

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	)	Docket Nos. ER98-899-000 and ER98-1923-000
	)	
	)	

**REPLY COMMENTS OF THE CALIFORNIA INDEPENDENT  
SYSTEM OPERATOR CORPORATION IN OPPOSITION  
TO THE COMMENTS OF THE CALIFORNIA DEPARTMENT  
OF WATER RESOURCES AND THE METROPOLITAN  
WATER DISTRICT OF SOUTHERN CALIFORNIA**

**To: The Honorable Joseph R. Nancy  
Presiding Administrative Law Judge**

Pursuant to Rule 602(f)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f)(2) (1998), the California Independent System Operator Corporation ("ISO") hereby submits its reply to the comments on the Offer of Settlement submitted by the California Department of Water Resources ("DWR") and The Metropolitan Water District of Southern California ("Metropolitan"). Neither DWR nor Metropolitan seek to modify a single provision of the Offer of Settlement, including the amended Utility Distribution Company Operating Agreements ("UDC Agreements"). Instead, they improperly seek to interject a new issue into this case -- treatment of Unaccounted for Energy ("UFE") under the ISO Tariff.<sup>1</sup>

As explained herein, DWR's opposition to the settlement is without merit and Metropolitan's reservation of rights is unnecessary. The calculation of UFE

---

<sup>1</sup> Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A.

charges is not determined by the UDC Agreement but rather by the ISO Tariff. The Offer of Settlement does not, in any respect, modify the ISO Tariff. Both DWR and Metropolitan have raised issues concerning the determination of UFE charges under the ISO Tariff in other dockets. Those issues should be resolved in those dockets; their pendency presents no basis for the Presiding Judge to withhold certification of the Offer of Settlement or for the Commission to decline to accept it.

## **I. Introduction**

### **A. The ISO's Utility Distribution Company Agreements**

On December 2, 1997, the ISO filed three separate UDC Agreements between the ISO and Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SoCal Edison"), and San Diego Gas & Electric Company ("SDG&E").

The purpose of the UDC Agreement:

is to establish the rights and obligations of the UDC and the ISO with respect to the UDC's interconnection with the ISO Controlled Grid and the UDC's cooperation and coordination with the ISO to aid the reliability and operational control of the ISO Controlled Grid and the UDC's Distribution System.<sup>2</sup>

The UDC Agreement coordinates operations between the ISO's transmission grid and the UDC's distribution system. It has provisions requiring coordination of maintenance (§ 4.1), responding to system emergencies, (§ 4.2 and Schedule 5), managing load shedding and load restoration activities (§§ 4.2.1, 4.2.2, 4.2.3, 4.3, and 4.4 and Schedules 6-10), providing certain

---

<sup>2</sup> See Attachment A of the Offer of Settlement, the pro forma agreement, at page 1.

records, information, and reports (§ 4.5 and Schedule 11), specifying certain interconnection operation standards and critical protective systems ( §§ 4.6, 4.7, and Schedules 12 and 13), and providing rights of access to facilities ( § 5.1 and Schedule 14). The UDC Agreement is subject to the ISO Tariff.<sup>3</sup> The UDC Agreement does not specify rates for wheeling power over either the ISO Controlled Grid or the UDC's system.<sup>4</sup>

All three filings were consolidated in Docket No. ER98-899-000. The Commission noticed the filings on December 9, 1997 with interventions and protests due by January 5, 1998. Numerous parties filed motions to intervene.<sup>5</sup>

On February 18, 1998, the ISO filed an unexecuted UDC Agreement between the ISO and the Anaheim Public Utilities Department ("Anaheim").<sup>6</sup> On

---

<sup>3</sup> Pro forma agreement, Attachment A to the Offer of Settlement at section 3.2 on page 4.

<sup>4</sup> The only discussion of costs is contained in Article VI of the pro forma agreement which states that the UDC is responsible for all costs in connection with procuring, installing, operating and maintaining its facilities for purpose of meeting this agreement and that the ISO is responsible for the procurement, installation, operation, and maintenance costs of ISO equipment installed on UDC property.

<sup>5</sup> The parties included: the Public Utilities Commission of the State of California; the Western Area Power Administration; the Los Angeles Department of Water and Power; the Modesto Irrigation District ("Modesto"); the Transmission Agency of Northern California ("TANC"); DWR; the California Manufacturers Association and the California Large Energy Consumers Association; the City of Palo Alto, California; SoCal Edison; the City and County of San Francisco; The Metropolitan Water District of Southern California; Cities of Redding and Santa Clara, California ("the Cities") and the M-S-R Public Power Agency ("M-S-R"); and the Northern California Power Agency. Motions to intervene out-of-time were submitted by the Turlock Irrigation District, SDG&E, the Independent Energy Producers Association, the Imperial Irrigation District, Sacramento Municipal Utility District, and Public Service Resources Corporation.

