

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

California Independent System Operator Corporation))))	Docket No. ER98-3760-000
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California Independent System Operator Corporation))))	Docket Nos. EC96-19-000 and ER96-1663-000
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[Not Consolidated]

UPDATED REPORT OF UNRESOLVED ISSUES

I. INTRODUCTION

On October 30, 1997, the Commission issued an order conditionally authorizing limited operation of the ISO. Pacific Gas & Electric Company et al., 81 FERC ¶ 61,122 (1997). In an order issued on December 17, 1997, the Commission conditionally accepted certain of the ISO's proposed tariff changes and pro forma agreements. Pacific Gas & Electric Company et al., 81 FERC ¶ 61,320 (1997). The Commission also noted that the ISO would be making a compliance filing sixty days from the commencement of operations and stated that interested parties would be permitted to pursue at that time issues not previously resolved by the Commission.¹Id. at 62,476. The Commission also

¹ The Commission stated:

At that time, the Commission will afford the parties an adequate opportunity to address the filings in view of actual ISO and PX

required the ISO to file its protocols under Section 205 of the Federal Power Act in that same compliance filing, specifying that “[a]t that time, we will afford the parties an opportunity to file comments.” Id. at 62,471. See also, California Independent System Operator Corporation, 82 FERC ¶ 61,327 at 61,294 (1998). The ISO made its “Compliance Filing” on June 1, 1998.

On July 15, 1998, the ISO submitted amendments to the ISO Tariff in Docket No. ER98-3760-000 to correct and clarify a variety of non-substantive matters (the “Clarification Filing”). As part of this Clarification Filing, the ISO submitted a procedural proposal for addressing issues previously raised in Docket Nos. EC96-19 and ER96-1663, but not resolved in prior Commission orders in those proceedings (the “WEPEX” proceedings).

In its September 11, 1998 Order in Docket No. ER98-3760-000, the Commission directed the ISO and the other participants in the WEPEX proceedings to develop a comprehensive list of the issues that remained active and in dispute. California Independent System Operator Corporation, 84 FERC ¶ 61,217, 62,048 (1998). The Commission further directed its Trial Staff to participate in and facilitate negotiations involving the ISO and participants to resolve as many of these outstanding issues as possible through settlement. Id. Lastly, the Commission directed the ISO and participants to submit a report on the results of these negotiations and indicated that this report should include a list of the outstanding issues that had been resolved through settlement and a list of those issues that remained for Commission resolution. Id.

operational experience. All issues raised by these filings, including, but not limited to ISO and PX issues regarding Tariff amendments not addressed in this order, will be the subject of a future order.

On March 11, 1999, the ISO filed its Report on Outstanding Issues (the “March 1999 Report”). In an Order dated April 28, 1999, the Commission accepted the March 1999 Report for filing, established procedures to incorporate issues that had been resolved by the parties into an Offer of Settlement, and specified further procedures to address issues that remained in dispute. California Independent System Operator Corporation, 87 FERC ¶ 61,102 (the “April 1999 Order”). The Commission required the ISO to file an updated Unresolved Issues report and a Joint Statement of Issues identifying the issues to be briefed to the Commission two weeks after the initial comments on the Offer of Settlement were to be filed.²Id., 87 FERC at 61,422.

In accordance with the April 1999 Order, the ISO files this Updated Unresolved Issues Report. This Report updates the matrices identifying the disposition of the approximately 680 Unresolved Issues identified in the March 1999 Report to reflect subsequent negotiations, the Offer of Settlement, and comments on the Offer of Settlement. In addition, this Report provides additional information required by the Commission to permit it to track the Unresolved Issues against their originating dockets. A separate Joint Statement of Issues will also be filed today.

II. REPORT

A. The Unresolved Issues Settlement

² If the initial comments to the settlement reveal any significant issues that need to be resolved by the Commission, these are to be removed from the list of resolved issues and included in either the Joint Statement of Issues for resolution by the Commission, or in one of the other categories in the updated Outstanding Issues Report. To the extent that the parties cannot agree to the categorization of an issue, it should be included in the Joint Statement of Issues for Resolution by the Commission.

On December 1, 1999, the ISO filed the Offer of Settlement. In Attachment A to this Report, the ISO provides a matrix matching the proposed tariff changes to the specific Unresolved Issue or Issues they are intended to address.

