

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

California Independent System Operator )  
Corporation )

Docket No. ER02-1834-000

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO  
MOTIONS TO INTERVENE, COMMENTS AND PROTESTS**

On May 17, 2002, the California Independent System Operator Corporation ("ISO") filed with the Federal Energy Regulatory Commission (the "Commission") an unexecuted Participating Generator Agreement ("PGA")<sup>1</sup> between the ISO and the City of Riverside, California ("Riverside") pursuant to Section 205 of the Federal Power Act. The PGA applies to Riverside's proposed Springs Generation Project (the "Project"). The comment date was June 7, 2002. Ten motions to intervene were filed, primarily by municipal corporations and associations representing such corporations. The ISO does not oppose the intervention of any party that sought leave to intervene in this proceeding. A number of the entities seeking intervention, including Riverside, either protested or filed critical comments on the unexecuted PGA.

As explained herein, the issues raised by the protests and comments do not provide a basis for rejection of the PGA. In their essence, many of the issues raised by Riverside and other interveners relate to accommodation by the ISO of

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<sup>1</sup> Terms used herein with initial capitalization and not otherwise defined herein have the definitions set forth in the Master Definitions Supplement, Appendix A of the ISO Tariff.

vertically integrated utilities or systems in the ISO framework. These issues are currently being addressed in Docket ER00-2019-000 in settlement discussions on ISO Tariff provisions on the transmission Access Charge. An aspect of the Access Charge methodology is the terms for allowing a New Participating Transmission Owner to become a Metered Subsystem (“MSS”). See May 31, 2000, Order in Docket ER00-2019-000, 91 FERC 61,205. In the context of settlement discussions in Docket ER00-2019-000, the ISO has offered to make amendments to the MSS ISO Tariff provisions filed initially, and has distributed a proposed MSS agreement. The ISO would, as it has indicated to Riverside, withdraw the unexecuted PGA, if Riverside signs the proposed MSS agreement. Further, the ISO would agree to have the MSS agreement with Riverside subject to the outcome of Docket ER00-2019-000. However, Riverside should not be allowed to offer its status as a vertically integrated utility as the basis for not entering into a PGA for the Project, while at the same time refusing to undertake the responsibilities of a vertically integrated utility by signing an MSS agreement.

Moreover, the key concerns cited by Riverside with regard to the unexecuted PGA, application of the Commission-mandated Must-Offer requirement to the Project and curtailment of Riverside Load due to system wide deficiencies, does not turn on whether the Project is subject to a PGA. Accordingly, these concerns also provide no basis for Riverside to escape application of the PGA to the Project.

While the ISO opposes Riverside's request that the Commission suspend the unexecuted PGA while expedited proceedings take place, the ISO believes that it may be possible to arrive at a settlement that sets forth Riverside's responsibilities as a vertically integrated utility pending the outcome of Docket ER00-2019-000. Riverside's protest sets forth a number of actions that Riverside would be willing to undertake that could provide the basis for such a settlement. Accordingly, the ISO would support acceptance of the unexecuted PGA, along with immediate appointment of a settlement judge to work with Riverside and the ISO to explore prompt development of such a settlement.

- I. **The ISO Tariff and the PGA support the ISO's filing of an unexecuted PGA for the Project; Riverside should not be allowed to proffer its status as a vertically integrated utility as its rationale for escaping a PGA without undertaking the responsibilities of a vertically integrated utility.**

Riverside argues that it is not required under the ISO Tariff to sign a PGA for the Project because it does not intend to use the Project to sell Energy or Ancillary Services to the ISO and does not wish to Schedule output from the Project over the ISO Controlled Grid. Riverside's reasoning and reading of the ISO Tariff are flawed, and ignore the ISO's responsibilities as Control Area operator. Because Riverside's operation of the Project should be scheduled with the ISO, the Project should be subject to a PGA.

Further, Riverside relies on its status as a vertically integrated utility to argue that control by the ISO of its Generating Units is inappropriate. However, Riverside has not to date entered into an MSS agreement with the ISO and

thereby committed to meet its responsibilities as a vertically integrated utility in a manner that allows the ISO to meet its responsibilities as Control Area operator. Riverside has executed a Utility Distribution Company (“UDC”) Operating Agreement with the ISO, by which Riverside has committed to comply with the terms of the ISO Tariff in the same manner as any other UDC in the ISO Control Area. However, a UDC Operating Agreement does not address operating reserve requirements and other matters related to the ISO’s Control Area responsibilities, and accordingly does not exempt Generating Units of the UDC from being subject to a PGA. Rather, the Generating Units of other UDCs having UDC Operating Agreements with the ISO are subject to PGAs irrespective of their purpose.

