

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

California Independent System Operator Corporation)	Docket Nos. ER01-313-000 and ER01-313-001
)	
Pacific Gas and Electric Company)	Docket Nos. ER01-424-000 and ER01-424-001
)	

**ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION
TO MOTION FOR SUMMARY DISPOSITION OF
THE COGENERATION ASSOCIATION OF CALIFORNIA AND
THE ENERGY PRODUCERS AND USERS COALITION**

To: The Honorable Bobbie J. McCartney
Presiding Administrative Law Judge

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.213, the California Independent System Operator Corporation (“ISO”) respectfully provides its answer to the Motion for Summary Disposition of the Cogeneration Association Of California and the Energy Producers and Users Coalition (together, “CAC/EPUC”). The ISO submits that the Motion is without merit and should be denied.

I. The ISO Has Met Its Burden of Establishing a Prima Facie Case that It Is Just and Reasonable to Assess the Control Area Services Charge on the Basis of Control Area Gross Load

Control Area Services (“CAS”) costs are incurred in order to maintain the reliability of the transmission grid within the Control Area. Exh. ISO-1 at 19:1-

11; Exh. ISO-10 at 18:15-29. It follows that the ISO incurs those costs providing service to all Loads that are interconnected with that grid. Accordingly, all such Loads should bear the cost of CAS. *See generally, Seminole Electric Coop., Inc.*, 46 FERC ¶ 61,119 at 61,470-71 (1989) (“cost responsibility follows cost causation”).

A. The Evidence Presented By the ISO Establishes a Prima Facie Case that Behind-the-Meter Load Benefits from CAS.

In its prepared testimony, the ISO provided ample evidence that behind-the-meter Load in general, and Qualifying Facility (“QF”) behind-the-meter Load in particular, benefits at all times from being connected to the ISO Controlled Grid. In his adopted direct testimony, Mr. Deane Lyon¹ explained at length how each of the CAS contributes to the reliability of the Control Area. Exh. ISO-29 at 12:4 - 15:3. He then explained how, if a Generator serving behind-the-meter Load becomes unavailable, the ISO’s systems will respond immediately, protecting the behind-the-meter Load from a loss of power.² This service is available continuously, seven days per week, twenty-four hours per day. As Ms. Deborah Le Vine testified, it is akin to an insurance policy, which provides protection at all

¹ Without any specificity, CAC/EPUC asserts that some ISO witnesses were not qualified to support their testimony. Mr. Lyon, who testified regarding reliability, has 25 years of experience in systems operations, support, and training. Exh. ISO-29 at 2:1-4:2. His knowledge and expertise regarding reliability issues was self-evident on the stand. *See* Tr. 905: 6-909:7.

² *Id.* at 15: 22 – 16: 4. There were suggestions during questioning on cross-examination that, because an individual behind-the-meter Load is less than the size of the power fluctuation that would be noticed by the ISO’s Area Control Error, it cannot be said to cause the need for these services. Of course, the same could be true of any individual Load. Causes and benefits in such circumstances can only be analyzed in terms of the contribution of individual entities to an aggregate effect on the system.

times. Exh. ISO-34 at 11:16-23.

Indeed, this service does not just provide protection in the case of Generator failure. Rather, the ISO constantly is monitoring fluctuations in Generation and Load, and its systems are responding at all times. Tr. at 1204:3-23.