Of the numerous entities served with the settlement documents, only ten participants submitted comments: the Public Utilities Commission of the State of California (“CPUC”); Commission Trial Staff (“Staff”); Pacific Gas and Electric Company (“PG&E”); the Cities of Redding, Santa Clara and Palo Alto, California and the M-S-R Public Power Agency (“Cities / M-S-R”); the Transmission Agency of Northern California (“TANC”); the Modesto Irrigation District (“Modesto”); the Metropolitan Water District of California (“MWD”); the Sacramento Municipal Utility District (“SMUD”); the Department of Water Resources of the State of California (“DWR”); and the Energy Producers and Users Coalition and the Cogeneration Association of California (“CAC”).

The CPUC “supports the Offer of Settlement as a reasonable resolution on many difficult issues.” CPUC Comments at 2. In its comments, Staff notes that the Offer of Settlement would resolve several issues which are pending on rehearing before the Commission. Staff does not oppose the proposed settlement terms, but seeks to insure that the Commission is fully informed. Staff Comments at 1.

PG&E supports the Offer of Settlement subject to the need to conform the ISO Tariff as proposed to be modified in the Offer of Settlement to conform with subsequent Commission decisions and orders. PG&E Comments at 1-2. The ISO agrees with this comment. Indeed, the ISO’s December 1, 1999, transmittal letter for the Offer of Settlement noted that the “that the Offer of Settlement is based on the ISO Tariff as approved by the Commission through Amendment No. 20 (including the Amendment No. 14 Compliance filings)... [and]

that a compliance filing may be necessary in order to incorporate Commission orders regarding subsequent tariff amendments.”³

The Cities / M-S-R “do not support the settlement, nor do they oppose it.” Cities / M-S-R Comments at 2. They note that many of the issues are of limited interest to them and they should “not be deemed to have adopted resolution of all the settled issues as appropriate.” Id. Cities / M-S-R are “cognizant of, and accept, the consequences under Rule 602 and the Commission’s prior orders in these proceedings, of failing to contest the Offer of Settlement in whole or in part,” but nevertheless specify that they should not be considered as parties to the settlement. Id. at 2-3. Cities / M-S-R also note that they and the ISO had reached a settlement regarding two Cities / M-S-R issues (Issue Nos. 541 and 543) but that another party has objected to this resolution. These issues are listed in Attachment G and included in the Joint Statement of Issues; however, the ISO has indicated to the participants that it would continue to support the agreement it reached with Cities / M-S-R.

TANC and Modesto wish “to clarify that [they do] not oppose the Offer of Settlement and the ISO’s Explanatory Statement.” TANC Comments at 4; Modesto Comments at 4. Similar to the position espoused by Cities / M-S-R, TANC and Modesto note that the resolution of many of the issues did not directly implicate their interests and “[t]herefore, it would be inaccurate to say that [TANC or Modesto] actively supports every issue.” Id. TANC and Modesto propose that the Commission should accept the Offer of Settlement for filing and not make a finding regarding the justness and reasonableness of each settlement term. Id.

³ Transmittal letter at 1. Of course, such a compliance filing would need to incorporate Commission Orders regarding compliance filings of conditionally-approved tariff amendments such as Amendment No. 18.

Similarly, MWD “does not oppose the Offer of Settlement and the Explanatory Statement,” but since “many of the identified resolutions of issues ... did not directly implicate [MWD’s] interests... it would be inaccurate to say that [MWD] actively supports every issue.” MWD Comments at 3-4. MWD objects to being considered a “Party”. Id. at 4. MWD also notes that it had reached agreement with the ISO on three issues (Issue Nos. 505, 516, and 519) but that another party rendered an objection. As it did with regard to the similarly-situated Cities / M-S-R issues, the ISO has listed these issues in Attachment G, included them in the Joint Statement of Issues, and indicated to the participants that the ISO would continue to support the agreement it reached with MWD, the original proponent of the issues.

Additionally, MWD requests certain corrections to the tariff sheets in the Offer of Settlement. MWD Comments at 4-5. First, MWD states that the term “Settlement Period t” be substituted for “Trading Interval t” on Attachment A, Original Sheet No. 966-A. Id. The ISO believes this change was already incorporated on the bottom of Tariff Sheet No. 926. Second, MWD requests that the reference in Section 2.2.4.6 to notice of default to Scheduling Coordinators as provided in “Sections 2.2.4.5(a)(ii) or Sections 2.2.4.5(a)(iii) be expanded to include a reference to Section 2.2.4.5(a)(i) or simply a reference to Section 2.2.4.5(a). Id. at 5. The ISO does not object to this proposed clarification.

Finally, MWD requests that Issue. No. 530 should be withdrawn from the settlement and included in the list of issues to be litigated. This change is reflected in the updates to Attachment C and Attachment G provided with this Report.

