

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

California Independent System Operator Corporation)	Docket Nos.	ER02-250-000
)		ER02-527-000
)		
Pacific Gas and Electric Company)	Docket No.	ER02-479-000

JOINT MOTION TO ADJUST INTERIM SETTLEMENT RATES

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2002), the California Independent System Operator Corporation (“ISO”) submits this Joint Motion requesting an adjustment to the interim Ancillary Services and Real-Time Energy Operations (“ASREO”) rate of the ISO’s Grid Management Charge (“GMC”). The ASREO rate is part of a settlement in principle among the active parties to this proceeding. The ISO, on behalf of the active parties, requests that the adjusted ASREO rate take effect November 1, 2002, as an interim rate until a formal settlement agreement can be filed with, and considered by, the Commission. This motion is supported by all active parties to this proceeding, and is not opposed by Commission Trial Staff or any other party. The California Municipal Utilities Association (“CMUA”) takes no position with regard to this motion. In support of this motion, the ISO states as follows:

1. On August 15, 2002, the ISO filed an unopposed motion to place interim settlement rates into effect on September 1, 2002 (“August 15 Motion”) (attached as Appendix A). In the August 15 Motion, the ISO informed the Commission that the active parties had agreed to a settlement in principle resolving the above-captioned dockets, and explained that interim rates would give the parties the immediate benefit of the negotiated terms of the settlement.

2. The August 15 Motion stated that the following rates for the three categories of the GMC would be specified in the proposed settlement:

Control Area Services (“CAS”): \$0.553/MWh – Effective January 1, 2002

Congestion Management (“CM”): \$0.312/MWh – Effective January 1, 2002

ASREO: \$0.957/MWh – Effective January 1, 2002

All of those rates are equal to or below the rates filed by the ISO on November 2, 2001, and accepted by the Commission, subject to refund, on December 20, 2001, effective January 1, 2002. *California Independent System Operator Corporation*, 97 FERC ¶ 61,303 (2002). The August 15 Motion also noted the following rate that would be specified in the proposed settlement:

ASREO: \$1.048 – Effective July 1, 2002

This rate is an increase from the rate filed by the ISO on November 2, 2001, and accepted by the Commission, subject to refund, on December 20, 2001, effective January 1, 2002.

3. The Commission granted the August 15 Motion by a letter order from Michael A. Coleman, Director of the Division of Tariffs and Rates – West, dated September 12, 2002 (attached as Appendix B). The letter order authorized the ISO to begin collecting the rates included in the settlement in principle, effective September 1, 2002, pending final Commission action on the settlement. The Commission authorized the ISO, in the event the proposed settlement is not approved, to reinstate the initial filed rates.

4. The negotiated settlement in the above-captioned dockets stipulates an ISO revenue requirement for 2002; the increased ASREO rate of \$1.048 as of July 1, 2002, allows the ISO to avoid under-recovery of its stipulated costs. Commission Trial Staff,

however, has raised concerns that an effective date of July 1, 2002, for the \$1.048 rate would constitute retroactive ratemaking.

5. To remove any issue of retroactive ratemaking, and enable the parties to complete and file the settlement, the active parties to the settlement negotiations have proposed delaying the effective date of the \$1.048/MWh ASREO rate to the date on which the Commission authorized the ISO to collect the interim rates: September 1, 2002. The \$0.957/MWh ASREO rate would be the effective rate for July and August. The approved interim ASREO rate of \$1.048/MWh would remain effective for the months of September and October. To allow the ISO to recover the difference in collections caused by delaying the effective date of the \$1.048/MWh ASREO rate, the active parties have proposed that the ASREO rate increase to \$1.158/MWh effective November 1, 2002. Under the increased rate the ISO would recover the difference between the amount that would have been collected in July and August under the \$1.048/MWh rate under and the amount collected during those months under the \$0.957 rate.

6. Thus, if this motion is granted, the rates for ASREO during 2002 will be as follows:

\$0.957/MWh - Effective January 1, 2002 through August 31, 2002

\$1.048/MWh - Effective September 1, 2002 through October 31, 2002

\$1.158/MWh - Effective November 1, 2002 through December 31, 2002

The ASREO rate as of January 1, 2003 will be determined pursuant to the terms of the settlement being finalized by the parties to these proceedings.

7. The Commission has ample authority to issue interim rate orders, under its general Section 309 authority to issue “necessary or appropriate” orders. 18 U.S.C.

§ 825h. The Supreme Court has stated that “there is ‘no question’ as to the Commission’s authority to issue interim rate orders.” *Federal Power Commission v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 150 (1962) (relying on Section 16 of the Natural Gas Act, which contains the same “necessary or appropriate” authority as Section 309 of the FPA). *Tennessee Gas* “illustrates the authority [the Supreme Court] repeatedly has given regulating agencies to issue interim rate orders prior to final determination whether proposed rates meet statutory requirements.” *United States v. City of Fulton*, 475 U.S. 657, 669 (1986). Indeed, the Commission has issued interim rate orders on numerous occasions. *See, e.g., Paiute Pipeline Company*, 65 FERC ¶ 61,085 at 61,518 (1993); *Yankee Atomic Electric Co.*, 61 FERC ¶ 61,380 (1992); *Minnesota Power & Light Co.*, 40 FERC ¶ 61,257 (1987); *Gulf States Utilities Company*, 38 FERC ¶ 61,257 (1987); *New England Power Company*, 72 FERC ¶ 61,117 (1995); *Southern California Edison Company*, 71 FERC ¶ 61,230 (1995).

8. The active parties continue to have a settlement in principle and are in the process of working out the details of a final settlement agreement, anticipated to be filed shortly.

9. The active parties respectfully request that the Commission allow the settlement ASREO rate of \$1.158/MWh to become effective, on an interim basis, on November 1, 2002.

10. The ISO is authorized to state that this motion is supported by all active parties, and is unopposed by Commission Trial Staff or any other party. The CMUA takes no position with regard to this motion.

Respectfully submitted,

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