<sup>6</sup> A revised and executed UDC Agreement between the ISO and Anaheim was filed on September 25, 1998.

February 25, 1998, the Commission issued an order in Docket No. ER98-899-000, granting all the motions to intervene pending at that time and conditionally accepting the UDC Agreements with PG&E, SoCal Edison, and SDG&E for filing to be effective commensurate with the start of ISO operations. California Independent System Operator Corporation, 82 FERC ¶ 61,180. The Commission required that the ISO modify the UDC Agreements consistent with its order of December 17, 1997 in Pacific Gas & Electric Company, et al., 81 FERC ¶ 61,320. The Commission also established a hearing to determine the reasonableness of the proposed UDC Agreements.

On March 30, 1998, the Commission issued an order in Docket No. ER98-1923-000, granting all pending interventions and conditionally accepting the UDC Agreement with Anaheim. California Independent System Operator Corporation, 82 FERC ¶ 61,326. The Commission also ordered the ISO to revise the Anaheim UDC Agreement consistent with the December 17, 1997 Order and set it for hearing, consolidating the proceedings with those in Docket No. ER98-899-000. On June 1, 1998, the ISO submitted its compliance filing incorporating the modifications to the UDC Agreements required by the Commission's December 17, 1997, February 25, 1998, and March 30, 1998 orders.<sup>7</sup>

Prehearing conferences were held in these proceedings on March 17, 1998 and on April 15, 1998. Settlement conferences were held on May 4 and 5, 1998.

On July 8, 1998, in accordance with the procedural schedule, both the ISO and the Joint Filers (TANC, M-S-R, Modsesto, and the Cities) submitted

---

<sup>7</sup> The California Electricity Oversight Board, the Western Area Power Administration, DWR, CalEnergy Company, Inc., and Enron Power Marketing, Inc. ("Enron") have sought leave to intervene in response to the ISO's June 1, 1998 Compliance filing in Docket No. ER98-899-001.

statements of issues.<sup>8</sup> Neither of these statements identified UFE as an issue to be contested in this proceeding.

The participants have also conducted conference calls to discuss settlement terms and circulated draft proposals. As a result of these efforts, the ISO filed an Offer of Settlement on October 14, 1996. On October 26, 1998, the Public Utilities Commission of the State of California (“CPUC”) filed comments in support of the Offer of Settlement. The CPUC found the settlement to be just and reasonable and in the public interest. The CPUC determined that the settlement: (1) allows the ISO and the UDC to adequately address particular restructuring issues; (2) protects consumers from arbitrary or capricious UDC Agreements; (3) is fair and preserves important legal rights; and (4) does not bind future Commission decision-making. CPUC Initial Comments at 4-5.

On November 3, 1998, the Commission Trial Staff also filed comments in support of the Offer of Settlement. Staff found the revised pro forma agreement to be a reasonable resolution of the issues in these proceedings. Staff Initial Comments at 6.

B. UFE Under the ISO Tariff

The inclusion in the ISO Tariff of specific provisions regarding UFE was first proposed in a filing by the Joint Commentors in Docket Nos. EC96-19-003 and ER96-1663-003 on June 6, 1997.<sup>9</sup> On August 15, 1997, the ISO filed its “Restated and Amended Tariff.” Based primarily on the suggestions of the Joint

---

<sup>8</sup> A copy of the ISO’s Statement of Issues is provided as Attachment A. A copy of the Joint Filer’s Statement of Issues is provided as Attachment B.

<sup>9</sup> The Joint Commentors consisted of the California Large Energy Consumers Association, the California Manufacturers Association, the Coalition of California Utility Employees, PG&E, SDG&E, SoCal Edison, and the Western Area Power Administration. An excerpt from the filing is provided as Attachment C.

Commentors, the ISO included a new definition of UFE in Appendix A of the ISO Tariff and additional provisions with respect to allocation of UFE.<sup>10</sup> UFE was defined as:

the difference in Energy, for each UDC Service Area and Settlement Period, between the net Energy delivered into the UDC Service Area, adjusted for UDC Service Area Transmission Losses (calculated in accordance with Section 7.4.3), and the total metered Demand within the UDC Service Area adjusted for distribution losses using Distribution System loss factors approved by the Local Regulatory Authority. This difference is attributable to meter measurement errors, power flow modeling errors, energy theft, statistical Load profile errors, and distribution loss deviations.