SMUD seeks to clarify the disposition of several of its issues. Specifically, SMUD notes that its Issue No. 74 was merged with Issue No. 73, which remains to be resolved by the Commission. SMUD Comments at 2. SMUD also states

that Issue No. 260 should be listed as merged with Issue No. 530 and that Issue No. 261 should be listed as merged with Issue No. 366. Id. The updated Attachment D to this Report reflects these designations. SMUD incorrectly reports that the Explanatory Statement and the Offer of Settlement fail to make reference to Issue No. 530. Id. See Offer of Settlement at page 8. As discussed above with respect to MWD's comments; however, Issue No. 530 will be listed in Attachment G, as requested by SMUD, as requiring resolution by the Commission and will be included in the Joint Statement of Issues.⁴

DWR "actively supports aspects of the proposed settlement, and does not oppose any of it." DWR Comments at 1. DWR correctly identifies that Issue No. 253 was mistakenly listed twice in the Offer of Settlement and should have been only included on the list of issues to be decided by the Commission. DWR also notes several "discrepancies" regarding Issue Nos. 405, 22, and 47. The ISO does not believe these are discrepancies, but rather that the final settlement documents reflect continuing negotiations regarding these issues subsequent to the submission of the March 1999 Report.

On December 29, 1999, CAC submitted comments on the Offer of Settlement.⁵ CAC correctly notes that Issue No. 353 was not addressed in the Offer of Settlement. CAC Comments at 1. This issue should have been

⁴ During the preparation of the Joint Statement of Issues, SMUD also corrected that Issue No. 252 which had been listed as an issue requiring Commission resolution should have been listed as a settled issue. The ISO has revised the tables accordingly.

⁵ During the preparation of the Joint Statement of Issues, CAC noted that Issue No. 543 which had been listed as an issue requiring Commission resolution should have been listed as a withdrawn issue. The ISO has revised the tables accordingly.

described as moving from Attachment C of the March 11 Report to Attachment G as an issue requiring resolution by the Commission.⁶

Based on the comments on the Offer of Settlement, the ISO believes that with the exception of moving Issue Nos. 353 and 530 from the list of settled issues, no participant objects to the proposed disposition of issues reflected in the Offer of Settlement.

B. Identification of Dockets

In the March 1999 Report, the ISO explained that the comprehensive matrix of issues that served as the basis for the settlement negotiations involved many, but not all, of the Commission's orders and proceedings involving the ISO.

Specific orders and proceedings addressed in the negotiations consisted of:

- Pacific Gas and Electric Company, et al., 77 FERC ¶ 61,204 (1996)(the November 26 Order)⁷
- Pacific Gas and Electric Company, et al., 81 FERC ¶ 61,122 (1997)(the October 30 Order);
- Pacific Gas and Electric Company, et al., 81 FERC ¶ 61,320 (1997)(the December 17 Order);
- California Independent System Operator Corporation, 82 FERC ¶ 61,312 (1998) (Order accepting ISO Tariff Amendment No. 1 subject to modification and rejecting Amendment Nos. 2 and 3);
- California Independent System Operator Corporation, 82 FERC ¶ 61,327 (1998) (Order accepting ISO Tariff Amendment Nos. 4, 5, and 6 subject to modification);

⁶ CAC suggests that this issue should have been listed in Attachment F as being addressed in another docket. The ISO disagrees that this issue is being addressed in the dockets identified by CAC, especially Docket No. ER98-1499-000, et al. in which an uncontested Offer of Settlement is pending. In accordance with the Commission's direction as cited in footnote 2 of this Report, to the extent the parties cannot agree on the categorization of an issue it has been included in the Joint Statement of Issues for resolution by the Commission.

⁷ This docket was inadvertently not listed in the March 1999 Report. However, several of the issues involve pending rehearing requests of this Order.

- California Independent System Operator Corporation, 83 FERC ¶ 61,209 (1998) (Order accepting ISO Tariff Amendment No. 7),⁸
- June 1, 1998 Compliance Filing, Docket Nos. EC96-19-029; and
- July 17, 1998 Clarification Filing, Docket No. ER98-3760-000.⁹

In the April 1999 Order, the Commission noted that it must continue to keep track of outstanding issues and their originating dockets. 87 FERC at 61,424. The ISO was required to provide: (1) the originating docket number or docket numbers associated with the issue and identification of rehearing issues; (2) the matrix issue number, reflected in the Unresolved Issues filing; and (3) the proponent or proponents of the issue. Id. The ISO has attempted to provide this information in Table 1 of Attachment B to this Report.

