

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

<b>California Independent System Operator Corporation</b>	) ) ) ) )	<b>Docket Nos. ER04-115-000 EL04-47-000</b>
<b>Pacific Gas and Electric Company</b>	) ) )	<b>Docket Nos. ER04-242-000 EL04-50-000</b>

**REPLY COMMENTS OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
TO COMMENTS ON THE OFFER OF SETTLEMENT**

On June 8, 2005, the California Independent System Operator Corporation (“ISO”) and San Diego Gas and Electric Company (“SDG&E”) submitted an Offer of Settlement to resolve the only remaining issue in the above-captioned dockets. That issue was reserved from the 2004 settlement in these matters and relates to the applicability of the ISO’s Grid Management Charge (“GMC”) to certain transactions by the joint owners on the Southwest Power Link (“SWPL”). Pursuant to Commission Rule 602,<sup>1</sup> the ISO now submits this Reply to the comments on the Offer of Settlement that were submitted by various parties on June 28, 2005.<sup>2</sup>

///

///

///

---

<sup>1</sup> 18 CFR § 385.602 (2005).

<sup>2</sup> Timely interventions and comments were submitted by Commission Trial Staff, Imperial Irrigation District and the Cities of Redding, Santa Clara and the MSR Public Power Agency (“Cities/MSR”). Pacific Gas and Electric Company has moved to intervene out of time.

## **I. THE OFFER OF SETTLEMENT IS UNCONTESTED**

With the exception of the initial comments in opposition of the Imperial Irrigation District (“IID”), since withdrawn,<sup>3</sup> no parties have filed comments on the Offer of Settlement such that the Commission is prevented from regarding the Offer of Settlement as uncontested. Specifically, no comments have been submitted that allege any genuine issue of material fact. To the contrary, although some comments raised questions or expressed concern regarding details of the SWPL settlement, none of the interventions remaining specifically oppose the Offer of Settlement in this proceeding or suggest that it should be rejected. Further, in its comments, Commission Trial Staff expressly states that it “does not object to the certification of the Settlement to the Commission by the Presiding Judge.”<sup>4</sup> In the absence of substantive objection to the Offer of Settlement in principle, the Commission should regard the Offer of Settlement as ‘uncontested’<sup>5</sup> and to approve it as such.

Under Rule 602, if comments on an offer of settlement are submitted to the presiding officer, the presiding officer is required to certify the offer of settlement to the Commission if the presiding officer determines that no genuine issues of material fact exist. 18 C.F.R. § 602(g)(1) (2000). A settlement is contested if:

- (a) any party submits comments "alleging a dispute as to a genuine issue of material fact" and

---

<sup>3</sup> The “Comment of the Imperial Irrigation District Opposing Offer of Settlement” submitted on June 28, 2005 was withdrawn by subsequent filing today. IID now supports the Offer of Settlement (see Withdrawal of Comments at page 2).

<sup>4</sup> FERC Trial Staff: Discussion at page 11.

<sup>5</sup> 18 CFR § 385.602 (g) (3) (2005).

(b) the party supports its allegation by including with its comments "an affidavit detailing any genuine issue of material fact by specific reference to documents, testimony, or other items . . ." 18 C.F.R. § 385.602(f)(4).

In this case, the comments do not include any affidavits.

They therefore are insufficient on their face to render the Settlement contested.<sup>6</sup> Further, none of the issues identified in the various comments constitute the kind of basic facts that, if disputed, require treatment of a settlement as contested.<sup>7</sup>

The issues raised by the comments do not allege a dispute as to a genuine issue of material fact and do not stand in the way of certification of the Settlement. Therefore, the Presiding Administrative Law Judge should certify the Settlement as uncontested.

## II. REPLY AND ANSWERS TO COMMENTS

While the Offer of Settlement is uncontested, the ISO recognizes that Commission Trial Staff and intervenors have questions or seek information about its terms and implementation. The ISO's response to the comments submitted to the Commission will accordingly focus on providing further explanation and clarification of the Offer the Settlement. The ISO is hopeful that this additional

---

<sup>6</sup> See, e.g., *Wisconsin Power & Light Co.*, 72 FERC ¶ 63,010 at 65,141 (1995), *aff'd* 73 FERC ¶ 61,095, *reh'g*, 74 FERC ¶ 61,159 (1996); *Chevron Pipe Line Co.*, 75 FERC ¶ 61,124 at 61,419-61,420 (1996).

<sup>7</sup> See, e.g., *Vermont Yankee Nuclear Power Corp.*, 50 FERC ¶ 63,007 (1990) (certifying settlement where comments raise policy issue, rather than dispute as to basic, underlying facts); *Trunkline Gas Co.*, 23 FERC ¶ 61,137 (1983) (genuine issue of material fact must be dispute as to basic underlying facts; dispute as to inferences that may be drawn or opinions consistent with basic facts does not qualify).

information will answer the questions that have been raised and allay concerns that may exist.