ISO Tariff, Appendix A, Sheet No. 355-56.

On October 30, 1997, the Commission issued its order conditionally authorizing limited operation of the ISO. Pacific Gas & Electric Co. et al., 81 FERC ¶ 61,122. With respect to UFE, the Commission noted the concerns raised by DWR and other intervenors but determined “that the ISO Tariff assignment of UFE losses is reasonable.” 81 FERC at 61,522.

The ISO has not modified the definition of UFE since it was filed in August 1997. In accordance with the Commission’s direction in the October 30, 1997 Order to remove those tariff provisions not intended to be effective when the ISO commences operations, 81 FERC at 61,442, the ISO deleted certain provisions in the ISO Tariff relating to UFE in its June 1, 1998 compliance filing.<sup>11</sup> As revised, Section 11.2.4.3 of the ISO Tariff provides:

<sup>10</sup> Excerpts from the August 15, 1997 filing pertaining to UFE are provided in Attachment D.

<sup>11</sup> Attachment E is a redline showing these deletions.

UFE is treated as Imbalance Energy. For each Settlement Period, the ISO will calculate UFE on the ISO Controlled Grid, for each UDC Service Area. The UFE will be included in the net settlements for Imbalance Energy in Section 11.2.4.1. UFE attributable to meter measurement errors, load profile errors, Energy theft, and distribution loss deviations will be allocated to each Scheduling Coordinator based on the ratio of their metered Demand (including exports to neighboring Control Areas) within the relevant UDC Service Area to total metered Demand within the UDC Service Area.

## **II. ARGUMENT**

Under the ISO Tariff, Scheduling Coordinators are responsible for scheduling deliveries and paying the applicable charges. These charges, including costs associated with UFE, are defined in the ISO Tariff and not the UDC Agreement. The concerns of Metropolitan and DWR that the charges for UFE under the ISO Tariff are unjust and unreasonable and that the ISO is improperly implementing these provisions go to issues beyond the scope of this proceeding, which concerns only the UDC Agreement. Nothing in the Offer of Settlement will change the manner in which UFE costs are charged under the ISO Tariff. Both Metropolitan and DWR are pursuing their concerns regarding UFE costs in other dockets. They should not be permitted to delay approval and implementation of the settlement by improperly seeking to bring into this proceeding issues related only to the ISO Tariff.

A. UFE Is Not An Issue In this Proceeding

Metropolitan alleges that the ISO “has stated that the UDC Agreement will govern the allocation of [UFE] charges.” Metropolitan Initial Comments at 3. DWR argues that “the ISO should not be permitted to use the UDC Agreement contained in this Settlement Offer to change UFE allocations.” DWR Initial Comments at 8. These concerns are unfounded; the ISO has never stated that the terms of the UDC Agreement govern the allocation of UFE charges.

Indeed, nothing in the UDC Agreement effects the manner in which UFE is charged under the ISO Tariff. Even Metropolitan and DWR appear to recognize that it is the ISO Tariff that specifies the allocation of UFE. Metropolitan notes that “UFE charges, through Imbalance Energy, are being allocated to wholesale customers under the ISO Tariff Section 11.2.4.3.” Metropolitan Initial Comments at 3 n. 4. DWR similarly cites the formula for calculating UFE under section 11.2.4.1 of the ISO Tariff. DWR Initial Comments at 6.

The only linkage alleged by either commentator between the UDC Agreement and UFE charges in the ISO Tariff concerns the ISO’s position, made clear in data request responses in Docket No. ER97-2355-002, et al., that the UDCs among which UFE charges are allocated are those entities that have executed UDC Agreements. DWR argues that neither the UDC Agreement nor the ISO Tariff requires the execution of a UDC Agreement or “make any reference to reallocating UFE upon execution of a UDC Agreement.” DWR Initial Comments at 5 and 7-8. DWR thus challenges the effect of a UDC Agreement under the ISO Tariff, not the terms of the UDC Agreement as settled. Even if DWR were correct; its concern would have no place in this docket and does not constitute a valid objection to the Offer of Settlement. In any event, DWR is mistaken.

Under Section 4.1.1 of the ISO Tariff:

[t]he ISO shall not be obliged to accept Schedules, Adjustment Bids, or bids for Ancillary Services which would require Energy to be transmitted to or from the Distribution System of a UDC directly connected to the ISO Controlled Grid unless the relevant UDC has entered into a UDC Operating Agreement.