The Commission also required the ISO to provide a “statement of the Docket Nos. or proceedings that would be terminated as a result of the Settlement of the issue.” Id. Table 2 of Attachment B to this report identifies the docket numbers associated with the Unresolved Issues that require resolution by

⁸ Not included in the negotiations were issues concerning the ISO's June 29, 1998 clarification filing concerning Amendment No. 7 in Docket Nos. EC96-19-031 and ER96-1663-032.

⁹ ISO proceedings not covered by these settlement negotiations include but are not limited to: (1) any rehearing requests or ongoing matters concerning Amendments 8 through 14 of the ISO Tariff; (2) the ISO's June 29, 1998 Clarification filing on Amendment 7; (3) the ISO's Grid Management Charge; (4) cases involving the ISO's Reliability Must Run Contracts; (5) the ISO's compliance filing on its governance structure and bylaws in Docket Nos. EC96-19-047 and ER96-1663-049; (6) matters concerning the rates, terms and conditions of the Participating Transmission Owner tariffs; (7) cases involving other ISO jurisdictional agreements including the Participating Generator Agreement, Meter Service Agreement, Responsible Participating Owner Agreement, Interconnected Control Area Operating Agreement, and Utility Distribution Company Agreement; and (8) The Transmission Control Agreement (Docket Nos. ER98-1971-000 and ER99-1770-000).

the Commission. As indicated in Table 2, all issues associated with Docket Nos. EC96-19-014 and ER96-1663-015, EC96-19-015 and ER96-1663-016, and ER96-19-018 and ER96-1663-019 have been resolved.

C. Updated Disposition of Issues

Attachments C, D, E, F, G, and H of the March 1999 Report showed the disposition of the issues resulting from the settlement negotiations.

- Attachment C listed the issues as to which the ISO agreed either to a modification of the ISO Tariff or on a commitment that resolves the concern. These Tariff revisions and commitments were reflected in the Offer of Settlement.
- Attachment D identified issues that were either: (1) consolidated with other issues (“merged”) or (2) no longer being pursued by the party raising the issue.¹⁰
- Attachment E listed those issues as to which the ISO and the other participants agreed to defer action pending consideration of the issue in ongoing ISO stakeholder forums.¹¹
- Attachment F identified certain issues that the participants have characterized as “premature” or are the subject of other proceedings. These are issues that were not raised in the original

¹⁰ Accordingly, these issues do not require further action by the Commission in these proceedings. While a number of factors (such as operational experience, subsequent tariff amendments, or further information by the ISO) may have led a party not to pursue these issues at this time, the participants agreed that withdrawal of an issue should be without prejudice if subsequent events lead the party to raise the same or a similar concern at a later date.

¹¹ The Commission need not take any additional action with respect to these issues at this time. In agreeing to list an issue in Attachment E, however, participants did not waive any right to pursue the issue at the Commission subsequently if dissatisfied with the outcome of the stakeholder process.

WEPEX dockets (including Amendments 1 through 7, the ISO's June 1, 1998 "Compliance" filing, and the ISO's July 15, 1998 "Clarification" filing) but relate to subsequent filings, stakeholder processes, or operational concerns.¹²

- Attachment G identified those issues as to which the ISO and the other participants in the settlement negotiations have been unable to reach a consensus and which require resolution by the Commission.

The March 1999 Report also included an Attachment H consisting of issues that had not yet been placed into one of the previous categories. These were issues that the ISO and the participants were continuing to pursue through further negotiations.

Attachments C, D, E, F, and G to this Report update the corresponding Attachments from the March 1999 Report. In accordance with the April 1999 Order, all these issues have been listed in Attachments C - G and Attachment H has been eliminated.

¹² These issues are either currently being pursued in other ongoing cases or will be addressed at such time as a future filing is made at the Commission. Accordingly, being listed on Attachment F is without prejudice to the parties' ability to pursue the concern in another case or when the appropriate ISO filing is made or by means of a petition under section 206 of the Federal Power Act.

III. CONCLUSION

Wherefore, for the reasons stated above, the ISO respectfully requests that the Commission accept this Report.

Respectfully submitted,

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Dated: January 4, 2000

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 dockets.

Dated at Washington this 4th day of January 2000

David B. Rubin
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ATTACHMENT A

ATTACHMENT B

ATTACHMENT C

ATTACHMENT D

ATTACHMENT E

ATTACHMENT F

ATTACHMENT G

