

UNITED STATES OF AMERICA 82 FERC ¶ 61,180
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hebert, Jr.

California Independent System)
Operator Corporation) Docket No. ER98-899-000

California Independent System) Docket No. ER98-1019-000
Operator Corporation)

Southern California Edison Company) Docket No. ER98-441-000

ORDER ACCEPTING FOR FILING AND SUSPENDING
PROPOSED RATES, CONSOLIDATING PROCEEDINGS,
AND ESTABLISHING HEARING PROCEDURES

(Issued February 25, 1998)

In this order, we accept for filing, suspend and set for hearing proposed Utility Distribution Company Operating Agreements (UDC Operating Agreements) filed by the California Independent System Operator Corporation (ISO). In addition, we accept for filing and suspend a proposed Interim Black Start Agreement filed by the ISO and consolidate that filing with ongoing proceedings set for hearing in Docket No. ER98-441-000.

Background

A. Docket No. ER98-899-000

On October 31, 1997, the ISO filed a *pro forma* UDC Agreement between the ISO and owners and operators of utility systems located within the ISO-Controlled Grid. ^{1/} The UDC Agreement defines the terms and conditions governing operation, maintenance, and planning for the systems under the respective control of the ISO and the utility distribution companies. In its December 17, 1997 Order in Docket No. EC96-019-006,

^{1/} The ISO Controlled Grid consists of the system of transmission lines and associated facilities of the

et al., 1/ the Commission deferred consideration of the pro forma UDC Agreement in light of the December 2, 1997 filing of superseding agreements, and stated that all of the ISO's filed UDC Agreements will be addressed in a subsequent order.

On December 2, 1997, the ISO submitted for filing in Docket No. ER98-899-000 three executed UDC Operating Agreements between the ISO and Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SoCal Edison), and San Diego Gas & Electric Company (SDG&E)(collectively the Companies). The ISO states that the agreements have been negotiated between the ISO and the Companies (the only entities which are currently expected to sign the Agreement initially), but the Agreement is also a pro forma agreement available to other applicable entities that choose to participate in the ISO.

Thus, the Agreements would apply to utility distribution companies that own or operate their systems within the ISO-Controlled Grid, and who wish to participate in the California market by transmitting energy or ancillary services to or from the ISO-Controlled Grid. The UDC Operating Agreements would govern coordination and maintenance of facilities and other activities affecting the reliability of the grid, establish ISO specifications and procedures to govern the general operation of the facilities that form the interface between the utility distribution company systems and the ISO-Controlled Grid, and address operational matters such as facility maintenance and coordination of outages.

The ISO requested that the proposed agreements be accepted to become effective on January 1, 1998, consistent with its proposal to implement the restructuring of the California Electricity Market on that date, and requested waiver of the 60-day notice requirement. However, on December 23, 1997, the ISO announced that commencement of ISO operations would be delayed. Accordingly, waiver of the 60-day notice period is no longer required. The Commission construes the requested effective date as the actual commencement of ISO Grid operations.

B. Docket No. ER98-1019-000

2/ See Pacific Gas and Electric Company, et al., 81 FERC ¶ 61,320 (1997) (December 17, 1997 Order).

In its December 17, 1997 Order, the Commission addressed a pro forma Black Start Agreement filed by the ISO to govern its purchases from units that have the capability to rapidly self-start without an external source of electricity. Although the Commission found the terms to be reasonable to the extent that the ISO must establish minimum reliability criteria applicable to those entities which propose to provide future Black Start service to the ISO, the Commission declined to accept the pro forma Black Start agreement, because the rates and terms for black start service should be proposed by the service providers, not the power purchaser. ^{1/} The Commission also found that separate black start service agreements are unnecessary, in light of the ISO's decision to obtain black start service under various must-run agreements with the Companies and other power producers that are acquiring generating units from the Companies.

On December 9, 1997, the ISO submitted for filing in Docket No. ER98-1019-000 an interim Black Start agreement executed by the ISO and SoCal Edison. The ISO states that SoCal Edison would provide service under the proposed interim Black Start agreement from units that are not covered under the must-run agreements. The ISO states that the proposed agreement would be a short-term contract, because the ISO plans to establish a Black Start auction before January 1, 1999. The agreement provides that SoCal Edison shall be paid a rate based on the average of the rates to be approved for the must-run agreements with SDG&E and PG&E. However, no reservation fee will be paid for Black Start service unless the Black Start Generators and Service Providers make an appropriate rate filing with the Commission.

