

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

**California Independent System)
Operator Corporation)** **Docket No. EL12-40-000**

**ANSWER TO MOTIONS TO INTERVENE AND COMMENTS, MOTION TO FILE
ANSWER, AND ANSWER TO PROTEST, OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation¹ hereby files its answer to the motions to intervene and comments submitted in this proceeding in response to the ISO's submittal on February 29, 2012, of a complaint seeking to amend the Transmission Control Agreement (TCA).² The ISO also hereby submits a motion to file an answer and its answer to the protest submitted in this proceeding by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities).³

¹ The California ISO is referred to as either ISO or CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the ISO tariff. Except where otherwise specified, references to section numbers are references to sections of the ISO tariff.

² The following entities filed motions to intervene and/or comments in this proceeding: Atlantic Path 15, LLC; California Department of Water Resources State Water Project; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (the "Six Cities"); Citizens Sunrise Transmission, LLC; Metropolitan Water District of Southern California; Modesto Irrigation District; NRG Companies; Pacific Gas and Electric Company, City of Santa Clara, California and the M-S-R Public Power Agency; Southern California Edison Company; San Diego Gas and Electric Company; Startrans IO, LLC; Trans Bay Cable, LLC; and the Western Area Power Administration. The ISO does not object to any of the motions to intervene filed in this proceeding.

³ The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. The ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protest. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in the case. See, e.g., *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, at P 20 (2008); *California Independent System Operator Corp.*, 132 FERC ¶ 61,023, at P 16 (2010); *Equitrans, L.P.*, 134 FERC ¶ 61,250, at P 6 (2011).

All of the comments support the ISO's proposed changes to the TCA or request further changes. The one protest submitted by the Six Cities argues that a single proposed change to the TCA is not just and reasonable. No other comments were filed that object to this or any other change proposed by the ISO. As discussed in more detail below, the Commission should accept the gross negligence standard for both liability and indemnity and reject the arguments presented by the Six Cities. The Commission should accept the TCA as submitted by the ISO as just and reasonable *except* with respect to section 16.2, and order the ISO on compliance to make the further change requested by Pacific Gas and Electric Company (PG&E).

I. Answer

A. The Commission Should Accept the Proposed Change to Section 22.4 of the TCA as Just and Reasonable

The Commission previously determined that a gross negligence standard is just and reasonable for both the standard of liability and indemnity under the ISO tariff because the risk of litigation and the total liability to ISO customers would be reduced.⁴ The changes the ISO proposes to the TCA are identical to the changes the Commission approved to the tariff – to establish a gross negligence standard for both liability and indemnity. This filing merely aligns the TCA indemnity provision with the tariff. Yet, in its protest, Six Cities contends that the ISO's revision to the indemnity provision in section 22.4 of the TCA is inconsistent with the Commission's prior decision approving revisions to sections 14.4 and 14.5 of the ISO tariff because it would somehow promote litigation against the ISO and increase the liability of the ISO's customers. This

⁴ *California Independent System Operator Corp.* 123 FERC ¶ 61,285, at P 241 (citations omitted).

argument – which the Six Cities stand alone in making⁵ – mirrors the Six Cities’ objections that the Commission rejected when it specifically approved the gross negligence standard for indemnity in ISO tariff section 14.4.

The Six Cities’ attempt to challenge the Commission’s prior decision by claiming that the indemnity issues in the TCA are somehow different from the identical issues in the tariff is, at best, misguided. The Six Cities provides no basis for the Commission to reconsider its prior determination that a gross negligence standard is just and reasonable and not unduly discriminatory. There is no substantive difference between the two indemnity provisions, both which apply to third-party claims brought against the ISO for which the ISO would seek indemnity from a market participant – a participating transmission owner in the case of the TCA indemnity. The Commission should affirm its prior decision by approving the gross negligence standard in the parallel provision in TCA section 22.4, and Six Cities’ objections should again be rejected.