The ISO accepts that Riverside does not intend to use the Project to offer Energy or Ancillary Services to the ISO. Nonetheless, the Project is synchronized to the electric grid; thus, the Project should be scheduled with the ISO, and a PGA is required for the Project unless Riverside enters into an MSS agreement. Section 5 of the ISO Tariff provides that “[t]he ISO shall not be obligated to accept Schedules or Adjustment Bids or bids for Ancillary Services relating to Generation from any Generating Unit interconnected to the ISO Controlled Grid unless the relevant Generator undertakes in writing to the ISO to comply with all applicable provisions of this ISO Tariff as they may be amended from time to time, including, without limitation, the applicable provisions of this Section 5 and Section 2.3.2.” Sections 2.2.4.3 and 2.3.5 of the ISO Metering

Protocol prohibit the netting of values for Generating Unit output and Load, irrespective of whether such Generating Units and Load are ISO Metered Entities or Scheduling Coordinator (SC) Metered Entities. Thus, the prohibition applies to all ISO Control Area Generating Units and Loads, including those such as the Project, that are connected at the distribution level.<sup>2</sup>

To assure appropriate settlements, scheduling should track metering. Otherwise, the SC for the Generating Units and Loads would be assessed Imbalance Energy charges for the differences between amounts scheduled and amounts metered. Thus, given the prohibition in the ISO Tariff against netting of Generating Unit output and Load (other than auxiliary load), even the output of a Generator located at the distribution level intended to serve Load at the distribution level, should be scheduled by Riverside with the ISO and should be subject to a PGA.

More importantly, the issues raised by Riverside relate, in their essence, to how the ISO should treat and interact with vertically integrated utilities and systems, and whether an alternative approach is appropriate regarding Generating Units that are part of a vertically integrated utility or system. As the Commission recognized in its May 31, 2000, order in Docket No. ER00-2019-000, the ISO Tariff provisions associated with MSS have as an aspect of their purpose accommodating vertically integrated systems in the ISO framework. In

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<sup>2</sup> Only Generating Units connected at the distribution level that are under 1 MW and meet certain additional requirements are exempt from the prohibition against net metering pursuant to ISO Tariff Section 5.1.4.1, and are hence exempt from signing a PGA.

fact, the ISO informed Riverside in an April 3, 2002 letter, Attachment 3 to the unexecuted PGA filing by the ISO, that a PGA with the Project would not be necessary if Riverside executes an MSS agreement.

As stated above, a proposed MSS agreement and associated ISO Tariff amendments were distributed to Riverside and to the parties to Docket No. ER00-2019-000 during settlement negotiations. These documents represent further development of the MSS concept introduced in the ISO Tariff provisions already accepted by the Commission, and they eliminate the requirement that an MSS must also be a Participating TO.

The ISO considers its efforts regarding the MSS agreement and associated ISO Tariff amendments to be a key action in response to the Commission's directive in its audit of ISO operations in 2001 that the ISO work toward better integration of municipal utilities into the ISO structure. However, the ISO's obligations as Control Area operator remain in effect pending finalization of the MSS ISO Tariff amendments and an MSS agreement.

Thus, in the absence of an MSS agreement with Riverside, the ISO requires a PGA for the Project to ensure that it can meet its responsibilities as Control Area operator, given the structure of the California market and electric system, and the physical reality of interconnected operations. As Control Area operator, the ISO must assure and maintain the balance between all Generation and Load within the Control Area, including Generation and Load connected at the distribution level. Moreover, the interconnected grid responds

instantaneously and automatically to address imbalances between all Generation and Load, including those connected at the distribution level. This is true even in the case of a Generating Unit within a vertically integrated utility or system within the Control Area. In the absence of an MSS Agreement, the PGA, by making a Generating Unit subject to the ISO Tariff, affords the ISO the tools it requires to undertake its responsibilities as Control Area operator.

Riverside's protest suggests that it is willing to commit to some requirements set forth in the ISO Tariff to allow the ISO to meet its Control Area responsibilities, and that on the basis of this commitment it should escape either signing an MSS Agreement or a PGA for the Project. The ISO is willing to forgo PGAs for Generating Units operated within a vertically integrated utility or system that has signed an MSS agreement, because in these circumstances, there are clear boundaries and allocations of responsibility between the vertically integrated utility or system and the ISO, such that the ISO, as Control Area operator, can meet its responsibilities. In effect, what Riverside is suggesting is that it should be entitled to some form of MSS "lite" status, including only the provisions that Riverside considers to be important, and without any agreement executed by Riverside that sets forth its responsibilities as a vertically integrated utility.