Motions to Intervene and Protests

Notice of the ISO's filing in Docket No. ER98-899-000 was published in the Federal Register, 62 Fed. Reg. 65,808 (1997), with motions to intervene or protests due by January 5, 1998. Notice of the ISO's filings in Docket No. ER98-1019-000 was published in the Commission's December 23, 1997 Order Establishing Comment Date and Directing Notification, 81 FERC ¶ 61,378 (1997), with motions to intervene or protests due by January 16, 1998. Numerous intervenors filed notices of intervention, timely motions to intervene, protests, and requests

for hearings in these proceedings, as listed in Appendix A. In addition, several intervenors filed motions to intervene out of time in Docket No. ER98-899-000 as designated in Appendix A.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1997), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities listed in Appendix A parties to the proceeding(s) in which they sought intervention. In addition, the Commission will accept the late filed motions to intervene. Given the early stage of the proceeding and the Commission's determination to establish hearing procedures in these proceedings, no party will be prejudiced by accepting the late motions to intervene.

A. Docket No. ER98-899-000

Several intervenors in Docket No. ER98-899-000 claim that the filed UDC Agreements do not comply with the Commission's directives in its December 17, 1997 Order, contain provisions which are inconsistent with parallel provisions in the ISO tariff, and contain terms which are discriminatory because they afford the UDC participants more flexibility than other participants in the California market will receive. Intervenors request that the Commission suspend the filings and accept them subject to refund. In addition, intervenors conditionally request that the filing be consolidated with Docket No. ER96-19-006, et al., and set for hearing. ^{1/} In addition, SoCal Edison and SDG&E filed Certificates of Concurrence in this proceeding.

^{4/} In the event that the Commission approves the filings as *pro forma* agreements that will have a precedential effect on future UDC Agreements, these intervenors request consolidation with Docket Nos. EC96-19-006 and ER96-1663-007 (in which the ISO proposed its *pro forma* UDC Operating Agreements), and hearing. Protest, Motion to Intervene, Conditional Motion to Consolidate, and Conditional Request for Suspension and Hearing of Transmission Agency of

On January 16, 1998, SoCal Edison filed a limited answer to proposals contained in the Motions to Intervene and Protests of Metropolitan and TANC. Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 1/ we will reject SoCal Edison's Answer to the extent that it represents an impermissible answer to the protests.

Our preliminary analysis of the ISO's filing indicates that the proposed UDC Agreements have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed UDC Agreements for filing, suspend them for a nominal period, subject to refund, and set them for hearing, as ordered below. Consolidation with the ISO's initial pro forma UDC Agreement filing is unnecessary because that filing has been superseded by the executed UDC Agreements, which the ISO now proposes will serve as the pro forma UDC Agreement.

We note that the ISO's filing preceded our December 17, 1997 Order, in which we addressed a number of generic issues related to the pro forma Agreements. ^{1/} The ISO's filing therefore does not conform to the determinations in that order. Accordingly, we direct the ISO and the Companies to modify these agreements consistent with the December 17, 1997 Order. In addition, consistent with that order, we direct the ISO to post these modifications to the UDC Agreements on the publicly accessible portion of WEnet (the ISO's Home Page), and to file these changes with the compliance filing that is to be filed within 60 days of the ISO Operations date. ^{1/}

The Commission has recently established formal hearings to address a number of filings related to the California restructuring. Consistent with our prior orders, we believe that the establishment of a procedural framework for the hearings ordered herein is best left to the discretion of the Chief Administrative Law Judge in the first instance. ^{1/}

B. Docket No. ER98-1019-000

^{6/} December 17, 1997 Order, 81 FERC at 61,473-74.

^{7/} December 17, 1997 Order, 81 FERC at 61,471.

^{8/} See, e.g., Long Sault, Inc., et al., 76 FERC ¶ 61,313 (1997) (granting Chief Administrative Law Judge discretion in the first instance concerning consolidations and severance of proceedings where the Commission was setting for hearing open access pro forma compliance tariffs involving 28 public utilities).

