

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

Turlock Irrigation District and)	
Modesto Irrigation District)	
v.)	Docket No. EL99-93-000
California Independent System)	
Operator Corporation)	

**REPLY BRIEF OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Charles F. Robinson
General Counsel
Stephen A. S. Morrison
Corporate Counsel
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-2207
Fax: (916) 351-4436

Michael E. Ward
Julia Moore
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW – Suite 300
Washington, DC 20007-5116
Tel: (202) 424-7500
Fax: (202) 424-7643

Counsel for the California Independent
System Operator Corporation

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**UNITED STATES OF AMERICA
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))	
California Independent System Operator Corporation))	

To: The Honorable Edward M. Silverstein

The California Independent System Operator Corporation (“CAISO” or “ISO”)¹ hereby submits its Reply Brief in this proceeding.

I. EXECUTIVE SUMMARY

Turlock Irrigation District (“Turlock”) contends that it meets the CAISO Technical Standards for providing certain Ancillary Services and that it is therefore similarly situated to providers of services outside the CAISO Control Area. Turlock concludes that the ISO Tariff requirement that it execute a Participating Generator Agreement as a precondition to participation in the CAISO’s markets is therefore unduly discriminatory. Turlock’s arguments ignore the criticality of the fact that it is within the CAISO Control Area. The reliability criteria of the Western Electric Coordinating Council (“WECC”) impose obligations on the CAISO with regard to the maintenance of the CAISO Control Area. In order to fulfill those obligations, the CAISO must have a greater degree of knowledge of, and control over, Generating Units within the CAISO Control Area than with regard to those outside the Control

¹ Unless otherwise defined, capitalized terms are used as defined in the CAISO Tariff. Ex. J-1, Appendix A.

Area. When Turlock's arguments are examined in light of this fundamental distinction, their error is apparent. As the ISO has shown in its Initial Brief, and further explains below, the requirement that Turlock execute a Participating Generator Agreement as a precondition to providing Ancillary Services and Energy in the CAISO's markets is intimately related to the ISO's fulfillment of its objectives under its Tariff and California law. It is therefore not unduly discriminatory.

Further, Turlock has failed to carry its burden of demonstrating that the requirement that it execute the pro forma Participating Generator Agreement if it voluntarily elects to participate in the CAISO markets imposes unreasonable costs or burdens on Turlock, interferes with its existing contractual relationships, or is otherwise unjust or unreasonable.

II. ARGUMENT

A. Whether the California Independent System Operator (CAISO), through the provisions of its Tariff governing the CAISO's acquisition of certain Ancillary Services and Imbalance Energy (including Supplemental Energy), unduly discriminates against Turlock Irrigation District.

1. Whether Turlock satisfies the technical standards for participation in the CAISO's Ancillary Services and Real Time markets, i.e., for resources from which the CAISO acquires certain Ancillary Services and Imbalance Energy (including Supplemental Energy).

Turlock argues that the CAISO has not demonstrated that Turlock's Generating Units fail to satisfy the technical requirements for participation in the CAISO's markets. This contention is a red herring. The CAISO has not contended that Turlock's Generating Units do not satisfy the technical standards for providing Operating Reserves through the CAISO markets, as described in the applicable appendices to the Ancillary Services Requirements Protocol. See, e.g., Appendix B, Ex. J-1 at First Revised Sheet No. 428, *et seq.* Turlock's arguments, however, fail to take into account the other requirements for participating in those markets, such as obligations to comply with CAISO dispatch instructions and data provision requirements. Nothing in the ISO Tariff or otherwise in the record suggests that the technical standards are the only reasonable requirements for participation.

2. Whether the CAISO's requirement that Turlock execute the CAISO's *pro forma* Participating Generator Agreement (PGA) as a precondition to Turlock's participation in the CAISO's Ancillary Services and Real Time markets, i.e., to Turlock's acting as a vendor of certain Ancillary Services and Imbalance Energy (including Supplemental Energy) is unduly discriminatory.

Turlock initiates its argument by attempting to define the legal showing it must make in a manner that puts that showing within its reach. Turlock first quite properly cites the test for undue discrimination set forth in *Mid-Continent Area Pool Agree-*

ment, 58 FPC 2622 (1977), *aff'd* 606 F.2d 1156 (D.C. Cir. 1979) (“*Mid-Continent*”): whether the alleged restrictive practice causing disparate treatment of similarly situated parties is reasonably related to the objectives intended to be achieved. *Turlock Br.* at 9. *Turlock* then asserts that the CAISO’s requiring execution of a Participating Generator Agreement as a precondition for participation in the CAISO’s markets by Generators in the CAISO’s Control Area is not reasonably related to the CAISO’s technical standards for Ancillary Services, *Turlock Br.* at 10, 13, and is therefore unduly discriminatory under the *Mid-Continent* standard. *Id.* at 13.

This leap of logic, or more accurately, illogic, falls well short of the mark. The CAISO’s technical standards for Ancillary Services providers are not by any manner of sound reasoning analogous to the relevant “objectives” in *Mid-Continent* (reserve sharing to develop reliable and economic generating capacity). 58 FPC at 2635. It makes no more sense to argue that the requirement to execute a Participating Generator Agreement must be reasonably related to the technical standards than it does to argue that the technical standards must be reasonably related to the requirement to execute a Participating Generator Agreement. The two are on a par: each is an independent requirement for selling Ancillary Services into the CAISO’s markets.

