



**Pacific Gas and  
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Via Overnight Mail

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Board of Governors  
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151 Blue Ravine Road  
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American Arbitration Association (as delegated agent for the ISO ADR Committee)  
Julie Collins, Intake Supervisor  
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Fresno, CA 93704

**STATEMENT OF CLAIM OF PACIFIC GAS AND ELECTRIC COMPANY  
PURSUANT TO CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TARIFF SECTION 13.2.2**

Pacific Gas and Electric Company ("PG&E") hereby submits the following Statement Of Claim to initiate the Alternative Dispute Resolution ("ADR") procedures set out in Article 13 of the California Independent System Operator Corporation Tariff ("ISO Tariff").

**Parties To The Dispute:** The California Independent System Operator Corporation ("ISO")  
PG&E

**Other Potentially  
Interested Parties:** Western Area Power Administration ("WAPA")  
Sacramento Municipal Utility District ("SMUD")  
Holders of transmission entitlements on the California Oregon  
Transmission Project ("COTP")

**I. Background Of Current Claim And Summary Of Grounds For Relief**

**A. The first arbitration establishes that PG&E is not the Scheduling Coordinator for COTP transactions or transactions occurring in the WAPA and SMUD “Bubbles”**

This dispute is virtually identical to a dispute PG&E and the ISO submitted to arbitration in October 2000 (American Arbitration Association Case No. 71 198 00711 00, herein “Arb. I”). The current dispute is over charges that the ISO has improperly imposed on PG&E, and which the ISO has been inappropriately netting from amounts due PG&E. The charges at issue are associated with COTP schedules and so-called “Bubble” transactions, which are transactions occurring on facilities that are owned by WAPA or SMUD and that are not scheduled over facilities that are part of the ISO Controlled Grid, as that term is defined in the ISO Tariff.

In Arb. I, the ISO had allocated charges to PG&E using a proxy scheduling coordinator identification (“proxy sc ID”) code to impose the charges. The proxy sc ID was used by PG&E purely as an accommodation to the ISO. The proxy sc ID was expressly created to facilitate implementation of electric restructuring and to pass the COTP and Bubble information through PG&E to the ISO so that it could perform its duties as Control Area Operator. However, in agreeing to facilitate this flow of information, PG&E was clear that it was not agreeing to act as an ISO-certified Scheduling Coordinator (“SC”) with respect to these transactions and would not accept any charges related to the COTP or Bubble schedules. Indeed, as the first arbitration establishes, the ISO has no authority to impose such charges on PG&E. PG&E is not now, nor has it ever been, the SC for COTP or Bubble transactions and, therefore, PG&E is not liable for any charges associated with such transactions.

The December 13, 2001, decision in Arb. I held that the ISO’s charges were improper for several reasons, one of which was that PG&E was not the SC for the COTP or Bubble transactions. The Arbitrator ruled that the ISO had no authority to impose the charges. Arb. I, Final Order and Award at 17-8 (December 13, 2001), (“In short, the Arbitrator finds and concludes that PG&E is the Scheduling Coordinator under the [ISO] Tariff for transactions on the ISO Controlled Grid, but is not in that status with respect to COTP and Bubble transactions.”)

The ISO then appealed the Arbitrator’s decision in Arb. I to the Federal Energy Regulatory Commission (“FERC”). On May 10, 2004, FERC issued its Order Denying Petition For Review, stating: “We will uphold the arbitration award and deny the ISO’s petition for review, as discussed below.” *California Independent System Operator Corporation*, 107 FERC ¶ 61,152, ¶27 (2004) (“May 10 Order”). FERC’s May 10 Order further stated:

Following the ISO Tariff, we also give substantial deference to the arbitrator’s factual findings that considered the extrinsic evidence relating to the meaning of the ISO Tariff provisions in dispute, and

the arbitrator's finding that PG&E had agreements in place that included ancillary service self-provision arrangements for COTP and Bubble transactions, **as well as the arbitrator's finding that PG&E was not a scheduling coordinator for COTP and Bubble transactions.** *Id.* at ¶31 (emphasis added).

**B. The current claim: the ISO's new charges are also improperly based on the proxy sc ID**

Notwithstanding the fact that the Arb. I proceeding was already underway, starting in late 2001 the ISO began again improperly billing PG&E, this time for three new Charge Types: Emissions, Start Up and Minimum Load Compensation (Charge Types 591, 592 and 595, respectively), again using the PG&E proxy sc ID.

In the current claim, the improper charges assessed to PG&E for the three new Charge Types totaled approximately \$9 million as of the end of May 2004. Additionally, in 2002, the ISO began charging PG&E interest on the amount in dispute, currently totaling approximately \$115,000.

Further, the ISO also began offsetting the currently disputed amounts against money the ISO owes PG&E. Regrettably, and somewhat surprisingly, this offsetting started *after* the December 2001 Arb. I decision holding that PG&E is not the SC for the COTP or Bubble transactions. The improper offsetting has continued even after the May 2004 FERC decision affirming that the ISO has no authority to impose the charges on PG&E because PG&E is *not* the SC for the COTP or Bubble transactions.

Since 2001, PG&E has repeatedly protested to the ISO regarding its improper actions, which started soon after the ISO first began imposing the new Charge Types on PG&E for COTP and Bubble transactions using the proxy sc ID. However, the ISO has continued to improperly impose charges and to offset the charges from money that is undeniably owed PG&E. In fact, as recently as three weeks ago PG&E received another invoice from the ISO on the proxy sc ID for the disputed Charge Types.

The new improper charges are not insignificant, accruing at a rate of approximately \$500,000 per month.