Nonetheless, CAC/EPUC asserts that the ISO witnesses failed to provide “concrete benefits that would flow to the entities which would be assessed the charge, separate and apart from the benefits already received by virtue of a utility distribution company’s [“UDC’s”] standby tariff.” CAC/EPUC Motion for Summary Judgment (“Motion”) at 4-5. CAC/EPUC’s assertion mischaracterizes the issue. CAS are services performed by the ISO, *not by a UDC*. Tr. 1349: 12-1350: 1; Tr. 1984: 9-25; Tr. 1986: 1-10. This proceeding concerns the ISO’s recovery of its CAS costs, not the extent to which the UDC currently is passing costs on to standby customers. The issue is whether CAS should be allocated to behind-the-meter Load according to the full measure of the Demand from that Load at any given time,³ or only to the extent that the Load withdraws Energy from the transmission grid as measured at the net meter at the site boundary. Even if there were no standby tariff or if the standby tariff passed through CAS costs on a gross load basis, the issue would be the same: *Is behind-the-meter Load receiving the benefits of a reliable transmission system around the clock or only to*

³ In its estimation of the Demand from behind-the-meter Load, the ISO applies a “Load factor” to the potential Load in order to estimate the actual Demand. *See* Exh. ISO-12 at 8-10.

the extent to which it withdraws power? The ISO's evidence demonstrates that the behind-the-meter Load benefits at all times.

B. Cross-Examination Did Not Diminish the ISO's Evidence.

1. Cross-Examination Did Not Discredit the ISO's Factual Evidence

CAC/EPUC does not even address the affirmative evidence proffered by the ISO. Rather, it focuses on the cross-examination of two witnesses. Tellingly, CAC/EPUC devotes almost two pages to the testimony of Mr. Michael Epstein, who did not specifically address "gross v. net." Motion at 5-7. (Although CAC/EPUC quotes, and emphasizes, Mr. Epstein's statement that he will provide "detailed justification" for billing determinates, Exh. ISO-1 2: 11 - 14, it entirely – and conveniently – ignores his explicit statement in his prepared testimony that the use of Control Area Gross Load as a billing determinant is discussed by Mr. Lyon and Ms. Le Vine. *Id.* at 24:7-9.) Mr. Epstein did set forth the principles that the ISO believes justify its billing determinants, but CAC/EPUC does not address that testimony. *Id.* at 21:19 – 23:20.

Instead, CAC/EPUC turns to the cross-examination of Mr. Lyon, in which Mr. Lyon testified to the benefits that flow to behind-the-meter Load because of CAS, but did not claim to translate those benefits to the establishment of billing determinants. Motion at 7-8.

According to CAC/EPUC, these statements of Mr. Epstein and Mr. Lyon demonstrate that the ISO has failed to make its case. CAC/EPUC apparently

believes the ISO must make its case with one witness, who is an expert in both reliability and in principles of rate design. This is a novel proposition, indeed. Mr. Epstein (and, less directly, others, *see, e.g.*, Tr. at 250:3 – 251:5 (Leiber)) did set forth the principles that the ISO used to establish the proposed billing determinants – which the Presiding Judge can apply, if she so chooses, to the factual evidence presented in this proceeding. Mr. Lyon and the ISO’s other witnesses establish the factual predicate for the application of those principles. In the end, however, whether Mr. Epstein or any other witness has set forth the appropriate ratemaking principles is not determinative. The ultimate question before the Presiding Judge is whether the ISO has presented *facts* that demonstrate that the rates are just and reasonable, in light of Commission ratemaking principles and policies. The application of the principles and policies to the facts determined at the hearing is most properly the subject of briefing and argument, not testimony.

CAC/EPUC’s arguments in this regard ignore the standard for summary disposition it sets forth in its motion:

If the decisional authority determines that there is no genuine issue of fact material to the decision of a proceeding or part of a proceeding, the decisional authority may summarily dispose of all or part of the proceeding.

Motion at 2. Although the ISO witnesses were subject to extensive and relentless cross-examination, that cross-examination certainly did not resolve factual disputes regarding the “gross v. net” issue.

2. The ISO's Use of Net Load Data Is Irrelevant to the Propriety of the Use of Control Area Gross Load as a Billing Determinant.