The purpose of the CAISO is to

ensure efficient use and reliable operation of the transmission grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council.

Cal. Pub. Util. Code § 345. The CAISO operates its markets to fulfill the statutory directive that it obtain

authority needed to give the Independent System Operator the ability to secure generating and transmission resources necessary to guaran-

tee achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council.

Id. § 346.

Accordingly, the ISO Tariff requires that the CAISO

be responsible for ensuring that there are sufficient Ancillary Services available to maintain the reliability of the ISO Controlled Grid consistent with WSCC and NERC criteria. Those Ancillary Services which the ISO requires to be available but which are not being self provided will be competitively procured by the ISO from Scheduling Coordinators

ISO Tariff § 2.5.1, Ex. J-1, Original Sheet No. 61.

Thus, under the *Mid-Continent* test, if Turlock were indeed similarly situated to System Resources,² the appropriate question would be whether the CAISO's requirement that Generators in the CAISO's Control Area execute a Participating Generator Agreement as a precondition to participation in the CAISO's markets is reasonably related to the CAISO's objectives of operating the ISO Controlled Grid in conformity with the WECC and NERC criteria (which are based on the Control Area) and of maintaining sufficient Ancillary Services toward that end. The CAISO's Initial Brief conclusively establishes that relationship. See ISO Br. at 9-14.³

² As described in the CAISO's Initial Brief, a System Resources is "A group of resources located outside the ISO Control Area capable of providing Energy and/or Ancillary Services to the ISO Controlled Grd. Ex. J-1, Original Sheet 351.

³ The question of whether two entities are similarly situated depends very much on the level of analysis. In the CAISO's Initial Brief, the CAISO argued that, because of the CAISO's responsibilities under the ISO Tariff as Control Area Operator, Generators inside the CAISO's Control Area are not similarly situated to System Resources. At a different level, one could argue that they are both generators, and therefore similarly situated. In that case, those same CAISO's responsibilities establish that the application of different requirements is reasonable. In either analysis, the fundamental question is the same: is the differential treatment of Generators inside the CAISO's Control Area reasonably related to the CAISO's objectives and responsibilities?

Turlock also argues, citing *City of Frankfort v. Kentucky Utilities*, 12 FERC ¶ 61,004 (1980), that the CAISO has a responsibility to do everything it can to pursue the least anticompetitive course of action, and that allowing Turlock to participate in CAISO's markets without execution of a Participating Generator Agreement would enhance, rather than impair, the CAISO's reliability through increased competition. Turlock Br. at 10-11. As an initial matter, Turlock's citation of *City of Frankfort* is totally inapt. In that case, the power pool in question had a virtual monopoly on available generation in the area and controlled all transmission access to the City of Frankfort. 12 FERC at 61,008-09. In contrast, the CAISO markets are not the only markets available to Turlock. There is nothing in the record to suggest that Turlock cannot enter into bilateral agreements or sell into other Control Areas. Moreover, in such transactions, Turlock can avail itself of its own transmission rights (see, e.g. Ex. TID-4 at 72-73 and Turlock Br. at 6), or can use the CAISO's *open access* transmission tariff, see *generally* ISO Tariff, Ex. J-1. The CAISO simply lacks the market power that the utility in *City of Frankfort* enjoyed.

More importantly, as Turlock acknowledges, *City of Frankfort* only requires the least competitive course of action consistent with the organization's objectives. Turlock Br. at 11. The CAISO has shown in its Initial Brief that the requirement to execute a Participating Generator Agreement as a precondition to participation in the CAISO's markets is necessary to the fulfillment of the CAISO's reliability responsibilities. ISO Br. at 9-14. Turlock's logic would require that the CAISO should exempt all Generators from the Participating Generator Agreement requirement because it would enhance competition. The Commission, however, has found both section 5 of the ISO Tariff, requiring the execution of a Participating Generator Agreement, and

the pro forma Participating Generator Agreement to be just and reasonable. *Pacific Gas & Electric Co., et al.*, 81 FERC ¶ 61,122 (1997) at 61,514; *Pacific Gas & Electric Co., et al.*, 81 FERC ¶ 61,320 (1997) at 62,471-72.

a. Whether Turlock is similarly situated to vendors of Ancillary Services and Imbalance Energy (including Supplemental Energy) outside the CAISO's control area who are not required to execute a PGA.

