

June 20, 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 No. ER05-150-000**

Dear Secretary Salas:

Enclosed please find the Reply Comments of the California Independent System Operator Corporation, submitted in the captioned docket.

Feel free to contact the undersigned with any questions. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas

J. Phillip Jordan
Bradley R. Miliauskas

Counsel for the California
Independent System Operator
Corporation

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System)
Operator Corporation) Docket No. ER05-150-000

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

Pursuant to Rule 602(f)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.602(f)(2), the California Independent System Operator Corporation (“ISO”)¹ submits these reply comments concerning the comments submitted in the captioned docket.

I. REPLY COMMENTS

A. Background

This proceeding concerns an Offer of Settlement and Settlement Agreement (“Settlement Agreement”) between the ISO and Trinity Public Utilities District (“Trinity PUD”) (together, the “Sponsoring Parties”), submitted on May 19, 2005. The Settlement Agreement included the following exhibits: a Small Utility Distribution Company (“SUDC”) Operating Agreement between the ISO and Trinity PUD, new ISO Tariff language concerning the relationship between the ISO and SUDCs, and new ISO Tariff language to be included in the ISO Tariff as a *pro forma* SUDC Operating Agreement. Explanatory Statement for Settlement Agreement at 6-7. The Sponsoring Parties submitted the SUDC Operating

¹ Capitalized terms not otherwise defined herein have the meanings set for in the Master Definitions Supplement, Appendix A to the ISO Tariff.

Agreement between the ISO and Trinity PUD for Commission acceptance. *Id.* at 7. However, the Sponsoring Parties stated that they would make a separate filing, pursuant to Section 205 of the Federal Power Act, for Commission acceptance of the new ISO Tariff language concerning the relationship between the ISO and SUDCs and the new ISO Tariff language to include in the ISO Tariff a *pro forma* SUDC Operating Agreement. *Id.* The ISO subsequently submitted that Section 205 filing in Amendment No. 70 to the ISO Tariff, in Docket No. ER05-1025 (“Amendment No. 70”).

Commission Staff, the Western Area Power Administration, and Trinity PUD submitted comments in support of the Settlement Agreement. Pacific Gas and Electric Company (“PG&E”) filed comments in opposition to the Settlement Agreement, requested clarification of the Settlement Agreement, and requested consolidation with the proceeding in Docket No. ER05-130.

B. PG&E No Longer Requests Consolidation

PG&E requested consolidation of the captioned proceeding with the proceeding in Docket No. ER05-130. PG&E at 5-6. Due to the issuance of a Partial Initial decision in Docket No. ER05-130, discussed in Section I.C, below, counsel for PG&E have informed counsel for the ISO that PG&E no longer requests consolidation.

C. PG&E’s Request for Clarification Has Been Addressed by a Partial Initial Decision Recently Issued in Docket No. ER05-130

PG&E requests that the Commission clarify that a Utility Distribution Company Operating Agreement (“UDC Operating Agreement”) and the proposed SDUC Operating Agreement “are distinct and do not replace IAs,” and states that

PG&E is concerned that the SUDC Operating Agreement “would be allowed to improperly substitute for an IA.” PG&E at 4, 5. The ISO believes that PG&E’s request for clarification has, in effect, been addressed by a recent issuance in Docket No. ER05-130. In that docket, PG&E unilaterally filed an unexecuted Interconnection Agreement (“IA”) with Trinity PUD. Explanatory Statement for Settlement Agreement at 10. Subsequent to the filing of the Settlement Agreement, the Presiding Administrative Law Judge in Docket No. ER05-130 issued a Partial Initial Decision in which he found, *inter alia*, that “PG&E can require [Trinity PUD] to have an IA or other agreement establishing terms of interconnection, if [Trinity PUD’s] distribution system is to remain interconnected with PG&E.” *Pacific Gas and Electric Company*, 111 FERC ¶ 63,062, at P 1 (2005). Because PG&E can require Trinity PUD to have an IA if Trinity PUD’s distribution system is to remain interconnected with PG&E, it does not appear to be possible for a SUDC Operating Agreement to “improperly substitute for an IA.” Therefore, the ISO believes that the Partial Initial Decision in Docket No. ER05-130 alleviates the concerns as to substitutes for IAs that PG&E expresses throughout its comments. See PG&E at 7, 8, 10-11.

D. The SUDC Operating Agreement Is Just and Reasonable

PG&E argues that the proposed SUDC Operating Agreement is unjust and unreasonable. PG&E at 6-10. PG&E notes that under the terms of the SUDC Operating Agreement, Trinity PUD “is not bound by all applicable terms in the ISO’s Tariff, but is bound only by select provisions,” and that, “[a]part from stating that [Trinity PUD] is a smaller entity than some UDCs, the Sponsoring

Parties have failed to present facts that specifically justify such discriminatory treatment.” *Id.* at 7. However, the small size and limited operating capacity of Trinity PUD are the very reasons that it is just and reasonable to make Trinity PUD subject to a SUDC Operating Agreement rather than a UDC Operating Agreement (which entails obligations that are more appropriate for a comparatively large UDC).² Explanatory Statement for Settlement Agreement at 4-5, 9-10. Moreover, given Trinity PUD’s size and operating capacity, there is no need to make Trinity PUD subject to more than the set of ISO Tariff provisions that apply to a SUDC. *Id.* at 9.

