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Re: *PG&E v. CAISO*; Case No. 74 Y 198 00625 04;  
Demand for Arbitration

## **PETITION TO INTERVENE OF THE TURLOCK IRRIGATION DISTRICT**

The Turlock Irrigation District ("TID") hereby submits this Petition to Intervene in the above-captioned matter, as initiated by the Demand for Arbitration submitted on July 9, 2004 by Pacific Gas and Electric

Company ("PG&E"). The California Independent System Operator Corporation ("CAISO") posted public notice of PG&E's Demand for Arbitration on or about July 15, 2004.

## I. BASIS FOR INTERVENTION BY TID

The Dispute Resolution Procedure of the CAISO is contained in Section 13 of its Tariff on file with the Federal Energy Regulatory Commission ("FERC"). The Demand for Arbitration provisions are set forth in Section 13.2.5. Supplemental Procedure 3 thereto provides that any party whose interests may be affected by the outcome of the arbitration at issue shall file a written petition to intervene with the AAA, within fifteen days of public notice of the Demand for Arbitration. TID's petition to the AAA is therefore timely.

In the underlying Statement of Claim by PG&E against the CAISO, among the entities listed as "other potentially interested parties" are "Holders of transmission entitlements on the California Oregon Transmission Project ("COTP)." TANC holds an ownership interest in the COTP transmission facilities, and TID, which is a member of TANC, owns a transmission entitlement on the COTP and undertakes transactions using its entitlement on the COTP. TID thus has an interest in this proceeding.

In a previous arbitration before the AAA in Case No. 71 198 00711 00 ("Arb. I"), TID was an intervenor and active participant in support of the position of PG&E against the CAISO. TID currently anticipates that it will also take a position in this case in support of the relief sought by PG&E in its present Demand for Arbitration and underlying claim.

For all these reasons, TID has established good cause to intervene in this matter before the AAA, consistent with Supplemental Procedure 3.2.

## II. BACKGROUND

This dispute is remarkably similar to the dispute that was submitted to arbitration in October 2000 in Arb I. The current dispute is over charges that the CAISO has improperly imposed on PG&E, for transactions for COTP transactions, and transactions occurring within the Sacramento Municipal Utility District ("SMUD") and Western Area Power

Administration (“WAPA”) bubbles (*i.e.*, using transmission facilities that are not controlled by the CAISO) for which the CAISO has been inappropriately netting from amounts due PG&E. The charges at issue are associated with COTP schedules and so-called “Bubble” transactions, which are transactions occurring on facilities that are owned by WAPA or TANC and that are not scheduled over facilities that are part of the CAISO Controlled Grid, as that term is defined in the CAISO Tariff.

In Arb. I, the CAISO had allocated charges to PG&E using a proxy scheduling coordinator identification (“proxy sc ID”) code to impose the charges. The proxy sc ID was used by PG&E purely as an accommodation to the CAISO. The proxy sc ID was expressly created to facilitate implementation of electric restructuring and to pass the COTP and Bubble information through PG&E to the CAISO so that it could perform its duties as Control Area Operator. However, in agreeing to facilitate this flow of information, PG&E was clear that it was not agreeing to act as a CAISO-certified Scheduling Coordinator (“SC”) with respect to these transactions and would not accept any charges related to the COTP or Bubble schedules. Indeed, as the first arbitration establishes, the CAISO has no authority to impose such charges on PG&E. PG&E is not now, nor has it ever been, the SC for COTP or Bubble transactions and, therefore, PG&E is not liable for any charges associated with such transactions. The same is true for TID, to the extent that such charges may be subject to pass-through treatment to it.

The December 13, 2001, decision in Arb. I held that the CAISO’s charges were improper for several reasons. The principal reason is that the CAISO’s Tariff does not authorize the CAISO to impose upon PG&E charges for ancillary services in connection with COTP and Bubble transactions since they are not included within the CAISO Controlled Grid, as the CAISO Tariff defines that term. Arb. I Final Order and Award at 7-12. There, the Arbitrator relied on a controlling FERC order, rejecting a previous CAISO attempt to assess similar charges on non-CAISO Controlled Grid facilities like the COTP and SMUD and WAPA Bubbles. This occurred in the FERC’s March 1998 Order on the CAISO’s proposed Tariff Amendment No. 2, which the FERC rejected. 82 FERC ¶61,312 (1998).

Additionally, the Arbitrator’s decision in Arb. I held that PG&E was not the SC for the COTP or Bubble transactions. The Arbitrator ruled that the CAISO had no authority to impose the charges. Arb. I, Final Order and Award at 17-8 (December 13, 2001)(“In short, the Arbitrator finds and concludes that PG&E is the Scheduling Coordinator under the [CAISO] Tariff

for transactions on the ISO Controlled Grid, but is not in that status with respect to COTP and Bubble transactions.”).