Turlock contends that it is similarly situated to System Resources because it meets the technical standards for the Ancillary Services and Imbalance Energy it might provide, is not on the ISO Controlled Grid, and meets the definition of a System Resource except for the fact that it is in the CAISO's Control Area. Turlock Br. at 15. This last exception, however, is critical. The CAISO has explained through its testimony and exhibits that the CAISO's responsibilities under its Tariff and the WECC criteria require it to have real time information on the Generating Units in its Control Area that participate in the CAISO's markets in order to ensure the availability of operating reserves and the CAISO Control Area. ISO Br. at 11. The CAISO further explained that it must have assurances, such as that provided by a Participating Generator Agreement, that those Generating Units will operate consistently with the ISO Tariff. *Id.* at 11-14. Rather than address these considerations, Turlock generally pretends they do not exist.⁴

⁴ See Turlock Br. at 16. Turlock does, however, impugn the CAISO's motives, citing a CAISO memorandum about encouraging municipalities to join the CAISO to show that the CAISO is seeking municipal Participating Transmission Owners in order to reduce rates. Turlock Br. at 13-14. The memorandum does discuss the rate impact of municipal Participating Transmission Owners; it does not, however, suggest that the rate impact is the driving force. Indeed, there is nothing malicious or insidious about the CAISO's encouraging municipal Participating Transmission Owners. The California legislature established that goal, Cal. Pub. Util. Code § 330(m), and the Commission has blessed efforts toward that end, *California Independent System Operator*, 91 FERC ¶ 61,205 (2000) at 61,272. More-

Indeed, Turlock's only two responses to the CAISO's explanation are without substance. First, Turlock asserts – contrary to its own witness's admission, see Tr. at 158-160 - that an interchange schedule between control areas is no more reliable than a schedule between Turlock and the CAISO. In support, Turlock cites the statement of CAISO witness Deborah Le Vine that schedules between control areas are subject to curtailment to preserve reliability and meet native Load. Turlock Br. at 16, n7. Turlock ignores the fundamental difference between an action by a Control Area operator to curtail an interchange change schedule and a failure by a Generator to deliver promised Energy. A Control Area operator must deliver scheduled Energy even if Generating Unit that is to provide the Energy fails. Ex. ISO-1 at 23; Ex. ISO-5 at 8. The WECC's Minimum Operating Reliability Criteria provide:

[A]ll entities involved in interchange scheduling shall coordinate and communicate information concerning schedules and schedule changes accurately and timely as detail in the *[WECC] Scheduling Procedures for All Entities Involved in Interchange Scheduling*.

Ex. ISO-6 at 11 (Section 3). Section 3.A.5 of the criteria reads as follows:

Schedule Changes. Schedule changes must be coordinated between control areas to ensure that the schedule changes will be executed . . . at the same time, in the same amount, and at the same rate.

Id. Thus, if a sending Control Area curtails an interchange schedule, it does so with the knowledge and coordination of the receiving Control Area. In contrast, if a Generating Unit scheduled to provide Energy from Ancillary Services is not available, the CAISO – absent real time information on that Generating Unit – will not find out until the Generating Unit fails to deliver the Energy. Tr. at 158. Moreover, without a Par-

over, the current Grid Management Charge is not affected by the number of Participating Transmission Owners. See ISO Tariff § 8, *et seq.*, Ex. J-1 at Original Sheet 215D, *et seq.*

ticipating Generator Agreement, the CAISO has no assurance that the Generating Unit within the Control Area will deliver Energy even if the Energy is available.

Second, Turlock seizes upon statements by the CAISO and Commission Staff that there is no difference for reliability purposes whether Ancillary Services are provided from within or outside the CAISO Control Area. Turlock Br. at 18. Those statements, however, presume that the Ancillary Services *are provided*. As discussed, the difference between Ancillary Services providers outside the CAISO Control Area and those inside the CAISO Control Area is the assurance that the Ancillary Services will be provided. In the former case, the CAISO can rely upon the sending Control Area's obligation to maintain Interchange Schedules under WECC criteria; in the latter, the CAISO needs real time data and contractual assurances.

In this regard, Turlock questions the CAISO's inability to rely upon Turlock's commitment to provide those resources. If the CAISO chose to rely upon Turlock's word, however, then – in order to avoid charges of undue discrimination – the CAISO would have to rely upon the word of all Generators participating in its markets that they will live up to their commitments to the CAISO or establish a mechanism for evaluating each Generator via a “reliability rating.” Recent events demonstrate the folly of the first alternative;⁵ the second is patently impractical. It is neither unreasonable nor unduly discriminatory for the CAISO to require that the Generators upon which it must rely to meet its responsibilities as the Control Area operator enter into binding contracts with the CAISO to fulfill the commitments that they make when they offer Energy and Ancillary Services for sale in the CAISO's markets.

Turlock's only other response is irrelevant to the issues of whether Turlock is similarly situated to System Resources. Turlock asserts that the CAISO does not have the authority to "impose" requirements on Turlock because the CAISO is obligated to honor Turlock's Interconnection Agreement with Pacific Gas and Electric Company. Turlock Br. at 17. Yet, Turlock nowhere explains how the requirement that Turlock execute a Participating Generator Agreement, if it chooses to make sales in the CAISO's markets, is inconsistent with the Interconnection Agreement. The CAISO has not proposed to interfere with Turlock's interconnection, its self-provision of certain Ancillary Services, or its transmission rights. The CAISO is not "imposing" anything on Turlock. Rather, the CAISO would only require that *if Turlock voluntarily chooses to participate in the CAISO's markets*, it must sign an agreement to abide by the provisions of the ISO Tariff applicable to all Generators in the CAISO Control Area that are competing with Turlock in those markets. The situation is not unlike the Commission's ability to impose open transmission access or other requirements on municipalities that would otherwise be beyond the Commission's jurisdiction if the requirements are related to participation in Commission regulated activities. See, e.g., Order 888, FERC Stats. & Regs. ¶ 31,036 at 31,761-6. (1996);⁶ *San Diego Gas & Electric Co. v. Sellers of Ancillary Services*, 97 FERC ¶ 61,275 at 62,181 (2001).