Section 11.2.4.3 of the ISO Tariff provides that “the ISO will calculate UFE on the ISO Controlled Grid, for each UDC Service Area” (emphasis added). In

addition the definition of UFE in Appendix A of the ISO Tariff states:

UFE is the difference in Energy, for each UDC Service Area and Settlement Period, between the net Energy delivered into the UDC Service Area, adjusted for UDC Service Area losses . . . and the total metered Demand within the UDC Service Area adjusted for distribution losses (emphasis added).

Accordingly, it is the ISO Tariff, as currently approved by the Commission, that requires the ISO to calculate UFE charges upon a qualified entity becoming a UDC by executing a UDC Agreement.

DWR’s characterization of UFE as a “recently announced interpretation of the UDC Agreement” (DWR Initial Comments at 1) is incorrect in two ways. First, it is the ISO Tariff, not the UDC Agreement, that is being interpreted. Second, the provisions requiring the ISO to calculate UFE for “each UDC” have not changed substantively since they were filed in August 1997 and approved by the Commission in October 1997.

UFE is not an issue in this case. It was not identified on the joint statement of issues submitted in the proceeding in July 1998. UFE is not mentioned in the Offer of Settlement. Most significantly, the Offer of Settlement does not modify, in any respect, the ISO’s authority under the ISO Tariff to charge UFE costs by calculating such costs for each UDC Service Area.

2. UFE Is Being Considered in other Dockets and in the ISO's Stakeholder Process

While not an issue with respect to the UDC Agreement, the reasonableness of the charges for UFE under the ISO Tariff is being considered in other dockets and in the ISO's own stakeholder process. Metropolitan recognizes: (1) that it has previously protested the treatment of UFE charges in the ISO Tariff, (2) that the Commission rejected this protest, and (3) that it has renewed this protest in its August 5, 1998 comments in Docket Nos. EC96-19-029 and ER96-1663-030. Metropolitan Initial Comments at 4, n. 5. DWR has also raised concerns regarding the ISO Tariff UDC provisions in other dockets.

In its rehearing request on the Commission's October 30, 1997 Order, Metropolitan argued that the Commission erred in permitting the ISO to assign UFE to wholesale customers connected directly to the ISO Controlled Grid.<sup>12</sup> In its rehearing request of the same order, DWR argued:

[t]he order should be clarified to recognize the need to more accurately reflect causation in UFE loss assignment. Specifically, the phrase "at this time" should be added to the finding that the ISO Tariff's present assignment of UFE losses is reasonable. The Commission should also require that the ISO develop an alternative UFE loss assignment methodology that more accurately reflects the cause of the loss.<sup>13</sup>

Both these requests are still pending before the Commission.

In response to the ISO's June 1, 1998 compliance filing in Docket Nos. EC96-19-029 and ER96-1663-030, DWR also contended that UFE attributable to UDC activities should not be charged to Scheduling Coordinators operating at

---

<sup>12</sup> Metropolitan December 1, 1997 Rehearing Request at 20-22. An excerpt from the pleading is provided as Attachment F.

<sup>13</sup> DWR December 1, 1997 Request for Clarification or Rehearing at 11-12. An excerpt is provided as Attachment G.

ISO Grid levels.<sup>14</sup> DWR makes this same argument in its Initial Comments on the UDC Offer of Settlement. DWR Initial Comments at 10. What DWR fails to disclose is that in the October 30, 1997 Order, the Commission rejected the identical argument stating:

While the distribution loss deviation component should arguably not be assigned to such Scheduling Coordinators, the quantification of this single component may not be feasible. We do not agree that Scheduling Coordinators scheduling at only the transmission level should bear no share of the other loss components because they are attributable to overall system conditions and do not lend themselves to any reasonable alternative assignment methodology.

Pacific Gas & Electric, et al., 81 FERC at 61,522.

This discussion is not meant to address the merits of Metropolitan's and DWR's respective claims concerning allocations of UFE, but instead merely to demonstrate that the issue is currently before the Commission in other dockets.

On September 11, 1998, the Commission issued an order directing:

the ISO and the parties to develop a list of all active issues, to negotiate resolutions with respect to as many of these issues as possible, and to file a report with the Commission within 120 days of the date of this order. Furthermore, we direct the Commission Trial Staff to establish procedures for and to facilitate the negotiations to complete this objective. The report should contain a stipulation of outstanding issues that have been resolved through Settlement, and issues that remain for resolution by the Commission. The report also should separately identify issues that have been newly raised as a result of actual ISO operations, and issues that are related to outstanding rehearing requests.