CAC/EPUC does make one argument that addresses factual issues. It cites cross-examination of Mr. Lyon for the proposition that the ISO performs certain CAS only for net Load. Motion at 8. Mr. Lyon did acknowledge that, in performing many CAS, the ISO uses data on the Demand of net Load. Although the ISO believes that the use of data on the Demand of Gross Load would improve the reliability of the Control Area transmission system, that information is not currently available.⁴ The “gross v. net” issue in this proceeding does not, however, concern whether the ISO should or should not use data on the Demand of Gross Load or whether that data would enhance reliability. The issue is whether the use of the Control Area Gross Load billing determinant is justified because the ISO incurs CAS costs on behalf of behind-the-meter Load. That the ISO *uses* data on the Demand of net Load does not in any manner imply that the ISO performs CAS only *for* net Load, or that behind-the-meter Load does not cause the ISO to incur CAS costs.

Thus, while the ISO only receives schedules for net Load, Tr. 1185: 5- 14, the coordination of schedules increases the likelihood that sufficient transmission capacity will be available to serve behind-the-meter Load in the event of a

⁴ Although the ISO Tariff requires that the ISO be provided data on gross Generation and Load, the ISO – in order to avoid the imposition of potentially unnecessary costs – has provided a temporary general exemption from that provision until the resolution of the disputes about the ISO's metering protocols in Docket No. ER98-997.

Generation failure, Exh. ISO-10 15: 12 – 16:4; Tr. 1986: 8 - 10. Although the Energy Management System can account only for net Generation, it will nonetheless detect a failure of a Generator serving behind-the-meter Load (without knowing where the failure occurred), and the units providing Regulation service will respond with sufficient Energy to serve the gross Load. Similarly, with regard to each of the CAS cited by CAC/EPUC, the service improves the reliability of the Control Area transmission grid, and increases the likelihood that imbalances between behind-the-meter Load and behind-the-meter Generation can be addressed both on a moment-to-moment basis or in the event of a complete failure of the Generation. Exh. ISO-10 at 15:4 – 16: 4. The ISO thus is performing the service on behalf of behind-the-meter Load, even though it uses data on the Demand of net Load.⁵

C. The ISO Has Demonstrated that Its Methodology for Estimating Behind-the-Meter Load is Just and Reasonable.

Through the testimony of Mr. James Price, the ISO showed how it estimates behind-the-meter Load, for the purpose of determining Control Area Gross Load, using the best available data. Exh. ISO-12 at 8: 6 - 11: 6. CAC/EPUC does not challenge the ISO's showing that this is a valid methodology to approximate behind-the-meter Load in the absence of metering data. Instead, CAC/EPUC asserts that the ISO improperly assumes that QF Generation will be

⁵ CAC/EPUC notes that issue I.F.1 of this proceeding includes whether the Market Operations Charge element of the GMC should be assessed on a gross load basis. Motion at 1. As is apparent in § 8.3.3 of the proposed Tariff language and noted in the testimony of Mr. Epstein,

unavailable 100% of the time and that the methodology is illegal because it is not spelled out in the tariff. Motion at 8. The former argument is discussed *infra* at II.A. The latter argument is not a basis for a summary rejection of the ISO's proposal. If the Presiding Judge concludes that the methodology is otherwise just and reasonable but, contrary to the ISO's position, must be specified in the tariff, then the appropriate course of action is to direct that it be included in a compliance filing. *See, e.g., New York Independent System Operator, Inc.*, 97 FERC ¶ 61,154, 61,674 (2001).

D. The Presiding Judge Should Not Discount the ISO's Reliance on WSCC Criteria.

In its final challenge to the ISO's factual case, CAC/EPUC contests the ISO's "reliance upon WSCC criteria to extend its jurisdiction beyond the site boundary meter to the private property of cogenerators." Motion at 9. As an initial matter, CAC/EPUC's depiction of the ISO's Control Area Gross Load billing determinant as an extension of ISO "jurisdiction" is irrelevant rhetoric. The ISO is not a judicial, governmental, or regulatory body with "jurisdiction." Neither is the ISO through this proposal attempting to exert any control over the operations of QFs or of the Load served by QFs. Rather, the ISO is simply attempting to ensure that all Loads that benefit from CAS pay a fair share of the costs of CAS.

however, the ISO does not propose charging Market Operations costs on a gross load basis, but rather according to purchases and sales in the ISO markets. *See* Exh. No. ISO-1 at 29: 8-10.