⁵ If necessary, the Presiding Judge can take judicial notice of memoranda on the Commission's website that document the market manipulation practices of various marketers and Generators. See, e.g., <http://www.ferc.gov/electric/bulkpower/pa02-2/Doc2.pdf>.

⁶ Promoting Wholesale Competition Through Open Access Non-discriminatory transmission services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order*

b. Whether the CAISO is otherwise justified in requiring, through the provisions of its Tariff, a Generator within the CAISO's control area to execute a PGA as a precondition to participation in the CAISO's Ancillary Services and Real Time markets, i.e., to acting as a vendor of Ancillary Services and Imbalance Energy (including Supplemental Energy).

Turlock asserts that Turlock's location within the CAISO Control Area does not justify treating Turlock differently from System Resources. First, Turlock reiterates its argument regarding its Interconnection Agreement, asserting that the CAISO's obligations as Control Area Operator cannot override its rights and obligations under the Interconnection Agreement. Turlock Br. at 20. The CAISO has already addressed this argument.

Second, Turlock contends that the CAISO's Control Area responsibilities for Ancillary Services are limited under the ISO Tariff to the ISO Controlled Grid. Turlock Br. at 20. As an initial matter, the scope of the CAISO's responsibility for the procurement of Ancillary Services is at issue in Docket No. EL02-45.⁷ Nonetheless, the resolution of this dispute is *irrelevant* to this proceeding. This proceeding does not concern scope of the CAISO's authority to procure Ancillary Services, but rather the requirements imposed on those that elect to compete to provide the Ancillary Services, *regardless* of the amount of Ancillary Services the CAISO must procure

on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part, remanded in part on other grounds sub nom*, Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d. 667, Nos. 97-1715, et al. (D.C.Cir), *aff'd* New York v. FERC, 122 S.Ct. 1210 (2002).

⁷ See *California Independent System Operator Corporation*, 98 FERC ¶ 61,047 (2002). It is the CAISO's position that section 2.5.1 of the ISO Tariff directs the CAISO to ensure adequate Ancillary Services not simply for the ISO Controlled Grid, but to *maintain the reliability* of the ISO Controlled Grid. Ex. J-1, Original Sheet No. 61. Thus, the CAISO's authority regarding the procurement of Ancillary Services is not determined by whether the transaction is on the ISO Controlled Grid, but rather by whether a lack of Ancillary Services for the transaction, regardless of its location, would endanger the reliability of the ISO Controlled Grid in violation of WSCC standards (which are based on the Control Area).

and how it allocates responsibility for the associated costs to purchasers. Even if the CAISO's Control Area responsibilities were limited to the ISO Controlled Grid,⁸ the CAISO would still need data from the Generating Units within the CAISO's Control Area that provide Ancillary Services and contractual arrangements with the Generators that own those Units as described above.

For these same reasons, Turlock's reliance on the Commission's order rejecting Amendment No. 2 to the ISO Tariff, which would have, *inter alia*, replaced many references to the ISO Controlled Grid with references to the ISO Control Area, see Turlock Br. at 20-21, is misplaced. The argument also fails, however, because – contrary to Turlock's argument, see *id.* – the CAISO is *not* attempting to bootstrap itself into authority over Turlock. As discussed above, the issue in this proceeding involves whether a Participating Generator Agreement is an appropriate precondition to *voluntary* participation in the CAISO's markets. If Turlock chooses not to make its Generating Units available for sales in the CAISO's markets, it will not be subject to the obligations imposed on Participating Generators; if it chooses to make such

⁸ Any argument that the CAISO's Control Area responsibilities are limited to the ISO Controlled Grid is almost a logical fallacy. Under orders of the Commission, the CAISO is the Control Area operator. *Pacific Gas & Elec. Co., et al.*, 81 FERC ¶ 61,122 at 61,456 (1997). As the Control Area operator, the CAISO must comply with the WECC Minimum Operating Reliability Criteria. *Id.*; see also ISO Tariff § 2.3.1.3.1, Ex. J-1, Original Sheet No. 35. Those criteria apply *on a Control Area basis*. See generally Ex. ISO-6. One cannot be a Control Area Operator for a subset of the Control Area. For example, the CAISO's load responsibility includes all firm Load within the Control Area. Ex. ISO-5 at 12. The CAISO's Control Area Error is determined on a Control Area basis. *Id.* at 10. Indeed, the Commission's orders in connection with the ISO Tariff, as initially filed, treated the operation of the ISO Controlled Grid as an inseparable adjunct to the ISO's Control Area responsibilities. For example, the Commission insisted that the CAISO have the discretion to determine, based on its Control Area responsibilities, which facilities of the Participating Transmission Owners would be included in the ISO Controlled Grid. *Pacific Gas & Elec. Co., et al.*, 77 FERC ¶ 61,204 at 61,822 (1996). See also, *Pacific Gas and Elec. Co, et al.*, 81 FERC ¶ 61,122 at 61,456-57, 61,496, 61,499 (1997).

sales, it must abide by the requirements of the ISO Tariff applicable to all Participating Generators.