This outcome is unacceptable. However, the ISO may be willing in the context of settlement discussions with Riverside, to consider whether any accommodations are appropriate in Riverside's case, pending the outcome of

ER00-2019-000, to minimize the burden on Riverside from complying with certain provisions of the PGA or an MSS agreement. Moreover, as stated earlier, the ISO would certainly be willing to have any MSS agreement signed with Riverside be subject to the outcome of ER00-2019-000. However, in the meantime, Riverside should not be allowed to "have it both ways"; that is to escape executing an MSS agreement, and also escape the ISO Tariff requirements, such as the PGA, that apply to entities that have not assumed the responsibilities of vertically integrated utilities.

In its protest, Riverside cites the definition of an ISO Metered Entity, as set forth in the Meter Service Agreement ("MSA"), for the proposition that Riverside need not enter into a PGA for the Project. The definition of an ISO Metered Entity as set forth in Section 1.2 of the MSA (and Appendix A to the ISO Tariff) does, as Riverside contends, exclude a "Generator directly connected to the ISO Controlled Grid that sells all of its Energy, excluding energy consumed by auxiliary load equipment, and Ancillary Services to the Utility Distribution Company in whose Service Area it is located". However, this definition is intended to address whether a Generating Unit should be an ISO Metered Entity or an SC Metered Entity. It is not intended to define a Participating Generator. Further, Participating Generators are ISO Metered Entities under part (b) of the definition of ISO Metered Entity even if they do not meet the definition of ISO Metered Entity under part (a) of the definition, the part quoted by Riverside. This



is clear because there is an "and" between parts (a) and (b) of the definition of an ISO Metered Entity.

Moreover, the PGA, which is the relevant document for purposes of defining whether a Generating Unit is a Participating Generator or not, also has an exemption for certain Generating Units with agreements to sell power to a UDC, but that exemption is clear that it relates the ISO's obligation to honor existing contracts, and does not apply in the case of a new Generating Unit such as the Project:

**2.2.1 Exemption for Certain Generators.** The Generator with an existing power purchase agreement with a UDC is not required to sign a Participating Generator Agreement if: (a) the Generator sells all of its Energy (excluding any Energy consumed by auxiliary load equipment electrically connected to that Generator at the same point) and Ancillary Services to the UDC . . . . With respect to subsections (a) and (b), an existing power purchase agreement shall mean an agreement which has been entered into and is effective as of December 20, 1995. . . . "

Riverside also argues that the ISO has not applied the requirement for a PGA to Generating Units connected at the distribution level consistently.

Riverside contends that there are units owned by the City of Vernon and NCPA that have not been required to be subject to a PGA. The ISO is aware that certain NCPA Generating Units have not been made subject to a PGA, due to the ISO's obligation to honor Existing Contracts. In cases where entities had pre-existing interconnection agreements with the Participating Transmission Owners, the ISO has, as it is required to do, honored these agreements. These agreements typically address the respective responsibilities of the entity and the Participating TO in a manner that the Participating TO considered allowed it to

meet its Control Area operator responsibilities. Even if the provisions of the interconnection agreement would be deficient in the new ISO based structure, the ISO must honor the agreement and has done so in a number of ways, including forgoing a PGA for the Generating Units of the entity.

As to the City of Vernon, the ISO is aware of one generating facility that is not subject to a PGA. At the time the City of Vernon became a Participating Transmission Owner, the facility was off-line and not operational. Thus, it was not required to become subject to a PGA. If that facility is once again on-line it should be subject to a PGA, unless the City of Vernon signs an MSS agreement. The ISO will, in light of Riverside's protest and the appended affidavit, investigate the status of the City of Vernon's generating facility.

In sum, the ISO Tariff and the PGA provide an adequate basis for a requirement that Riverside sign a PGA for the Project. Moreover, Riverside should not be allowed to use its status as a vertically integrated utility as an excuse to escape signing a PGA, without undertaking through executing an MSS agreement, to meet the responsibilities of a vertically integrated utility.

**II. Riverside's stated primary concerns associated with signing a PGA are unrelated to the Project's status as a Participating Generator and provide no basis for challenging the PGA.**

Riverside cites as the most serious concerns related to the unexecuted PGA for the Project, the fact that this will make the Project subject to the Commission-mandated "Must-Offer" obligation. However, the Must-Offer obligation applies irrespective of the status of the Project as a Participating

Generator. Similarly, Riverside's concern that its Load could be interrupted due to system considerations unrelated to imbalances between Riverside's Load and Generation is not associated with the status of the Project as a Participating Generator. This is not to say that Riverside's concerns regarding these topics are unimportant; the ISO recognizes that similar concerns are shared by a number of municipal entities, and the ISO is attempting to address these concerns. However, these concerns are unrelated to the ISO filing of an unexecuted PGA for the Project.