In this regard, Load served by QFs is not different from any other Load. Virtually all Loads are located on private property. Virtually all loads are served by distribution systems, which are not under the ISO's control. Tr. 1268: 24-1269:8; Tr. 1341: 17- 22. Because, for example, electricity must eventually travel from the utility's retail meter through the homeowner's wires to the toaster, virtually all Loads in the final instance are served by privately-owned wires on the Load side of the meter. Presumably Scheduling Coordinators will pass on the CAS charges to retail customers, but it is not reasonable to infer therefrom that the ISO is exercising "jurisdiction" over the toaster.

The issue is not the ISO's jurisdiction. The issue is the extent to which the ISO provides reliability services to behind-the-meter Loads. CAC/EPUC contends that the ISO only provides such services to the extent that the behind-the-meter Load withdraws Energy from the transmission Grid. The ISO contends that the evidence described above demonstrates as a factual matter that the ISO performs those services for the benefit of behind-the-meter Load at all times.

Under the WSCC criteria, the ISO is responsible for providing reliability to the total behind-the-meter Load served by QFs in the same manner that it must provide those services to other Loads. It is in this regard that the WSCC criteria are relevant – not with regard to sophistic arguments about jurisdiction.

The Initial Decision of Administrative Law Judge Leventhal in the "QF-PGA" case, *California Independent System Operator Corp.*, 96 FERC ¶ 63,015 (2001), does not diminish the significance of the WSCC criteria. Judge Leventhal

did not, of course, address whether the ISO could “extend its jurisdiction.” Judge Leventhal did conclude that behind-the-meter Load was not within the ISO’s “load responsibility” for the purposes of procuring operating reserves. The ISO is not attempting to relitigate that issue, on which it has filed exceptions. The ISO discusses *infra* in section III, however, why Judge Leventhal’s conclusion is not controlling regarding the applicability of WSCC criteria to this case. Pertinent to CAC/EPUC’s argument here, Judge Leventhal did not at any point reject the testimony of the WSCC witness. Rather he concluded (albeit, the ISO believes, erroneously) that the WSCC witness’s testimony was consistent with his conclusion. 96 FERC at 65,138. Judge Leventhal’s decision, therefore, provides no basis for rejecting the ISO’s reliance on WSCC criteria, as interpreted by a WSCC witness who testified under oath that he was authorized to interpret those criteria, *see* Exh. ISO-31 at 82-83, with regard to the ISO’s broader reliability responsibilities.

Finally, the ISO must advert to CAC/EPUC’s statement that, “notably, the WSCC . . . did not intervene” in this proceeding. Motion at 9. This is not surprising, because the WSCC’s responsibilities do not involve a Control Area Operator’s recovery of its costs. Exh. ISO-10 at 8: 4-6. The ISO must note, however, that following Judge Leventhal’s decision, the WSCC has sought to intervene in the QF-PGA proceeding and has filed a Brief on Exceptions.

II. The ISO's Use of Control Area Gross Load as a Billing Determinant and Its Methodology for Estimating Control Area Gross Load Are Consistent with Law, including Commission Precedent.

A. The ISO's Proposal Is Consistent With PURPA

CAC/EPUC appears to assert that the ISO's proposal violates the Public Utilities Regulatory Policies Act of 1978 ("PURPA") in two respects. First, CAC/EPUC argues that the ISO's proposal violates the Commission's Order No. 69 (concerning regulations implementing Section 210 of PURPA) in that it assumes that outages by each QF on a system will occur simultaneously. CAC/EPUC contends that "[i]t has been demonstrated through ISO witness Price that the ISO's estimation methodology results in an assumption in this proceeding that 100% of QFs will be down 100% of the time." Motion at 11. The ISO's methodology, however, makes no such assumption and the testimony does not support a conclusion that it does.