Further, PG&E’s concerns that the Commission’s acceptance of the SUDC Operating Agreement may have “operational impacts that will add unwanted burdens” on UDCs are unfounded. PG&E at 7.³ The peak demand of Trinity PUD is only 17 MW, and an entity cannot be a SUDC if it has an annual peak demand of more than 25 MW. Explanatory Statement for Settlement Agreement at 2, 5. Such a small utility is unlikely to cause a material adverse impact on the ISO Controlled Grid and, if it were to do so, the ISO would have recourse pursuant to the terms of the SUDC Operating Agreement.⁴ For example, an SUDC is obligated by the SUDC Operating Agreement to “operate and maintain its SUDC Facilities in accordance with applicable reliability

² The requirements under the SUDC Operating Agreement are mostly derivative of the requirements applicable under a UDC Operating Agreements, with a few exceptions to reflect a SUDC’s size and operating capacity. Explanatory Statement for Settlement Agreement at 5, 9.

³ On pages 8-9 of its comments, PG&E makes similar arguments concerning impacts and costs that Trinity PUD may purportedly impose on PG&E.

⁴ Presumably PG&E would also have recourse pursuant to the terms of its IA with Trinity PUD as required by the decision discussed in Section I.C, above.

standards, statutes, and regulations and Good Utility Practice so as to avoid any material adverse impact on the reliability of the ISO Control Area and the ISO Controlled Grid.” SUDC Operating Agreement, § 3.1.⁵ The ISO would certainly investigate such an event in an effort to ascertain whether the adverse impact was caused by a failure of the SUDC to comply with this provision and respond accordingly.

PG&E argues that the Sponsoring Parties should quantify the “significant financial investment and substantial increased operational costs” that Trinity PUD would be required to incur in order to qualify as a UDC. PG&E at 8-9 (quoting Explanatory Statement for Settlement Agreement at 4). No such quantification is needed. It is plain, based on the characteristics of Trinity PUD described in the Settlement Agreement, that Trinity PUD would need to take on a significant amount of investment and costs in order to meet the requirements of a UDC. Explanatory Statement for Settlement Agreement at 4.

PG&E asserts that “[i]t is unclear whether there are any other entities [besides Trinity PUD] that fit or may fit the definition of [a SUDC Operating Agreement], and therefore it appears improper for the ISO to have filed a *pro forma* [SUDC Operating Agreement] or ISO Tariff Amendments.” PG&E at 9. PG&E’s argument is outside the scope of the present proceeding and should instead be raised solely in the Amendment No. 70 proceeding, in which the new

⁵ On page 8 of its comments, PG&E also argues that a recital included in the SUDC Operating Agreement but not included in the UDC Operating Agreement “appears to absolve [Trinity PUD] of any harm to interconnected systems anywhere on the ISO Controlled Grid.” PG&E fails to properly recognize that the ISO intended this language purely as a recital to provide background why it is just and reasonable to subject a SUDC to obligations that differ from the obligations imposed on a UDC.

ISO Tariff language that PG&E refers to was submitted for Commission acceptance. Moreover, there is nothing improper about the filing of the new ISO Tariff language. If PG&E turns out to be right and there are no other entities that ever fit the definition of a SUDC, the language merely will be in the ISO Tariff but will not be widely used in practice. If, on the other hand, PG&E turns out to be wrong and there are other entities that fit the definition of a SUDC, the new ISO Tariff language will permit them to become SUDCs. It may be the case that entities other than Trinity PUD will seek to become SUDCs at some point in the future. Therefore, it is prudent to include the new ISO Tariff language proposed in Amendment No. 70.

PG&E argues that it should receive the contact information for Trinity PUD that was filed as a confidential part of the Settlement Agreement. PG&E at 9-10. It is the ISO's practice not to release this kind of information to Participating TOs. However, the ISO would have no objection if Trinity PUD were to decide to release its own contact information to PG&E.

II. CONCLUSION

For the reasons explained above, the ISO respectfully requests that the Commission deny PG&E's request for consolidation, find the Settlement Agreement to be just and reasonable, and accept the Settlement Agreement as filed.

Respectfully submitted,

John Anders Corporate Counsel The California Independent System Operator Corporation 151 Blue Ravine Road Folsom, CA 95630 Tel: (916) 351-4400 Fax: (916) 608-7296	<u>/s/ J. Phillip Jordan</u> J. Phillip Jordan Bradley R. Miliauskas Swidler Berlin LLP 3000 K Street, N.W., Suite 300 Washington, D.C. 20426 Tel: (202) 424-7500 Fax: (202) 424-7643
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Counsel for the California Independent
System Operator Corporation

Dated: June 20, 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 for the 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 20th day of June, 2005.

/s/ John Anders
John Anders