B. If the CAISO, through the provisions of its Tariff governing the CAISO's acquisition of Ancillary Services and Imbalance Energy/Supplemental Energy, unduly discriminated against Turlock, whether Turlock is injured by the undue discrimination.

1. Whether Turlock would lose significant operational and maintenance control over its generating units by signing a PGA.

a. Control During System Emergencies

(1) Magnitude of Control

In its Initial Brief, the CAISO explained that its ability to control the output of Generating Units in excess of bids into the CAISO's markets is confined to System Emergencies. Except with regard to the CAISO's authority under section 2.3.1.1.3(e) of the ISO Tariff, Turlock does not take issue with this proposition. The CAISO has already explained the deficiencies of Turlock's interpretation of section 2.3.1.1.3(e) in its Initial Brief. See ISO Br. at 19-21.

Turlock's first complaint about the CAISO's authority under System Emergencies is that it would have been subject to ISO Control 60 percent of the time between December 12, 2001, and February 22, 2001, and that Turlock could not have served its load responsibly during that period if it had been subject to CAISO dispatch. Turlock Br. at 24, 32. The CAISO has explained in its Initial Brief, however, that the CAISO's dispatch of Turlock's Generating Units cannot interfere with Turlock's service to its load. Service to load is only affected if load is curtailed, which has nothing to do with the dispatch of Generating Units and nothing to do with the Participating Generator Agreement. See ISO Br. at 23. In addition, that Turlock would have been subject to CAISO dispatch does not mean that it would have been dispatched. In-

deed, Turlock asserts that it responded to all requests for Energy from the CAISO, and makes no claim that its ability to serve load was affected. Turlock Br. at 18 n.8, 41.

Moreover, the period Turlock cites was extraordinary. The data on which Turlock relies reveal that outside of the California energy crisis, the declaration of System Emergencies has been rare. See Ex. TID -12. In fact, during that period Turlock's Generating Units could have been subject to dispatch by the CAISO even without Turlock's execution of a Participating Generator Agreement. Turlock, like all owners of generating facilities, is subject to dispatch by order of the Secretary of Energy under section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c). During that period, the Secretary at that time, William Richardson, issued a number of such orders. See, e.g., December 14, 2000, Order of Bill Richardson, Secretary of Energy, published at 65 Fed. Reg. 82989 (December 29, 2000).

Second, although the CAISO has pointed out that Turlock can specify operating limitations in Schedule 1 of its Participating Generator Agreement, see Tr. at 239; 249-251, Turlock argues that such protection is insufficient. It finds the operative language of the Participating Generator Agreement inadequate, Turlock Br. at 26, even though limitations are clearly identified as just that – *limitations*. Indeed, the Commission must consider them binding: it has specifically ordered the CAISO to file Schedule 1 under section 205 of the Federal Power Act. *California Independent System Operator Corporation*, 82 FERC ¶ 61,174 at 61,622 (1998).

Further, Ms. Le Vine's testimony that the CAISO treats the limitations in Schedule 1 as binding is uncontradicted. See Tr. at 251. There is no basis for Turlock's characterization of her statements as "speculative." Instead, Turlock posits a

“[CAISO] history of assertion of dispatch control over Participating Generators and [a] common knowledge that [the CAISO] has subjected Turlock and other fully resourced systems . . . to rolling blackouts.” Turlock Br. at 26. With regard to the former assertion, Turlock has failed to identify a single instance in which the CAISO has dispatched a Generating Unit contrary to limitations included in the Participating Generator Agreement. With regard to the latter, the evidence is uncontradicted that the CAISO does not subject Loads to rolling blackouts. Tr. at 347. In Turlock’s case, Pacific Gas and Electric Company – the other party to the Interconnection Agreement upon which Turlock relies so heavily – is responsible for any decision to shed Turlock’s load. Tr. at 346-47. Load shedding, when required, simply has nothing to do with whether or not particular generators are subject to the CAISO’s emergency dispatch authority. Thus it is Turlock’s assertions, not Ms. Le Vine’s testimony, that are speculative. In a proceeding under section 206 of the Federal Power Act, such as this proceeding, the complainant bears the burden of proof. 16 U.S.C. 824e(b). Speculation cannot meet that burden.

(2) Determination of System Emergency

Turlock also asserts that the definition of System Emergency is overly broad and not used consistently throughout the ISO Tariff. Turlock Br. at 24. 27-29. Turlock’s complaint here is with the ISO Tariff itself. The ISO Tariff has been approved by the Commission. See *Pacific Gas & Electric Co., et al.*, 81 FERC ¶ 61,122 (1997). Turlock was a party to the proceedings that gave rise to this approval, and had ample opportunity to protest the scope of the CAISO’s authority at that time. *Id.* at 61,591. Turlock is also free to bring a complaint and request that the Commission direct a revision of the scope of the CAISO’s Tariff authority. Turlock cannot be

heard here, however, to complain that the scope of that authority – applicable to all Participating Generators – would be unreasonable if it were applied to Turlock. Turlock, which as noted above, carries the burden of proof, has not identified a single instance in which the CAISO has abused its authority to dispatch units in System Emergencies. There is simply no evidentiary basis for concluding that the CAISO's ability to dispatch Turlock's Generating Units, within the limitations that would be specified in Schedule 1 of a Participating Generating Agreement, Ex. ISO-7, under System Emergencies as authorized in the ISO Tariff would injure Turlock.