In the cited cross-examination, counsel for CAC/EPUC asked Mr. Price how he would calculate Control Area Gross Load if all QF Generation were simultaneously unavailable. Mr. Price acknowledged that the calculation would be the same as that proposed for calculating Control Area Gross Load. CAC/EPUC errs, however, when from that fact it infers that the ISO's methodology makes an assumption that all QF Generation is unavailable. Tr. 853:23- 854:6.

Mr. Price's calculation of behind-the-meter Load reaches the same result if he assumes that all QF Generation serving that Load is unavailable for the simple

reason that the calculation is the same regardless of the availability of the QF Generation. The ISO methodology does not rely upon *any* assumption about the availability or unavailability of QF Generation. Whether on-site Load is served from QF Generation or from remote Generation is simply irrelevant. The calculation is based on Demand, not Generation. Control Area Gross Load is defined as “all Demand for Energy within the Control Area” (with minor exceptions). Exh. J-2, ISO Tariff at First Revised Sheet 8. It makes no difference whether the Load creating the Demand is served by on-site Generation or any other source of Generation. Hence, the calculation is the same whether one assumes that all QF Generation is available or whether one assumes that it is all unavailable.

Thus, it can as easily be said that the ISO’s estimation process results in an assumption that eighty percent, or fifty percent, or five percent – or even zero percent – of QF Generation is unavailable as it can be said that it results in an assumption that 100 percent is unavailable. CAC/EPUC’s conclusion is a *non sequitur*.

Second, CAC/EPUC asserts that the ISO has provided no factual justification for its failure to treat retail customers with Generation in the same manner as retail customers without Generation. CAC/EPUC’s only asserted basis for alleging that the ISO has failed to do so is CAC/EPUC’s own subsequent contention that the ISO allocates charges to QF cogenerators on the basis of

potential loads,⁶ but allocates charges to all other retail customers on the basis of actual load metered at the customer's point of interconnection with the utility distribution company. Motion at 13.

As explained above, Control Areas Services charges are billed according to each Load's contribution to the "Demand for Energy within the Control Area" (*i.e.*, to the Control Area Gross Load). The extent of the contribution is not affected by the point at which it is metered or, in the absence of metering data, estimated. If a Load is consuming Energy, its Demand is part of the Control Area Gross Load; if it is not, its Demand is excluded from the Control Area Gross Load. All Load, regardless of whether it is served by self-Generation or otherwise, is treated identically in this regard.

CAC/EPUC's reference to Load served by QF Generation as "potential" Load is a misnomer. If a 10 MW industrial facility is consuming 5 MW of Energy from a remote Generator, there are 5 MW of Demand from actual Load and 5 MW of potential Load. Similarly, if a 10 MW industrial facility is consuming 5 MW of Energy from an on-site QF Generator, there are 5 MW of Demand from actual Load and 5 MW of potential Load. In each case there are 5 MW of Demand from Load (the Demand from actual Load) that are enjoying the benefits of system

⁶ For the sake of accuracy, it should be noted that the ISO does not allocate Control Area Services charges to cogenerators. It allocates those charges to the Loads served by the cogenerators.

reliability discussed above. In each case, the 5 MW would be assessed the Control Area Services charge.⁷ There is no discrimination.

B. California Public Utility Commission Holdings Are Irrelevant to the Legality of the ISO's Proposals.

CAC/EPUC asserts that the ISO's proposals are contrary to holdings of the California Public Utilities Commission ("CPUC") regarding standby rates. The ISO's GMC is not a standby rate. Moreover, it is subject to the jurisdiction of the Commission, not the CPUC. To the extent that any holdings of the CPUC are relevant to the issues, the ISO will address them in brief. They cannot provide a basis for summary disposition.