Several intervenors in Docket No. ER98-1019-000 contend that in some respects the filed Black Start Agreement fails to conform to the requirements of the December 17, 1997 Order, that it contains insufficient rate specificity, that it is unreasonable to base rates for SoCal Edison on rates to be established for other utilities, and that the provisions related to suspension of service are unreasonable. Intervenors request that the Commission suspend the filings and accept them subject to refund.

The Public Utilities Commission of the State of California (California Commission) requests that the filing be set for hearing. 1/ In addition, SoCal Edison filed a Certificate of Concurrence in this proceeding.

On February 2, 1998, SoCal Edison filed a limited answer to proposals contained in the California Commission's pleadings. Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 1/ we will reject SoCal Edison's Answer to the extent that it represents an impermissible answer to a protest.

Our preliminary analysis of the ISO's filing indicates that the proposed interim Black Start agreement has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed interim Black Start Agreement for filing, suspend it for a nominal period, subject to refund, and set it for hearing. The Commission notes that the filing raises numerous issues related to the proposed Black Start service rates, which the SoCal Edison and the ISO would initially base on the rates for must-run service currently at issue in an ongoing proceeding. 1/ Accordingly, the Commission considers it appropriate to consolidate this proceeding with the hearing to address issues related to SoCal Edison's must-run filing in Docket No. ER98-441-000.

9/ Notice of Intervention, Limited Protest, Request for Hearing of the California Commission at 6.

10/ 18 C.F.R. § 385.213 (1997).

11/ See Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, Docket Nos. EC96-19-007 and ER96-1663-008, Southern

In addition, the ISO must revise the interim Black Start Agreement to conform to the directives set forth in the December 17, 1997 Order. As discussed above, consistent with that order, we direct the ISO to post these modifications to the UDC Agreements on the publicly accessible portion of WEnet (the ISO's Home Page), and to file these changes with the compliance filing that is to be filed within 60 days of the ISO Grid Operations date.

With respect to both filings, we encourage the parties, with the assistance of trial staff, to pursue settlement discussions with the hope that these proceedings will benefit from the collaborative process that has characterized the development of the California restructuring proposals to date and result in a settlement of the issues.

The Commission orders:

(A) The ISO's proposed UDC Agreements and Interim Black Start Agreement are hereby accepted, as modified, for filing and suspended for a nominal period, to become effective on the date that ISO Grid operations commence, subject to refund, as discussed in the body of this order.

(B) The late filed motions to intervene set forth in Appendix A are hereby granted.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the ISO's proposed UDC Agreements and the interim Black Start Agreement, as discussed in the body of this order.

(D) The Chief Administrative Law Judge shall convene a prehearing conference in Docket No. ER98-899-000, to be held within approximately fifteen (15) days after the issuance of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of determining the

(E) The Motions to Consolidate the UDC Agreements with the ISO's October 31 proposed pro forma Agreement filing are hereby dismissed as moot.

(F) The ISO's proposed interim Black Start Agreement filing is hereby consolidated with the proceedings currently set for hearing in Docket No. ER98-441-000, as discussed in the body of this order. The Chief Administrative Law Judge, or the administrative law judge designated to preside in Docket No. ER98-441-000, as appropriate, shall determine procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(G) SoCal Edison is hereby notified that the rate schedule designation for its Black Start Agreement is as follows:

Southern California Edison Company
Rate Schedule FERC No. 338

All other rate schedule designations will be assigned at a later date.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

APPENDIX A

**Notice of Intervention,
Motions to Intervene and Protests**

Docket No. ER98-899-000

California Department of Water Resources
California Manufacturers Association and the California Large
Energy Consumers Association
Cities of Redding and Santa Clara, California and the M-S-R
Public Power Agency
City and County of San Francisco
City of Palo Alto, California
Los Angeles Department of Power and Water
Metropolitan Water District of Southern California
Modesto Irrigation District
Northern California Power Agency
Public Utilities Commission of the State of California
San Diego Gas and Electric Company *
Southern California Edison Company
Transmission Agency of Northern California
Turlock Irrigation District *
Western Area Power Administration

California Electricity Oversight Board
Los Angeles Department of Water and Power
Metropolitan Water District of Southern California
Modesto Irrigation District
Northern California Power Agency
Public Utilities Commission of the State of California
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Edison Company
Transmission Agency of Northern California
Western Area Power Administration
Williams Energy Services Company

* Filed a motion to intervene out of time.