---

<sup>14</sup> See Comments and Protest of DWR filed on August 5, 1998 at 13-16. An except is provided as Attachment H.

California Independent System Operator Corporation, 84 FERC ¶ 61,217, Slip op. at 7. The issues raised by DWR and Metropolitan with respect to UFE on rehearing from the Commission's October 30, 1998 order and the additional issues raised in Docket Nos. EC96-19-029 and ER96-1663-030 have been assigned by the Commission to this settlement process.

In addition, the ISO has established several stakeholder working groups to make recommendations for improving ISO operations and the market structure. One of these working groups was formed specifically to evaluate UFE issues. Thus, Metropolitan and DWR have an additional process to seek modification of the ISO Tariff.

Metropolitan and DWR have raised their concerns regarding allocations of UFE costs in other proceedings. They should not be permitted to try and enhance their respective litigation and settlement positions by delaying Commission consideration and approval of the Offer of Settlement.

B. If Metropolitan and DWR Object to the Manner In Which the ISO Is Implementing the UFE Provisions of the ISO Tariff They Have Other Remedies

The ISO recognizes that it may not charge for UFE except in accordance with the terms the Commission has approved in the ISO Tariff. The ISO agrees with DWR that it cannot change the meaning of terms without filing an amendment to the ISO Tariff. DWR Initial Comments at 7. However, to the extent that the ISO is properly implementing its existing tariff provisions regarding the determination and allocation of UFE costs -- as the ISO believes it is -- Metropolitan and DWR are incorrect in suggesting that a subsequent filing under section 205 of the Federal Power Act would be necessary.<sup>15</sup>

---

<sup>15</sup> Metropolitan Initial Comments at 4; DWR Initial Comments at 4. The ISO is reviewing whether the formula in the data request provided in Southern

Moreover, Metropolitan and DWR have rights under both the ISO Tariff as well as the Federal Power Act if they believe the ISO is improperly implementing the UFE provisions. Section 13 of the ISO Tariff provides procedures for alternative dispute resolution. Of course, Metropolitan and DWR could also pursue relief under Section 206 of the Federal Power Act.

Under Rule 602(f)(4) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f)(4) (1998), a party contesting an Offer of Settlement by alleging a dispute as to a genuine issue of material fact "must include an affidavit detailing any genuine issue of material fact." Neither Metropolitan nor DWR has included such an affidavit in its comments. In addition, the Commission has held that if the dispute concerns a matter of policy, it does not preclude certification, and the Commission can resolve the dispute without the development of a record. Koch Gateway Pipeline Co., 74 FERC ¶ 61,088, 61,270-71 (1996). Metropolitan and DWR have not raised material issues of fact that would prevent certification of the settlement.

### III. CONCLUSION

---

California Edison, Docket No. ER97-2355-002 and discussed by DWR on page 5 of its Initial Comments is consistent with the formula in the Commission-approved tariff section. If the data request is inconsistent with the Tariff, the ISO will correct it in a supplemental response.

Wherefore, for the reasons stated herein, the ISO respectfully requests that the Presiding Judge certify the Offer of Settlement to the Commission and that the Commission approve the Offer of Settlement, without modification or condition, as soon as possible. The issues raised by DWR and Metropolitan concerning UFE charges under the ISO Tariff are beyond the scope of the matters addressed in the UDC settlement.

Respectfully submitted,

---

N. Beth Emery  
Vice President and General Counsel  
Roger E. Smith  
Regulatory Counsel  
The California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
(916) 351-4400

---

Edward Berlin  
Kenneth G. Jaffe  
David B. Rubin  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Washington, D.C. 20007-3851  
(202) 424-7500

Dated: November 13, 1998

**CERTIFICATE OF SERVICE**

I hereby certify I have this day served this document upon each person designated on the official service list compiled by the Secretary in this docket in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. ¶ 385.2010).

Dated at Washington, D.C. on this 13<sup>th</sup> day of November, 1998.

David B. Rubin

November 13, 1998

The Honorable David P. Boergers  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: California Independent System Operator Corporation  
Docket Nos. ER98-899-000 and ER98-1923-000**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Reply Comments of the California Independent System Operator Corporation. Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,

Kenneth G. Jaffe  
David B. Rubin  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Washington D.C. 20007

Counsel for the California  
Independent System Operator

Enclosures

cc: Service List

The Honorable Joseph R. Nacy

ATTACHMENT A

ATTACHMENT B

ATTACHMENT C

ATTACHMENT D

ATTACHMENT E

ATTACHMENT F

ATTACHMENT G

ATTACHMENT H