**II. The Claims**

As noted above, while Arb. I was still pending in late 2001, the ISO began charging PG&E for new charges, again using the proxy sc ID to impose charges on PG&E for COTP and Bubble

interchange schedules. The charges were for three new Charge Types authorized generally by the FERC in June 2001, but *not* authorized to be charged against proxy sc IDs.<sup>1</sup>

In November 2001, PG&E sent a letter to the ISO stating that PG&E disputed Charge Types 591 and 592, and that PG&E disputed any charges associated with the proxy sc ID (Charge Type 595 was authorized by FERC later, but authorized to be billed back to June 2001). Because PG&E received no satisfactory response from the ISO, in February 2002, PG&E formally filed a dispute with the ISO using the ISO's Settlement Dispute System, regarding the ISO's improper imposition of Charge Types 591, 592, and 595 on the proxy sc ID. The ISO again failed to reverse or stop the improper charges, despite the December 2001 ruling in Arb. I that PG&E was not the SC for the COTP or Bubble. Then, in March 2003 (while the parties awaited the outcome of the ISO's appeal of the Arb. I decision), PG&E found that the ISO had begun charging interest on the improper proxy sc ID charges. Also in 2003, the ISO began to offset amounts it claimed PG&E owed for the three new Charge Types on the proxy sc ID against amounts the ISO indisputably owes PG&E.

The improper charges currently total approximately \$9 million, plus interest. The ISO continues to offset the amounts it claims PG&E owes it for the disputed charges on the proxy sc ID, so the charges continue to accrue, at a rate of approximately \$500,000 per month, despite the ISO's lack of authority to impose the charges.

PG&E believes the ISO has misconstrued the FERC rulings on which it states it relies, including the June 19 Order, that, among other things, allowed the ISO to begin charging SCs for the new Charge Types at issue here. The new Charge Types were to be assessed: "against all in-state-load served on the ISO's system." June 19 Order, 95 F.E.R.C. P61,418 at P62,562.

Significantly, nothing in the June 19 Order or any other FERC order or ISO compliance filing allows the ISO to charge anyone other than an SC for any of the charges at issue. As the ISO Tariff states at §§2.5.23.3.6.1, 2.5.23.3.7.1, and 5.11.6.1.4, these charges are to be paid by SCs, e.g.: "The ISO shall levy this charge...each month, against all Scheduling Coordinators..." ISO Tariff §2.5.23.3.6.1. Given the unambiguous rulings in Arb. I and the FERC May 10 Order that PG&E is not the SC for the COTP or Bubble, the ISO has no authority to impose the new charges on PG&E.

PG&E also believes that the ISO improperly applies the disputed Charge Types against PG&E here because, among other things, transactions at issue are not "in-state load served on the ISO's

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<sup>1</sup> The exact language of the ISO Tariff amendments to implement the new Charge Types was hotly contested, as memorialized in a series of FERC rulings following the June 19, 2001, Order in *San Diego Gas & Electric Co.*, 95 F.E.R.C. P61,418 (2001) ("June 19 Order") (see, e.g., orders in the case on December 19, 2001, and May 15, 2002, 97 FERC ¶61,293 (2001) and 99 FERC ¶61,159 (2002) respectively). However, the propriety of the ISO mechanism of charging SCs for the new charges was not contested.

system.” June 19 Order. However, PG&E believes that the ruling in Arb. I is dispositive that the ISO may not charge PG&E as the SC for the COTP or Bubble.

The ISO stated during the good faith negotiations preceding this filing that the outcome of their petition for review in Arb. I would not change the ISO’s assertion that it can impose these new charges on PG&E using PG&E’s proxy sc ID for the COTP and Bubble transactions.

PG&E asserts that (i) it is not a Scheduling Coordinator for the COTP or Bubble or for transactions scheduled on them, (ii) it has no liability for ISO charges, if any, which result from COTP/Bubble transactions, including, but not limited to, Emissions, Start Up, or Minimum Load Compensation, (iii) the ISO improperly included these charges in its invoices to PG&E, and continues to do so after PG&E informed the ISO of its error and also filed disputes over the improper charges, and (iv) the ISO currently improperly offsets these improper charges from amounts the ISO owes PG&E, and imposes interest, because PG&E refused and continues to refuse to pay the improper charges on the proxy sc ID.

### **III. The Relief Sought**

PG&E seeks an award (i) following the FERC’s ruling that PG&E is not a Scheduling Coordinator for COTP or Bubble transactions, (ii) ordering the ISO to reverse the wrongful Charge Types 591, 592 and 595, totaling approximately \$9 million as of the end of May 2004, plus interest, and accruing at a rate of approximately \$500,000 per month, (iii) ordering the ISO promptly to pay all charges owing PG&E that the ISO is improperly offsetting against amounts owed to PG&E, plus interest, (iv) ordering the ISO to refrain in the future from improperly imposing any charges on PG&E as the proxy sc for COTP or Bubble transactions, and (v) whatever other relief the arbitrator determines to be just and reasonable under the circumstances.

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#### IV. Individuals Having Knowledge Of Each Claim

There are many individuals with knowledge of these claims. To the best of PG&E's knowledge, and without limitation, those most knowledgeable include:

PG&E present and former employees:

Susan Dowling  
Robert Evans  
Erik Menzel  
Judi Mosley (through April 30, 2004)  
Jeannette Woo

ISO present and former employees:

Randy Abernathy  
Michael Epstein  
Don Fuller  
Spence Gerber  
Kyle Hoffman  
Debi Le Vine  
William Regan  
Chris Sibley

Respectfully submitted,

MARK D. PATRIZIO  
JENNIFER S. ABRAMS

By:

  
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