C. There Is No Commission Precedent That Is Inconsistent with Billing Control Area Services Based on Control Area Gross Load

CAC/EPUC cites two Commission decisions as "reaffirm[ing] the appropriateness of netting." Motion at 15. The cases indeed approve some forms of netting. In neither of these cases, however, are the circumstances even remotely analogous to the ISO's proposal to assess Control Area Services according to Control Area Gross Load. More relevant are the two instances, discussed in section III *infra*, where the Commission has approved ISO charges on a gross Load basis.

⁷ As discussed in note 3, *supra*, because the ISO currently is unable to meter the behind-the-meter Load, in estimating that Load it applies a "Load factor" in order to estimate the amount of the potential behind-the-meter Load that will actually be consuming Energy, *i.e.*, the actual Demand.

The first case cited by CAC/EPUC, *PJM Interconnection, LLC*, 94 FERC ¶ 61,251 (2001), concerned the question of whether the provision of Energy for station Load is a sale of Energy. In the course of the decision, the Commission determined that when a Generator supplies the Energy to serve its own station Load, that Energy should be netted against Generation, and is not a sale of Energy. In essence, station Load is deemed “negative generation.”

CAC/EPUC asserts that “[m]erchant generators self-serving station power needs are electrically identical to QFs self-serving behind-the-meter load.” Motion at 15. CAC/EPUC offers no support for that statement, however, other than a quotation from the cross-examination of an ISO witness that has nothing whatsoever to do with station power. (The cross-examination of Mr. Lyon concerns the impact on the ISO’s Area Control Error (“ACE”) of a sudden increase in Demand from Load. Tr. at 1144:9-13.)

CAC/EPUC next cites *Mid-American Energy Co.*, 94 FERC ¶ 61,340 (2001), in which the Commission concluded that a state policy allowing net billing arrangements for alternative energy facilities was not preempted by PURPA. CAC/EPUC notes that the Commission concluded that net billing “would be appropriate in some circumstances” and likened the situation to the treatment of station power in *PJM*. Motion at 16.

These decisions provide no basis for reaching any conclusion about the ISO’s proposal. Both of the cases concern the sale of Energy; it is eminently logical that the provision of Energy for one’s own use is not a sale of the Energy.

This logic does not apply to the assessment of charges for Control Area reliability. QFs and other distributed Generators are not providing Control Area reliability for their own use. The ISO is providing it for them.

Moreover, that the Commission considered on-site Load and station Load analogous for the purpose of sales does not imply that the Commission would do so for other purposes. Indeed, the Commission very specifically differentiates between on-site Load and station Load in the context of QFs. Under Commission rules, a QF cannot sell power in excess of its net output. The net output is the facility's gross output less station Load. On-site Load is *not* netted for that purpose, and is thus treated differently from station Load. *See Connecticut Valley Electric Co. v. Wheelabrator Claremont Co.*, 82 FERC ¶ 61,116 at 61,416-19 (1998).

Finally, in *Mid-American*, the Commission merely indicated that the decision whether to allow net billing – in retail sales circumstances – was within the jurisdiction of state commissions. It did not require states to adopt such procedures; neither did it make any conclusions about matters within its own jurisdiction.

III. The Initial Decision in Docket No. ER98-997 Does Not Preclude Consideration of the Issues in this Proceeding.

Citing *Tennessee Gas Pipeline Co.*, 41 FERC ¶ 63,006 (1987),⁸

CAC/EPUC argues that the issues concerning the assessment of Control Area

⁸ CAC/EPUC inaccurately describes the decision as a Commission holding. Motion at 18.