The CAISO appealed the Arbitrator’s decision in Arb. I to the FERC. On May 10, 2004, the FERC issued its Order Denying Petition For Review, stating: “We will uphold the arbitration award and deny the ISO’s petition for review, as discussed below.” *California Independent System Operator Corporation*, 107 FERC ¶ 61,152, ¶27 (2004) (“May 10 Order”).

Notwithstanding the fact that the Arb. I proceeding was already underway, starting in late 2001 the CAISO began again improperly billing PG&E, this time for three new Charge Types: Emissions, Start Up and Minimum Load Compensation (Charge Types 591, 592 and 595, respectively), again using the PG&E proxy sc ID.

In the present dispute that is the subject of PG&E’s Demand and underlying claim, the improper charges assessed to PG&E for the three new Charge Types totaled approximately \$9 million as of the end of May 2004. Additionally, in 2002, the CAISO began charging PG&E interest on the amount in dispute, currently totaling approximately \$115,000.

Further, TID understands that the CAISO also began offsetting the currently disputed amounts against money the CAISO owes PG&E. This offsetting started after the December 2001 Arb. I decision holding that PG&E is not the SC for the COTP or Bubble transactions. The improper offsetting has continued even after the May 2004 FERC decision affirming that the CAISO has no authority to impose the charges on PG&E because the transactions at issue involved use of non-CAISO Controlled Grid facilities and PG&E is not the SC for the COTP or Bubble transactions.

The new improper charges are not insignificant, accruing at a rate of approximately \$500,000 per month.

### **III. PRESENT DEMAND FOR ARBITRATION AND UNDERLYING CLAIM**

As noted, the charges in dispute currently total approximately \$9 million, plus interest. The CAISO continues to offset the amounts it claims PG&E owes it for the disputed charges on the proxy sc ID, so the charges continue to accrue, at a rate of approximately \$500,000 per month, despite the CAISO’s lack of authority to impose the charges.

TID believes that the CAISO has misconstrued the FERC rulings on which it states it relies, including the June 19 Order, that, among other things, allowed the CAISO to begin charging SCs for the new Charge Types at issue here. The new Charge Types were to be assessed: “against all in-state-load served on the ISO’s system.” June 19 Order, 95 F.E.R.C. P61,418 at 62,562.

Nothing in the June 19 Order or any other FERC order or CAISO compliance filing allows the CAISO to assess charges for transactions serving in-state load over non-CAISO Controlled Grid facilities, or charge any entity other than an SC for any of the charges at issue. As the CAISO Tariff states at Sections 2.5.23.3.6.1, 2.5.23.3.7.1, and 5.11.6.1.4, these charges are to be paid by SCs, *e.g.*: “The ISO shall levy this charge...each month, against all Scheduling Coordinators...” CAISO Tariff Section 2.5.23.3.6.1. Given the unambiguous rulings in Arb. I and the FERC May 10 Order that PG&E is not the SC for the COTP or Bubbles, the CAISO has no authority to impose the new charges on PG&E, regarding transactions over the non-CAISO Controlled Grid facilities on the COTP, and behind the SMUD and WAPA Bubbles.

TID further believes that the CAISO improperly applies the disputed Charge Types against PG&E here because, among other things, transactions at issue are not “in-state load served on the ISO’s system.” June 19 Order. The ruling in Arb. I, as fully affirmed by FERC in the May 10 Order, is dispositive.

TID’s current position is that: (i) the charges in dispute are unlawfully applied to non-CAISO Controlled Grid transactions, (ii) PG&E is not a Scheduling Coordinator for the COTP or Bubbles or for transactions scheduled on or behind them, (iii) PG&E has no liability for CAISO charges, if any, which result from COTP/Bubble transactions, including, but not limited to, Emissions, Start Up, or Minimum Load Compensation, (iv) the CAISO improperly included these charges in its invoices to PG&E, and continues to do so after PG&E informed the ISO of its error and also filed disputes over the improper charges, and (v) the CAISO currently improperly offsets these improper charges from amounts the CAISO owes PG&E, and imposes interest, because PG&E refused and continues to refuse to pay the improper charges on the proxy sc ID.

IV. NOTICES

The names, titles and addresses of the persons authorized to receive communications concerning this matter are as follows:

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V. RELIEF REQUESTED

WHEREFORE, for the reasons above, TID requests that this petition for intervention in support of PG&E's Demand and underlying claim be granted, and that TID be granted full rights of participation in this proceeding as an intervenor.

Respectfully submitted,

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