b. Approval of Outages

In its Initial Brief, the CAISO explained the reasonableness of the CAISO's limited authority to control outages. ISO Br. at 21-22. Turlock's comparison of the ISO's authority with Pacific Gas and Electric Company's more limited authority under the Interconnection Agreement is fundamentally irrelevant. As noted in the CAISO's Initial Brief, the CAISO's authority is established and exercised pursuant to the Commission's directives. *Id.* at 22. Further, Turlock cannot complain that it is subject to requirements to which System Resources are not subject. As the CAISO noted in its Initial Brief, System Resources in adjacent Control Areas may be, and in one adjacent Control Area are, subject to outage control by the System Operator in their own Control Area. ISO Br. at 15.

2. Whether Turlock's ability to operate its system in a vertically integrated manner would be significantly compromised by Turlock's signing a PGA.

The majority of Turlock's arguments regarding its ability to operate as a vertically integrated utility are reiterations of earlier arguments and are addressed above. Turlock's only new argument is that Turlock's internal resources are energy-limited,

and the CAISO's dispatch of its Generating Units might interfere with Turlock's ability to use those Generating Units to serve its own Load at a later time. Turlock Br. at 32. As the CAISO has already noted, outside of the period of late 2000 through 2001, the CAISO's declarations of System Emergencies have been relatively rare. Ex. TID -12. In addition, Turlock apparently has enough excess Energy available from its energy-limited Generating Units that it expects to earn \$4.6 million from the sale of that Energy. Ex. TID 8 at 27. The odds that the CAISO's dispatch authority would deplete Turlock's energy-limited resources are thus not particularly great.

Even if that were not the situation, however, Turlock's complaints would still be unjustified. When the CAISO dispatched a Turlock Generating Unit out of market, Turlock would receive the Ex Post Price.⁹ ISO Tariff § 11.2.4.2, Ex. J-1 at Original Sheet No. 247. Because such out of market calls would only occur during System Emergencies, when there is a shortage of Energy, the Ex Post Price – which is based on the last unit selected in the CAISO's markets, ISO Tariff § 2.5.23.2.1, Ex. J-1 at First Revised Sheet No. 108 – is likely to be relatively high. Turlock could use those receipts to pay for any additional Energy it requires. Of course, there is no guarantee that Turlock will come out ahead in such transactions, but one must also consider that – by Turlock's own estimate – Turlock will earn an additional \$4.6 million by signing a Participating Generator Agreement and participating in the CAISO's markets.

Indeed, the Commission has already concluded that Turlock's complaints in this regard are unfounded. In its order accepting the *pro forma* Participating Generator Agreement, the Commission observed:

Turlock is concerned that Section 2.1 of the PGA may permit the ISO to take certain actions that may harm the Participating Generator's customers. For example, Turlock states that Section 2.1 of the PGA may permit the ISO to require Turlock to operate certain of its hydroelectric facilities at times when they are of little value to Turlock, causing Turlock to incur higher costs at other times. We find that the relevant provision is reasonable. Section 2.1 of the PGA states that the ISO is responsible for the efficient use and reliable operation of the ISO Grid, and that to the extent that a Participating Generator fails to comply with its obligations under the PGA and the ISO Tariff and Protocols, the ISO may not be able to satisfy its responsibilities. With regard to Turlock's example, we find that, at certain times, in order to maintain the reliability of the ISO Grid, the ISO may have no alternative but to take actions that will have negative cost consequences on certain parties.

81 FERC ¶ 61,320 at 62,474 (footnotes omitted).

In brief, the ISO Tariff provides Turlock with a choice. It can continue to operate solely as a vertically integrated utility under its Interconnection Agreement with Pacific Gas and Electric Company without being subject to any ISO Tariff requirements for the term of such agreement. Alternatively, Turlock can participate in the competitive electricity markets – with potentially significant rewards and concomitant risks and obligations. Turlock, however, wants the rewards of the new paradigm without the obligations imposed on all other Market Participants. As Southern California Edison noted in its Initial Brief at 2, Turlock wants to have its cake and eat it too. This is not a basis for a finding of injurious undue discrimination.

3. Whether Turlock, by signing a PGA, would have to pay CAISO charges that similarly situated vendors of Ancillary Services and Imbalance Energy (including Supplemental Energy) outside the CAISO's control area do not have to pay.

With this exception of the question of the necessity of revenue quality meters on Generating Units, the CAISO has fully addressed Turlock's arguments regarding cost in the CAISO's Initial Brief. See ISO Br. at 24-30. In summary, the only addi-

⁹ Turlock would have the option of electing a cost-based payment.

tional costs that Turlock will bear if it signs a Participating Generator Agreement and schedules and meters its internal load are charges for Unaccounted for Energy and Neutrality charges,¹⁰ and it can avoid the former by signing a Utility Distribution Company Agreement. When compared with Turlock's estimates of earnings from participation in the CAISO's Markets, these costs are eminently reasonable.