On April 26, 2001, the Commission directed that "all non-hydroelectric generators and marketers in the WSCC with energy operationally and contractually available in real-time (public utilities and non-public utilities) would be required to offer that real-time energy for sale". 95 FERC ¶ 61,115, at 27. This requirement was reiterated on June 19, 2001, when the Commission confirmed the requirement in response to rehearing requests by multiple entities stating:

We believe that all entities must assist with solving the problems in the WSCC. Accordingly, the Commission will require that, as a condition of selling into the markets which are subject to this Commission's exclusive jurisdiction, and as a condition of using Commission jurisdictional interstate transmission facilities, all sellers located in the WSCC, including non-public utility sellers in the WSCC, must abide by . . . the must-offer obligation (if applicable) described in this order.

95 FERC ¶ 61,418 at 51. The affidavit attached to the Riverside protest explains that "[m]ost of Riverside's resources are located outside the Riverside system, and most of the energy generated or purchased by Riverside is delivered to

Riverside over the ISO Controlled Grid using entitlements under Existing Transmission Contracts ("ETCs") between Riverside and Southern California Edison Company ("SCE"). Thus, Riverside uses Commission jurisdictional interstate transmission facilities and is subject to the Must-Offer obligation regardless of whether the Project is a Participating Generator or not.

Riverside relates its concern regarding the Must-Offer obligation to the fact that the Project has a limited number of hours of operation due to environmental limitations. Riverside argues that, if the ISO requires the Project to operate pursuant to the Must-Offer obligation and uses up the available hours, the Project might not be available to operate when there is an outage or capacity restriction at SCE's Vista Substation, the only substation that links Riverside to the ISO Controlled Grid. Riverside is not alone in this concern; all owners of Energy limited resources would prefer to reserve the output of their resources for the circumstances for which the resources were developed. The ISO would be happy to discuss these concerns with Riverside in the context of settlement discussions in this docket, if the Commission institutes settlement proceedings. After all, the ISO shares the goal of managing resources to assure grid wide reliability. But again, since the Must-Offer obligation is unrelated to the status of the Project as a Participating Generator, Riverside's concerns provide no basis for rejecting the unexecuted PGA. Moreover, Riverside can, in Schedule 1 of the PGA set forth limitations on the operation of the Project, which the ISO is bound to respect.

Similarly, Riverside's concern that its Load may be interrupted as a result of system-wide problems is unrelated to the status of the Project as a Participating Generator. If there are system wide generation shortages, as there were in early 2001, the ISO could be forced to institute involuntary Load curtailments. In these circumstances, whether or not Riverside Load will curtailed is completely unrelated to whether the Project is a Participating Generator or not – the determination of which Load to curtail has never depended on whether Generating Units serving particular loads are or are not Participating Generators<sup>3</sup>. In any event, the ISO hopes that, with the stabilization of the financial situation of the Investor-Owned Utilities, and the recent addition of a number of key generation resources within the ISO Control Area, supply deficiencies will no longer be a threat.

In sum, the concerns that Riverside characterizes as most critical associated with the unexecuted PGA are unrelated to the status of the Project as a Participating Generator. The ISO is happy to discuss them further with Riverside in the context of settlement discussions in Docket ER00-2019-000, or this docket. However, the concerns do not provide a basis for rejecting the unexecuted PGA.

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<sup>3</sup> Regarding Load shedding Riverside's UDC agreement (Schedule 8) provides: "Until such time as the UDC implements a program for manual Load Shedding and rotating service interruptions independent of Southern California Edison Company, the UDC shall continue to operate in accordance with the applicable Southern California Edison Company System Operating Bulletin and its Standard Procedure No 190.001." Those documents call for SCE to take Load Shedding directions from the ISO and to include Riverside as part of its Load Shedding program.

### **III. Conclusion.**

There is an adequate basis for a requirement that Riverside sign a PGA for the Project. Nonetheless, Riverside can avoid this requirement if it executes an MSS agreement, and hence undertakes the responsibilities of a vertically integrated utility in a manner that will allow the ISO to carry out its Control Area operator obligations. The ISO is willing to undertake settlement discussions with Riverside to address MSS agreement requirements, pending the outcome of Docket ER00-2019-000. However, the ISO requires some mechanism, be it the PGA or the MSS agreement, to ensure that the Project will be operated in a manner that allows the ISO to meet its Control Area obligations.

Respectfully submitted,

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Date: June 24, 2002



June 24, 2002

The Honorable Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: California Independent System Operator  
Docket No. ER02-1834-000

Dear Secretary Salas:

Enclosed for electronic filing in the above-captioned proceeding is the Answer of the California Independent System Operator Corporation to Motions to Intervene, Comments and Protests.

Thank you for your attention to this matter.

Respectfully submitted,

Jeanne M. Solé  
Counsel for the California Independent  
System Operator Corporation

CERTIFICATE OF SERVICE

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

Dated at Folsom, California this 24th day of June, 2002.

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Jeanne M. Solé  
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