The Six Cities argue that a gross negligence standard would increase the likelihood of joint claims, particularly by entities that do not pay transmission access charges or wheeling access charges, and will increase the exposure of ISO transmission customers because the participating transmission owner will simply pass on the cost through its transmission revenue requirement. The basis for this argument is flawed. The potential for indemnity is irrelevant to whether a third party will sue the ISO, the participating transmission owner, or both. Six Cities simply present no logical basis for applying an indemnity standard to participating transmission owners that is different from that applied to market participants. Indeed, since many participating

⁵ Although the Six Cities raised this argument during the multi-party negotiations, it is noteworthy that none of the other participating transmission owners have joined them here.

transmission owners are market participants, a rejection of the proposal to align section 22.4 of the TCA to the tariff could result in two different indemnification responsibilities applicable to the same entity. This inconsistency between the TCA and the tariff, in addition to being irrational, would increase the risk of litigation between the ISO and a participating transmission owner over which indemnity provision applies. The Commission should avoid this litigation and conform the TCA provision to the tariff provision that it previously considered and approved.

The ISO presented this change to the parties engaged in the negotiations of the TCA as a simple clarification to be consistent with the tariff – no different than changing a tariff section reference in the TCA that was out of date. Six Cities now seek to prevent this result, renewing their unsuccessful objections to the parallel change to the tariff. There is no better argument for these objections than there was the first time they were presented, and the Six Cities' protest should be rejected.

B. The Commission Should Require the ISO to Include PG&E's Requested Change on Compliance

PG&E requests that the Commission direct the ISO to include an additional change to PG&E's Appendix B on compliance.⁶ It is unfortunate the ISO was not able to include this change in the initial filing since PG&E did share its request with the ISO and all parties to the negotiations. There was no objection to this requested change at that time and the ISO expects there should be none here. PG&E is also correct that this change applies only to PG&E's Appendix B and should not affect the other parties to the TCA. Accordingly, the ISO concurs with PG&E's recommendation that the Commission order the ISO to make this change when it files the compliance filing requested by the

⁶ See Motion to Intervene and Comments of PG&E at pgs. 2-3.

ISO to establish the effective date of the proposed TCA changes; i.e., the date the ISO assumes operational control of Citizens Sunrise Transmission, LLC's interest in the Sunrise Powerlink transmission project.

C. The Commission Should Reject the ISO's and SCE's Requests to Change to Section 16.2 of the TCA

Southern California Edison Company (SCE) requests a further clarifying change to section 16.2 of the TCA that was not included in the ISO's proposed changes filed in this proceeding.⁷ This further proposed change was not shared with the ISO or the other parties to the TCA negotiations prior to SCE's comments in this proceeding, despite this provision being the subject of discussion and the ISO having understood its proposed change to be acceptable to all parties. Moreover, the ISO has reviewed the further change requested by SCE and has some concerns that should be discussed among all parties to the TCA. In view of the apparent lack of agreement among all parties and the lack of opportunity for the other parties to comment on SCE's proposed change, the ISO recommends that the Commission reject both the change originally proposed by the ISO and the further change proposed by SCE.⁸ This restores the status quo and would allow all parties to agree upon and propose a change to section 16.2 at the next opportunity to amend the TCA, currently anticipated later this year to include Valley Electric Association, Inc. as a participating transmission owner.

II. Conclusion

For the reasons explained above, the Commission should reject the arguments presented by the Six Cities, accept the TCA as submitted by the ISO *except* for the

⁷ See Motion to Intervene out of Time and Comments of SCE at pgs. 3-4.

⁸ The ISO discussed this matter with counsel for SCE and SCE has no objection reverting back to the original language and working out an acceptable alternative at a later date.

change to section 16.2, and order the ISO to make the further change requested by PG&E on compliance.

Respectfully submitted,
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Dated: March 28, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceeding(s), 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 Folsom, California this 28th day of March, 2012.

/s/ Anna Pascuzzo

Anna Pascuzzo