

**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 OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT
TO LODGE OR, IN THE ALTERNATIVE, TAKE OFFICIAL NOTICE OF
ARBITRATION REPORT**

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 of the Sacramento Municipal Utility District to Lodge or, in the Alternative, Take Official Notice of Arbitration Report. The ISO submits that the Motion is without merit and should be denied.

I. Introduction and Summary

On January 11, 2002, the Sacramento Municipal Utility District (“SMUD”) filed a motion to lodge the decision issued in the arbitration case (“Arbitration”), *Pacific Gas and Electric Co. v. California Independent System Operator Corp.*,

Final Order and Award, American Arbitration Association Case No. 71 198 0071 (December 13, 2001) (“Award”). In the alternative, SMUD moved the presiding Administrative Law Judge to take official notice of the Arbitration Report.

The Award concerns a dispute between the ISO and various parties regarding charges that the ISO assessed, or seeks to assess, to PG&E for Ancillary Service procured to support schedules on transmission facilities that are within the ISO Control Area but not a part of the ISO Controlled Grid. The Award concludes that the ISO was not authorized under the ISO Tariff to levy such charges. The ISO believes this conclusion is erroneous and has placed the Award before the Commission for review in accordance with the terms of the ISO’s Tariff.

The Award is irrelevant to this proceeding, which does not concern the existence of the ISO’s authority to levy charges under the ISO Tariff, but rather whether the authority provided by the ISO’s Tariff amendments is just and reasonable. Moreover, reliance on the decision in this proceeding would be improper because the Award is nonfinal, has been stayed, and has no precedential value.

II. The Award Is Patently Irrelevant to the Issues in this Proceeding

In attempting to show the relevance of the Award to this proceeding, SMUD argues:

As in the instant proceeding, a primary issue in the Arbitration was whether the ISO had legal authority under its Tariff to impose costs on various governmental entities, such as SMUD, via pass-through, for transactions that occurred within the Control Area, but not on the ISO Controlled Grid. Also, similar to this proceeding, a related dispute in the Arbitration

concerned whether governmental entities, relying in part on Existing Contracts, could reliably self-provide or make alternative arrangements for the services they were being charged by the ISO. (SMUD Motion at 2.)

This assertion *fundamentally* mischaracterizes the issues in this proceeding, in which neither the ISO's existing authority under the Tariff nor the ability of governmental entities to self-provide Ancillary Services is at issue.¹

A. The Award Concerns the ISO's Existing Authority Under the ISO Tariff; this Proceeding Concerns Whether the ISO's Authority Is Just and Reasonable.

SMUD is generally correct in its description of one of the issues in the Arbitration, as described in the Award.² “The subject matter of the dispute is whether Cal ISO has the requisite legal authority to impose upon PG&E certain charges for ancillary services in connection with transactions scheduled on [certain facilities that are within the ISO Control Area but not part of the ISO Controlled Grid].” (Award at 1-2.) The Award states that the ISO Tariff, “considered within its four corners,” did not provide such authority. (Award at 7.) The Award also states that extrinsic evidence did not support a contrary conclusion. *At no point* did the Arbitrator address whether it would be just and reasonable for the ISO to have authority to assess charges for services it provides as Control Area Operator

¹ SMUD also mischaracterizes the issues discussed in the Award. The Award concerned the ISO's ability to charge PG&E for Ancillary Services in connection with schedules on facilities that are within the ISO Control Area but not part of the ISO Controlled Grid. The Award does not address PG&E's “pass-through” of those costs to the governmental entities for which it scheduled.

² See n. 1, *supra*.

in connection with schedules that are in the Control Area but not on the ISO Controlled Grid.³

SMUD is *incorrect* in asserting that the ISO's legal authority is an issue in this proceeding. A review of the Joint Statement of Issue reveals no reference to the existence of the ISO's authority. When the Commission set the proposed 2001 GMC for hearing, it noted that "the ISO's and PG&E's proposed rate recovery, cost allocation methodologies, and whether existing transmission customers should be subject to these charges." *California Independent System Operator Corp.*, 93 FERC ¶ 61,337 at 62,144 (2000). It did not mention the ISO's authority.