Turlock's complaints regarding the CAISO's revenue metering requirements are in reality complaints about the ISO Tariff requirements, and have already been rejected by the Commission. In its order authorizing the CAISO's operation, the Commission noted:

Turlock contends that Section 10 of the ISO Tariff gives the ISO unnecessary authority over metering facilities and data acquisition. Turlock argues that the historical operation of utilities should be respected and that the ISO's access to data should be limited to that which is reasonably necessary to fulfill its responsibilities as Control Area operator.

81 FERC at 61,514 (footnotes omitted). The Commission concluded:

We reject Turlock's recommendations. Under the new model, the ISO will not only operate as the control area operator, but it must also perform billing and settlement functions. Therefore, it is reasonable that the ISO have broad access to data acquisition and metering facilities.

Id. at 61,516. Turlock is simply attempting a second bite at the apple. Turlock cannot use this proceeding to ask the Presiding Judge to review the Commission's previous conclusion.

¹⁰ Turlock acknowledges in its Initial Brief that, if the Commission approves the Initial Decision of Judge Bobby McCartney in Docket No. ER01-313, *see California Independent System Operator Corporation*, 99 FERC ¶ 63,020 (2002), Turlock will be responsible for Control Area Services charges regardless of whether it signs a Participating Generator Agreement. The converse, however, is also true: if the Commission reverses the Initial Decision, Turlock will be exempt from the Control Area Services charges regardless of whether it signs a Participating Generator Agreement.

C. If Turlock is not similarly situated to vendors of Ancillary Services and Imbalance Energy (including Supplemental Energy) outside the CAISO's control area who are not required to execute a PGA, whether the CAISO's requiring, through the provisions of its Tariff, that Turlock execute a *pro forma* PGA is otherwise unjust, unreasonable or unduly discriminatory.

As an initial matter, the CAISO notes that this issue is not properly before the Presiding Judge. The only matters that the Commission set for hearing were those raised in Turlock's complaint, *i.e.*, whether the requirement that Turlock execute a Participating Generator Agreement as a precondition to participation in the CAISO's markets is unduly discriminatory because the CAISO does not apply such a requirement to System Resources. The CAISO reserves the right to take exception on that basis to any adverse ruling on this issue.

Turlock identifies three bases for its conclusion that the Participating Generator Agreement is unjust, unreasonable, or unduly discriminatory even if Turlock is not similarly situated to System Resources. First, Turlock asserts that the requirement is unjust and unreasonable because Turlock would incur costs associated with its internal Load. Turlock Br. at 38. As the CAISO has noted, Turlock's Load does not incur any costs by virtue of Turlock's execution of a Participating Generator Agreement. ISO Br. at 26.

If Turlock also schedules and meters its internal load, Turlock will incur additional costs, but Turlock has not met its burden of demonstrating that these costs are unreasonable. ISO Br. at 24-30. Rather, the CAISO has shown in its Initial Brief that they are not. Moreover, these costs are a function of the ISO Tariff, not of Turlock's execution of a Participating Generator Agreement. Issues concerning these costs are before the Commission in other proceedings. For example, the ISO Tariff provides a mechanism for vertically integrated utilities that become Participating

Transmission Owners to qualify as Metered Subsystems, and, as such, to aggregate Generating Units as System Units to serve Load. See ISO Tariff § 3.3 *et seq.*, Ex. J-1, Original Sheet No. 150, *et seq.* The terms and conditions of Metered Subsystems are at issue in Docket No. ER00-2019, and the limitation to Participating Transmission Owners is at issue in Docket No. ER98-3760. See *California Independent System Operator Corporation*, 91 FERC ¶ 61,205 at 61,721 (2000). This issue should be resolved in those dockets, where all interested parties are involved rather than in this docket, where other parties had no notice that such ISO Tariff provisions would be placed at issue.

Turlock's second basis for its argument is that the *pro forma* Participating Generator Agreement would destroy the mutual benefits of Pacific Gas and Electric Company and Turlock under their Interconnection Agreement and would violate the CAISO's obligation to honor Existing Contracts. Turlock Br. at 40. As the CAISO has pointed out above, the Participating Generator Agreement does not interfere with Turlock's right to self-provide Ancillary Services, to purchase Regulation from Pacific Gas and Electric Company, or to exercise its rights to transmission under the terms of the Interconnection Agreement. More significantly, the requirement that Turlock execute a Participating Generator Agreement as a precondition to participating in the CAISO's markets does not violate the CAISO's obligation to honor Existing Contracts because the ISO Tariff does not require Turlock to participate in those markets. The decision to participate is voluntary; in order to profit from the CAISO's markets, however, Turlock must accept the obligations imposed on all similarly situated Market Participants – *i.e.*, those in the CAISO's Control Area. Also, the obligation to honor Existing Contracts is an obligation to honor Existing Rights, *i.e.*, rights

to receive transmission service under a pre-CAISO Tariff contract with a Participating Transmission Owner; Turlock nowhere explains how executing a Participating Generator Agreement would limit its ability to take advantage of any transmission rights in the IA, and in fact it would not. Neither, for that matter, would executing a Participating Generator Agreement deprive Turlock of the ability to obtain Energy or Ancillary Services from Pacific Gas and Electric Company, or to self-provide Ancillary Services, under any applicable provision of the Interconnection Agreement.