**A. Detail Regarding the Source and Application of the Proposed GMC Refunds**

Some comments claim there is the lack of detail in the Offer of Settlement regarding the proposed GMC refunds. Specifically they ask what would be the source of any “shortfall” between the amount of the GMC refund and the amount of the “Line Operator Charge”.<sup>8</sup>

Under the proposed treatment of the GMC refund to SDG&E, the refund payments and the Line Operator Charge revenues will be accounted for through the ISO’s operating reserve. The pertinent aspects of the proposed accounting treatment are as follows:

- The portions of SWPL owned by Arizona Public Service Company (“APS”) and IID will be treated as non-ISO Controlled Grid and the ISO will refund to SDG&E the approximately \$7.5 million of GMC charges<sup>9</sup> that had been assessed to APS/IID SWPL transactions during the period January 1, 2001 through June 1, 2005.
- The refund of GMC to SDG&E will be made through two adjustments, which are expected to be made in 2005 and 2006 and will be reflected in the ISO’s operating reserve.

---

<sup>8</sup> Cities/M-S-R: Comments at page 2, FERC Trial Staff: Discussion at page 9.

<sup>9</sup> In its out-of-time comments, PG&E asks how the refund of \$39 million will be handled. The ISO would note that the GMC portion of the SWPL settlement is approximately \$7.5 million. As discussed in a subsequent section of this Reply, it is only the GMC portion of the settlement that is before the Commission in this proceeding through the Offer of Settlement, and the ISO has limited its responsive comments to the proposed GMC refund.

- The refund will be offset by the historic and the 2005 and 2006 Line Operator Charges the ISO collects from SDG&E, which will also be reflected in the ISO's operating reserve as Other Revenue.
- To the extent that any differential exists between the GMC refund payments and Line Operator Charge revenues, it will be accounted for in the ISO's operating reserve and no shortfall will be allocated to and collected from Market Participants in the form of a settlements adjustment. This proposed treatment will not impact any prior GMC rates or GMC charges to other Market Participants.
- Provided that the ISO's revenue requirement does not exceed the Revenue Requirement cap established in the Offer of Partial Settlement,<sup>10</sup> the proposed treatment of the GMC refund to SDG&E will not cause a change in the GMC rate in effect for 2005 or 2006.

In order to further address concerns about the treatment and impact of the GMC refunds to SDG&E, the ISO suggests that the Commission, as part of its approval of the Offer of Settlement, require a refund report from the ISO within a specified time period after each refund payment is made. Such an approach would provide specific details about the refund payments and would provide greater clarity to the parties. It would not, however, necessitate another round of comment, nor delay approval of the GMC settlement, as suggested in the out-of-time comments of PG&E.

---

<sup>10</sup> Offer of Partial Settlement in the above noted dockets, submitted by the ISO and PG&E on July 29, 2004 and approved by the Commission February 2, 2005.

## **B. Matters Raised Beyond the Scope of the Instant Proceeding**

Commission Trial Staff offered a number of positive comments about the settlement but did express concern regarding matters beyond the scope of the Offer of Settlement and this proceeding. Specifically, Staff draws the Commission's attention to the SWPL 'Operations Agreement' and the treatment of Transmission Losses under the SWPL 'Settlement Agreement', indicating that such matters should not be implicitly approved by virtue of approving the instant Offer of Settlement. The ISO agrees. The only matter properly before the Commission in these dockets is the Offer of Settlement between the ISO and SDG&E of past paid GMC on the APS and IID transactions on SWPL. The other matters to which Staff refers are the subjects of separate proceedings before the Commission.

The ISO, however, does not agree with Staff that Commission approval of the Offer of Settlement would, or could, limit Commission consideration of any other aspects of the SWPL Settlement Agreement or the SWPL Operations Agreement. The non-GMC aspects of the Settlement Agreement, and the SWPL Operations Agreement, address matters that are pending in other proceedings before the Commission that are separate and distinct from the GMC refund proposed in the Offer of Settlement. Approval of the Offer of Settlement in this proceeding need not be legally binding nor precedential in any other matter. Further, the intent of the ISO and SDG&E that such approval in this case not limit the Commission's consideration of the other aspects of the settlement is reflected in the provisions of the SWPL Settlement Agreement. Those provisions

contemplate that separate regulatory approvals will be required in the various cases<sup>11</sup> and expressly allow for the possibility that different decisions could be rendered by providing that the parties may elect to terminate the agreements if all necessary approvals are not obtained.<sup>12</sup> No approval sought here is intended to, nor would have the effect of, abridging Commission authority on any separate matter.

Separately, PG&E submitted comments out of time and has moved to have them considered by the Commission. The PG&E comments are, however, misplaced as they center on the entire amount of the settlement between SDG&E and the ISO; not the \$7.5 million amount at issue in the instant proceeding which is limited to the past paid GMC amounts for the APS/IID SWPL transactions. Therefore, to the extent that the Commission wishes to consider PG&E's Comments, submitted out of time, the Commission should disregard concerns raised by PG&E that go beyond the scope of the instant proceeding. To the extent that the Commission wishes to consider PG&E's comments, the ISO's discussion in part A of this section of the Reply is also applicable to the substance of PG&E's comments.