The reason is simple. The filed tariff revisions *provided the authority*. The Commission accepted the tariff provisions for filing, subject to refund. Accordingly, there is no question that the ISO currently has the authority, subject to refund, to assess the Control Area Service charge in connection with the schedules that are within the ISO Control Area but do not involve the ISO Controlled Grid. If the Commission finds that the tariff provisions are just and reasonable, the ISO will continue to have the authority, but no longer subject to refund. If the Commission finds to the contrary, the ISO will not, and will conform its Tariff and activities accordingly. No interpretation of the ISO Tariff is involved; the Award is thus completely irrelevant.

³ In dicta, the Arbitrator addressed the equities that favored PG&E in connection with ancillary services the ISO provided in addition to ancillary services that governmental entities

B. The Award Concerns Charges for Ancillary Services; this Proceeding Does Not.

SMUD is also correct that the Award addresses whether governmental entities, relying in part on Existing Contracts, could reliably self-provide or make alternative arrangements for the services for which the ISO sought to charge PG&E. In attempting to draw an analogy to this proceeding, however, SMUD fails to note that the services in question were Ancillary Services. (*See, e.g.*, Award at 13.) The record in this proceeding is abundantly clear that governmental entities can self-provide Ancillary Services. (*See, e.g.*, Tr. at 2746:10-24, 1047:18-21.) There is no issue in that regard. Despite the extensive cross-examination about self-provision of Ancillary Services (*see, e.g.*, Tr. at 876:17 - 881:13, 956:10-14, 964:9 - 965:6, 977:18 - 978:8, 1012:22 - 1016:3, 1041:15 - 1047:21), the record is also clear that this proceeding does not involve the ISO's ability to recover that cost of Ancillary Services. (*See, e.g.*, Exh. ISO-29 at 12: 11-14; Tr. at 1984: 2-8.) There is no issue in this regard, either.

What is at issue is whether governmental entities can self-provide Control Area Services. The Award makes no reference to evidence on that issue and therefore no conclusions on that issue. Accordingly, the Award is irrelevant.

III. Even If the Award Addressed Issues in this Proceeding, It Would Still Be Entitled to No Weight, and Should No Be Included in the Record

self-provided. As discussed below, this proceeding does not concern charges for Ancillary Services.

As noted, the ISO has sought Commission Review of the Award. As a result, under section 13.4.4 of the ISO Tariff, the Award is stayed. Moreover, as a nonfinal order, it has no precedential effect. SMUD admits as much. The Award may be modified or reversed by the Commission itself. The Award is therefore at this point no more than the opinion of a lawyer, whose expertise is not before the Presiding Judge and who has not been subject to cross-examination. It is entitled to no more weight than the opinions of any other lawyer. If SMUD finds the Award's reasoning compelling in some manner that is relevant to this proceeding, SMUD can use that reasoning in its brief. There is no value in including the Award in the record of this proceeding.

IV. Conclusion

For the reasons described above, SMUD's Motion to Lodge or, in the Alternative, Take Official Notice of Arbitration Report should be denied.

Respectfully submitted,

Charles F. Robinson
General Counsel
Stephen Morrison
Corporate Counsel
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7135
Fax: (916) 608-7296

J. Phillip Jordan
Michael E. Ward
Theodore J. Paradise
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, DC 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Counsel for the California Independent
System Operator Corporation

Dated: January 24, 2002

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 24th day of January, 2002.

January 24, 2002

Linwood A. Watson
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 Secretary Watson:

Enclosed are an original and fourteen copies of the California Independent System Operator Corporation's Answer to the Motion of the Sacramento Municipal Utility District to Lodge or, in the Alternative, Take Official Notice of Arbitration Report. 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.

Yours truly,

Michael E. Ward
(202) 424-7588

Counsel for the California
Independent System Operator Corporation

Enclosures

cc: The Honorable Bobbie J. McCartney
Service List