Turlock also argues that the ISO Tariff limits the CAISO's responsibilities to the ISO Controlled Grid. *Id.* at 41. That argument is also addressed above. See *supra* at 13.

Finally, Turlock argues that the requirement that it sign a Participating Generator Agreement would jeopardize its obligation to serve its native Load, its irrigation operations, and its ability to remain a vertically integrated utility and irrigation district. Each of these arguments is addressed above. See *supra* at 12-13, 15-17.

Turlock's reliance on Judge Leventhal's Initial Decision regarding Participating Generator Agreements for Qualifying Facilities, *California Independent System Operator Corporation*, 96 FERC ¶ 63,015 (2001) is inapt. The CAISO, as well as the WECC, have filed exceptions to the Initial Decision. Even if the decision stands, however, it does not advance Turlock's case. First, there are significant distinctions between the Qualifying Facilities at issue and Turlock's Generating Units. Those qualifying facilities must be operating in an integrated manner with an industrial process. 96 FERC at 65,133. Turlock's need to match load and resource – as must the ISO and any electric utility, of course – and to provide irrigation water, Turlock Br. at 44, is not comparable.

Moreover, Judge Leventhal found that the ISO's ability to dispatch Participating Generators in emergencies – which Turlock insists would interfere with its operation as a vertically integrated utility – was just and reasonable. 96 FERC at 65,145. He also deferred to the Commission regarding the ISO's authority to control outages. 96 FERC at 65,145. The Commission affirmed that authority as applied to all Participating Generators, including Qualifying Facilities. *San Diego Gas & Elec. Co. v. Sellers of Ancillary Services*, 95 FERC ¶ 61,418 at 62,551 (2001); *San Diego Gas & Elec. Co. v. Seller of Ancillary Services*, 97 FERC ¶ 61,066 at 61,357 (2001). As discussed above, the Commission has already rejected Turlock's position on metering requirements.

In the course of these arguments, Turlock repeatedly asserts that the requirement that it sign a Participating Generator Agreement in order to participate in the CAISO's markets is even more unjust and unreasonable because Pacific Gas and Electric Company operated its Control Area reliably, and Turlock has always been willing to help out in reliability crises. Turlock Br. at 41. Turlock fails to recognize that conditions have changed. Pacific Gas and Electric Company owned the generation it needed to provide reserves and balancing energy. The CAISO must operate markets to procure Ancillary Services and Imbalance Energy, and must therefore have enforceable assurances that Market Participants will provide the services that the CAISO procures from them.

Moreover, the needs of the Control Area have changed. As the Presiding Judge has found in another context:

During the 1990s, electricity demand in California grew 25% per year, while new generation within the State only grew 6%. This supply/demand problem was compounded recently by a rise in the cost of

natural gas which is used to operate most non-hydroelectric California generators, inadequate gas supplies and low water conditions reducing the ability of hydroelectric plants to generate electricity. In addition, unusually cool weather in the fall and early winter in California and the Pacific Northwest, as well as the shutting down of generators for an annual maintenance, have placed further demands on the State's power grid. . . .

. . . .

The current condition of the California electric market is . . . abysmal. California's transmission system is not capable of delivering power, at all times, from where it may be available to where it may be needed. . . Moreover, the amount of new generation in California has not kept pace with the growth of the load. Rather than building infrastructure within the State, California has been relying upon the surplus energy which formerly existed in the other States of the Western Interconnection. Unfortunately, that surplus is quickly disappearing as the load in those states also increases.

Sierra Pacific Power Company, 94 FERC ¶ 63,019 at 65,113; 65146-47 (2001)

(footnotes omitted). In short, what worked when Pacific Gas and Electric was Control Area Operator is no longer sufficient. The nature of the electricity industry in California has fundamentally changed. The new paradigm provides opportunities, but also carries risks and obligations. Turlock cannot fairly ask for the former without the latter.

D. If the CAISO's practices, through the provisions of its Tariff governing the CAISO's acquisition of Ancillary Services and Imbalance Energy/Supplemental Energy, are unduly discriminatory or otherwise unjust and unreasonable as applied to Turlock, what remedies are appropriate.

Because Turlock has not met its burden of showing that the CAISO's practices, through the provisions of its Tariff governing the CAISO's acquisition of Ancillary Services and Imbalance Energy/Supplemental Energy, are unduly discriminatory or otherwise unjust and unreasonable as applied to Turlock, no remedies are appropriate.

III. CONCLUSION

For the reasons discussed above, Turlock's complaint should be dismissed.

Respectfully submitted,

Charles F. Robinson
General Counsel
Stephen A. S. Morrison
Corporate Counsel
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-2207
Fax: (916) 351-4436

Michael E. Ward
Julia Moore
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW – Suite 300
Washington, DC 20007-5116
Tel: (202) 424-7500
Fax: (202) 424-7643

Counsel for the California Independent
System Operator Corporation

Date: June 20, 2002

CERTIFICATE OF SERVICE

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

Dated at Washington, DC, this 20th day of June, 2002.

Julia Moore
(202) 295-8357