance filing.

SMUD and Santa Clara effectively sought to relitigate application of the CAS charge once again, requesting that the Commission reject the ISO’s compliance filing because its acceptance would subject them to CAS charges that they deem inappropriate, even though they do not contend that the generators that serve their loads do not belong on the amended list. The Commission, however, has addressed conclusively the issues raised by SMUD and Santa Clara twice before, in Opinion No. 463-B and its subsequent Order Denying Rehearing.⁴ Their protests, therefore, are without merit and the Commission should deny them.

³ *Id.*

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

II. MOTION FOR LEAVE TO ANSWER PROTESTS

A cursory examination of MID's, SMUD's and Santa Clara's Protests reveals that each requests affirmative relief. Each filing requests that the Commission reject the ISO's compliance filing⁵ and SMUD's and Santa Clara's filings seek 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 purposes.⁶ Thus, though entitled "Protests," the filings are in substance motions to reject the October 23 Compliance Filing. The ISO is entitled to respond to these requests for relief under Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, regardless of the captions applied to them.

In the event that the Commission does not view the three protests as in substance motions 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.⁷

⁵ See MID Protest at P 6; SMUD Protest at p. 1; Santa Clara Protest at P 9.

⁶ See SMUD Protest at pp. 2-3; Santa Clara Protest at P 10-12.

⁷ 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 ISO Will Correct Errors Identified by MID in an Amended Compliance Filing, Which Will Include an Accurate List of Generators That Were Included in Models Used by the ISO and an Explanation of Differences Between the Original and Amended Lists**

MID and Santa Clara argue that the ISO's compliance filing did not explain the changes that the ISO made to the original Exhibit ISO-55, which the compliance filing was intended to correct, and that they therefore cannot determine if the amended list addressed the deficiencies in the original list.⁸ Upon review of MID's argument that the list submitted by the ISO mistakenly included and excluded certain generators, the ISO conducted a further review of the revised list and realized that it indeed did contain errors. The ISO is revising the list of generators to correct the errors that it identified and is confirming the accuracy of the list with the PTOs. The ISO will submit a corrected list as an amended compliance filing, together with an explanation of the changes made from the original exhibit, once this process is complete.⁹

B. **The Commission Should Reject SMUD's and 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 their protests, SMUD and Santa Clara seek to relitigate issues that the Commission has resolved in this proceeding. SMUD and Santa Clara both assert that the ISO's list erroneously includes certain generators that were not modeled by the ISO.

SMUD argues that because 1) the behind-the-meter generation and power that it received

⁸ See MID Protest at PP 4-6; Santa Clara Protest at PP 2, 4-5.

⁹ The ISO notes that although Santa Clara explained that it had to "unleash[] . . . paralegals to ferret out the differences between the two exhibits," Santa Clara Protest at P 2, it fails to note that, in response to a request from Santa Clara's counsel, the ISO provided him with a blacklined list that identified the differences between the two lists on Tuesday, October 31, 2006.

from the Western Area Power Administration (“WAPA”) was either located behind SMUD’s meters with the ISO Controlled Grid or deemed delivered to the SMUD bubble; and 2) SMUD’s native load is served by its behind-the-meter generation and power that WAPA delivered to the SMUD bubble over Western’s lines, “[t]his generation was not explicitly modeled by the CAISO, and merely appeared as fixed constants in the base case studies that the Participating Transmission Owners collected and submitted to the CAISO,”¹⁰ and therefore should be exempted from the CAS charge. Santa Clara 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.¹¹

SMUD’s and Santa Clara’s arguments go well beyond the only relevant issue at this stage of these proceedings: the consistency of the October 23 Compliance Filing with the Commission’s orders.¹² Instead, they seek 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 SMUD and Santa Clara in their latest protests and explicitly found that “the ISO, using models provided by the

¹⁰ SMUD Protest at p. 3.

¹¹ See Santa Clara Protest at PP 11-13.

¹² 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).

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 Order No. 463-A.¹³ The Commission reaffirmed this conclusion in Order No. 463-C.¹⁴ 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,”¹⁵ 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.”¹⁶

The Commission also rejected SMUD’s argument that a generator should not be subject to the CAS charge if it merely appeared as a fixed constant in ISO models and studies.¹⁷ The Commission noted that “[w]hether or not SMUD’s behind-the-meter generation is considered a constant is irrelevant,”¹⁸ noting that if a generator “is in the

13 Opinion No. 463-B at P 61.

14 See Opinion No. 463-C at P 26.

15 *Id.* at P 74.

16 *Id.* (emphasis in original).

17 See SMUD Protest at p. 3.

18 Opinion No. 463-B at P 68.

model studied by the ISO . . . it causes the ISO to incur Control Area Services costs and is not eligible for the exemption.”¹⁹

SMUD’s and Santa Clara’s disagreement with these rulings provides no valid basis for the rejection of the ISO’s compliance filing implementing them.²⁰ The Commission should accordingly deny their protests.

IV. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission refrain from acting on the protests until the ISO submits an amended compliance filing correcting the errors it has discovered in the October 23 Compliance Filing.

Respectfully submitted,

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¹⁹ *Id.*

²⁰ *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).*

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 27th of November, 2006.

/s/ Judith Sanders
Judith Sanders