Services on a Control Area Gross Load basis are duplicative of the issues decided by Administrative Law Judge Leventhal in the Initial Decision in the “QF-PGA” case, *California Independent System Operator Corp.*, 96 FERC ¶ 63,015 (2001). In *Tennessee Gas*, the Commission had ordered that certain issues in an earlier docket not be relitigated in the hearing. The Presiding Judge determined that the issues in the hearing were the same and refused to allow their litigation.

CAC/EPUC asserts that the Commission in *California Independent System Operator Corp.*, 94 FERC ¶ 61,266 (2001) “ordered that gross v. net issues be addressed in the QF PGA Proceeding.”⁹ This statement is simply inaccurate. The Commission did not order that all or even most gross v. net issues be addressed in that proceeding; rather it simply deferred certain limited gross v. net issues because they were addressed in the QF-PGA proceeding. In actuality, the Commission noted:

CAC/EPUC recommends that the Commission set the ISO's gross metering and telemetry requirements for hearing.

....

.... [Southern California] Edison asserts that the ISO should remove the prohibitions in the ISO Tariff against "net metering" for QFs with more than 1 MW of capacity.

Id. at 61,921. The Commission ordered:

⁹ CAC/EPUC appears to base its issue preclusion argument on this Commission decision. Because Judge Leventhal’s decision is not a final Commission order, it cannot provide the basis for *res judicata*. See *Transcontinental Gas Pipeline Co.*, 85 FERC ¶ 61,357 at n.10 (1998). In addition, *res judicata* generally is not applicable to rate cases. *Id.* at n.9; *Boston Edison Co.*, 88 FERC ¶ 61,267 at 61,838 (1999).

We decline to set the ISO's "net metering" requirements for hearing in this proceeding. This issue is presently being litigated in Docket Nos. ER98-997-000 and ER98-1309-000. In addition, both [Southern California] Edison and CAC/EPUC are parties to that proceeding.

Id. at 61,922. Thus, the *only* gross v. net issues that the Commission stated were being addressed in the QF-PGA proceeding were gross metering and telemetry.

Indeed, CAC appears to have come only recently to the conclusion that the issues in the current proceeding were litigated in the QF-PGA proceeding. In its Initial Brief in that proceeding at 46, which is on file with the Commission and of which the Presiding Judge can take official notice, CAC stated, “. . . Transmission Access Charges (TAC) and Grid Management Charges (GMC) are not within the scope of this proceeding”

CAC's initial judgment, as reflected in its brief, was correct. Judge Leventhal's decision addressed the “gross v. net” issue solely in the context of the ISO's procurement of, and billing for, Ancillary Services, 96 FERC at 65,137-8; the ISO's metering and telemetry requirements, 96 FERC at 65,140; and the ISO's scheduling requirements, 96 FERC at 65,141. Judge Leventhal at no point addressed whether behind-the-meter Load should share responsibility for the administrative costs of maintaining Control Area reliability.

There is also good reason to conclude that the Commission recognized the distinction between the issues in the QF-PGA proceeding and other aspects of “gross v. net.” As discussed in the following paragraphs, three times while the QF-PGA proceeding was pending the Commission was presented with “gross v.

net” issues regarding the ISO Tariff. In none of these instances did the Commission defer resolution of the issue to the outcome of the QF-PGA case. Indeed, in two instances the Commission resolved the issue in favor of the use of gross Load as a billing determinant.

Most recently, in an order issued *after* Judge Leventhal’s Initial Decision, the Commission issued an order on an ISO’s compliance filing and addressed the billing determinant for emissions and start-up costs incurred by generators subject to the must-offer obligation as a result of dispatch instructions from the ISO. *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al.*, 97 FERC ¶ 61, 293 (2001). The ISO proposed to amend its tariff to base charges on Control Area Gross Load. Parties argued that the proceeding was not the appropriate forum to resolve this issue, alleging that this issue had been raised in other pending proceedings before the Commission. Additionally, parties argued that the ISO’s proposal violated the cost-causation principle by allocating charges to customers that do not benefit from ISO-dispatched generation. Finally, Southern California Edison argued that the ISO has no ability to measure the Control Area Gross Load of certain entities, such as generators with behind-the-meter loads, and therefore, the use of gross load was inappropriate. *Id.*, slip op. at 20.