The remainder of the settlement amount to which PG&E refers - approximately \$32 million - results from an arbitration decision which held that the assessment of Transmission Losses and other charges to the APS/IID SWPL transactions was unlawful. The ISO's appeal of that arbitration decision is pending in Docket No. EL04-24-000. Upon Commission approval of the Offer of

---

<sup>11</sup> SWPL Settlement Agreement, Sections 5.2 and 5.3.

<sup>12</sup> SWPL Settlement Agreement, Sections 5.3.4 and 5.4.

Settlement and SWPL Operations Agreement, the ISO will withdraw its appeal of that arbitration decision and PG&E and the other intervenors to that proceeding will have the opportunity to review basis for and calculation of the remainder of the settlement amount in that context.

### **C. Staff Concerns Regarding the Explanatory Statement**

In its comments, Staff questions the adequacy of the Explanatory Statement submitted by SDG&E and the ISO in support of the Offer of Settlement. As noted by Staff, the Explanatory Statement addressed each of the matters required by the Chief Administrative Law Judge in the ‘Notice to the Public’ dated October 23, 2004. With regard to one of those requirements however, Staff disagrees with one of the assertions of the ISO and SDG&E. Specifically Staff disagrees that “there are no previous reversals on the issues addressed in the agreement”. In this Staff refers to the findings of the ALJ, as approved by the Commission.<sup>13</sup>

The Offer of Settlement has been filed in the instant dockets to address the reserved issue therein. The instant dockets followed on from a fully revised GMC that does not specifically include a Market Operations charge as referred to in Staff’s comments. Technically, therefore, it is possible to consider this issue anew for purposes of the Offer of Settlement.

Nonetheless, while the ISO would agree that this matter was addressed in the proceeding noted by Staff, the matter is still pending upon appeal by SDG&E

---

<sup>13</sup> FERC Trial Staff Comments at page 10. The referenced portions of the Initial Decision of the Judge spoke to the applicability of the “Market Operations charge” to specific SWPL transactions.



to the D.C. Circuit. The ISO would, therefore, direct the Commission's attention to the fact that a resolution of this matter by agreement, i.e. approval of this Offer of Settlement, should result in resolution of that appeal and a final settling of this matter.

In any case, as is clear from Staff's comments, such disagreement itself is not fatal to the Offer of Settlement nor was it sufficient to deter Staff from concluding that the "Offer of Settlement appears to represent a compromise of competing interests concerning the resolution of difficult, complex issues."<sup>14</sup> Significantly, Staff states that it "does not object to certification of the Offer of Settlement to the Commission."<sup>15</sup>

#### **D. The Offer of Settlement is Fair and Reasonable and in the Public Interest**

As can be deduced from the parties' comments, and the absence of any remaining opposition to the Offer of Settlement, resolution of this long running issue through settlement is of general benefit to the community of the ISO's Market Participants, the affected parties and therefore in general to the public interest. As indicated by Commission Trial Staff, this resolution "reflects an expeditious resolution to the reserved issue in this consolidated proceeding and eliminates the need for any additional expenditure of major and financial and personnel resources by the parties and the Commission of the resolved issues."<sup>16</sup> The ISO agrees unequivocally with Staff's statement. In addition, the settlement ensures that SWPL remains in the ISO Control Area and is operated

---

<sup>14</sup> *Ibid* at 6  
<sup>15</sup> *Ibid* at 11  
<sup>16</sup> *Ibid* at 6

and scheduled in a reliable manner, which has significant benefit to the ISO Market Participants and electric consumers.

Given the long running nature of this controversy and the reasonableness of an Offer of Settlement that is endorsed by both the ISO and SDG&E, *nem con*, the Offer of Settlement is clearly in the public interest.

### III. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission approve the Offer of Settlement.

Respectfully submitted,

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

Charles F. Robinson  
General Counsel  
Stephen A.S. Morrison  
Corporate Counsel  
Beth Ann Burns  
Litigation Counsel  
California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 351-4400  
Fax: (916) 351-2350  
[smorrison@caiso.com](mailto:smorrison@caiso.com)  
[bburns@caiso.com](mailto:bburns@caiso.com)

Dated: July 8, 2005

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010). Dated this 8th day of July in the year 2005 at Folsom in the State of California.

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

Stephen A.S. Morrison



July 8, 2005

**Via Electronic Filing**

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: California Independent System Operator Corporation  
Docket Nos. ER04-115-000 & EL04-47-000**

**Pacific Gas and Electric Company  
Docket Nos. ER04-242-000 & EL04-50-000**

Dear Secretary Salas:

Transmitted herewith for electronic filing in the above-referenced proceeding are Reply Comments of the California Independent System Operator Corporation to Comments on the Offer of Settlement.

Thank you for your attention to this matter.

Yours truly,

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

Counsel for the California Independent  
System Operator Corporation