The Commission concluded nonetheless:

We agree with the ISO that total gross load is the most appropriate method to assess these costs. As we stated in our December 15 Order, the ISO provides imbalance service needed for reliable transmission service. Additionally, on July 25, 2001, the Commission issued an order which stated that ISO market purchases are made in order to procure the resources necessary to reliably operate the grid. We have previously found that the use of gross load is the appropriate billing unit for the ISO's open access transmission access charge. Accordingly, the use of gross load as the basis for the assessment of emissions and start-up fuel costs is appropriate in that all users of the transmission grid will be assigned these costs consistent with the ISO's markets performing a reliability function.

Id., slip op. at 22.

The second instance – the Commission's Order accepting the ISO's proposed Transmission Access Charges provisions for filing – was issued just days before its order cited above that noted the issues pending in the QF-PGA proceeding. The Commission stated:

The Energy Producers and Users Coalition and Cogeneration Association of California argue that the ISO proposal properly excludes existing loads that are met by the internal generation of QFs but fails to exclude new, non-grandfathered QF loads. As such, they assert that the ISO proposal violates both the FPA and PURPA in that it discriminates against new standby service customers.

California Independent System Operator Corp., 91 FERC ¶ 61,205, 61,728 (2000). It then concluded:

Our review indicates that the continued use of gross load as the billing units as proposed by the ISO is appropriate. In Order No. 888 we addressed similar concerns regarding loads that were "behind the meter," and we see no change in circumstances to warrant a different result here. With respect to the exceptions for existing QF and cogeneration facilities, we generally agree with the ISO's criteria used to support its proposal. However, the record should be further developed to demonstrate that the criteria are

applied in a non-discriminatory manner in order to avoid possible future claims of discrimination.

Id. at 61,729 (footnote omitted).

The third instance is the Commission's order initiating this proceeding. The QF-PGA proceeding already was pending when the ISO filed the tariff amendments that are the subject of this proceeding. The Commission already had issued the order on which CAC/EPUC relies (*i.e.*, the order noting certain "gross v. net" issues were being litigated in the QF-PGA docket, *see California Independent System Operator Corp.*, 91 FERC ¶ 61,243 (2000)). In its intervention in this proceeding, CAC/EPUC raised the gross v. net issue, discussing at length its assertion that CAS should not be assessed based on behind-the-meter retail Load.¹⁰ The Commission nonetheless set all matters for hearing.

¹⁰ CAC/EPUC did not contend at that time that the issue would be determined in the QF-PGA proceeding. This is understandable, because CAC/EPUC did not know that Judge Leventhal would rule in its favor.

IV. Conclusion

For the reasons discussed above, CAC/EPUC's Motion for Summary Disposition should be denied.

Respectfully submitted,

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Counsel for the California Independent
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Dated: December 28, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 28th day of December, 2001.

Julia Moore
(202) 295-8357

December 28, 2001

The Honorable Linwood A. Watson, Jr.
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *California Independent System Operator Corporation*
Docket Nos. ER01-313-000 and ER01-313-001

Pacific Gas and Electric Company
Docket Nos. ER01-424-000 and ER01-424-001

Dear Acting Secretary Watson:

Enclosed are an original and fourteen copies of the California Independent System Operator Corporation's Answer To Motion For Summary Disposition Of The Cogeneration Association Of California And The Energy Producers And Users Coalition in the above-captioned proceeding. Two courtesy copies of this filing are included to be hand delivered to Judge Bobbie J. McCartney. Also enclosed are two extra copies of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Sincerely,

Julia Moore
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Counsel for the California
Independent System Operator Corporation

Enclosures

cc: The Honorable Bobbie J. McCartney
Service List