

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

California Independent System)
Corporation) Docket No. ER04-61-000

**MOTION FOR LEAVE TO FILE ANSWER AND JOINT ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
AND PACIFIC GAS AND ELECTRIC COMPANY
TO MOTIONS TO INTERVENE, COMMENTS, AND PROTESTS**

I. INTRODUCTION AND SUMMARY

On October 21, 2003, the California Independent System Operator Corporation (“ISO”)¹ filed a revision to the Transmission Control Agreement (“TCA”) between the ISO and the Participating Transmission Owners (“Participating TOs”), which consist of Pacific Gas and Electric Company (“PG&E”), San Diego Gas & Electric Company, Southern California Edison Company (“Original Participating TOs”), the City of Vernon, California (“Vernon”), and the Cities of Anaheim, Azusa, Banning, and Riverside, California (the “Southern Cities”). The purpose of the October 21 Filing was to revise Exhibit B-1 to PG&E’s TCA Appendix B to substitute a new set of Path 15 Operating Instructions (“Instructions”) provided by PG&E in place of the existing set of Path 15 Operating Instructions, which expired by their terms on April 1, 2003.

¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

A number of entities have submitted motions to intervene in the captioned proceedings, several entities have submitted substantive comments, and two entities have submitted protests of the filing.² The ISO and PG&E do not oppose the interventions of entities that have sought leave to intervene in the proceeding.

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO and PG&E hereby request leave to file an answer, and file this answer, to the comments and protests submitted in this proceeding.³ In short, the two protesting entities appear to want to transform this proposed update to the Instructions into an extensive hearing. Their purpose in so doing is transparent. They want to use this proceeding as a vehicle to attempt to gain more rights than they currently have under their existing wholesale transmission contracts (referred to in the ISO Tariff as "Existing Contracts") with respect to the use of Path 15.⁴ Because review of those issues is unnecessary to determine whether the Instructions, as filed by the ISO, are just and reasonable, the Commission should decline to allow such an

² Motions to Intervene were filed by the California Department of Water Resources – State Water Project ("SWP"); the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency; Modesto Irrigation District ("MID"); Northern California Power Agency ("NCPA"); PG&E; and the Transmission Agency of Northern California. SWP and MID styled their pleadings as, *inter alia*, protests of the October 21 Filing.

³ To the extent this answer is deemed an answer to protests, the ISO and PG&E request waiver of Rule 213 (18 C.F.R § 385.213) to permit them to make this answer. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098 at 61,259 (2000).

⁴ As required by Section 2.4.4.1.1 of the ISO Tariff, the ISO does not interpret Existing Contracts, as that term is defined in Appendix A to the ISO Tariff. Therefore, any element of this Answer that provides an interpretation of Existing Contract terms is solely the responsibility of PG&E.

expansion of the issues to be resolved in this docket. If the protesting entities truly believe their Existing Contract rights are different than the service PG&E has been providing to date, they should pursue whatever remedies they may have through the Commission's complaint procedures or the terms and conditions of the Existing Contracts.

II. ANSWER

A. Modesto Irrigation District

The Modesto Irrigation District ("MID") protests the Instructions on several grounds.⁵ MID claims that the Instructions abrogate MID's Existing Contracts, are inconsistent with the ISO's previous description of "phantom congestion," provide too many opportunities for unexamined revision, leave too much discretion to the ISO in terms of implementation, and fail to include real-time North-to-South curtailment priorities. As discussed below, MID's concerns on these issues are unwarranted.⁶

⁵ MID incorrectly states that the ISO is proposing to incorporate PG&E's Operating Instructions for Path 15 into the TCA for the first time with the October 21 Filing, and that Attachment 1 ought to be considered by the Commission as the CAISO's seeking acceptance of it "for the first time." In fact, the ISO filed Attachment 1 as part of a compliance filing in Docket No. ER99-1770 on June 21, 2002. Moreover, the Commission clearly accepted the June 21, 2002 filing in that docket as being incorporated into the TCA, as the rate schedule designation provided in its May 28, 2003 Letter Order makes clear. That being the case, the proper time for MID's arguments regarding the contents of Attachment 1 (other than the changes made in the October 21 Filing) would have been when the Attachment was first filed in Docket No. ER99-1770, or certainly no later than the time that the Commission's Letter Order made clear that Attachment 1 formed a part of the TCA.

⁶ It should be noted that the service on which MID relies is provided by PG&E to the Transmission Agency of Northern California ("TANC"), a joint powers agency of which MID is a member, and that TANC itself is *not* protesting this filing.

1. MID's Assertion Regarding Abrogation of Existing Contracts

MID argues that the language in Attachment 1 allows any Existing Contract capacity not scheduled by the Existing Right holder to be made available to the market without compensation to the Existing Right holder. MID Protest at 7. MID states that this provision violates the ISO Tariff by treating non-converted Existing Contract capacity as a part of the ISO Controlled Grid, and that it violates MID's Existing Rights under its allocation of TANC's South of Tesla Principles ("SOTP") Entitlement.

There are two reasons why MID's argument fails. First, the version of the Path 15 Operating Instructions that the Instructions filed in this docket replace operate in essentially the same way as the current, proposed Instructions do. As such, MID's challenge is untimely.⁷ When Paragraph 5, quoted by MID, in its current form is read with Paragraph 4 (see Attachment B to the filing for the redline version), it is apparent that Available Transmission Capacity ("ATC") available for New Firm Uses already is net of "Remaining ETCs Actual Scheduled Amounts." In other words, any service available under Existing Contracts that has not been scheduled is available to the ISO for open access use without any reference to compensation.

Second, MID has not alleged, let alone shown, that it (or more accurately, TANC) has any right to compensation under the applicable contract. MID's argument is no more than a claim for compensation for which no right exists. MID, through TANC, is provided service under the applicable rate schedule.

⁷ See note 4 above.

That the ISO uses capacity on Path 15 not needed to provide that service is irrelevant to MID's service.

2. Use of Existing Contract Capacity Prior to Real Time

MID contends that the October 21 Filing would allow the ISO to extend its right to use unused Existing Contract capacity beyond real-time and into the Day-Ahead and Hour-Ahead Markets. MID Protest at 8. Such an extension, according to MID, would conflict with the ISO's previously stated position on phantom congestion – *i.e.*, that phantom congestion exists because the ISO reserves unused Existing Contract capacity until the close of the Hour-Ahead Market. MID Protest at 9.

MID expresses concern that the ISO is using MID's SOTP capacity prior to real-time and that PG&E is receiving the Access Fee, Usage Charges, and other revenues associated with this use. MID requests that the Commission require the ISO to render an accounting of such revenues, and either to require the ISO to stop using the capacity ahead of real-time or compensate MID for such use. MID at 9.

As with the previous issue, MID asserts a right to compensation that does not exist.⁸ Its Protest is based on nothing more than (1) its misreading of a Commission order that MID mistakenly interprets as entitling it to payment for “use of ETC capacity” and (2) unsubstantiated allegations that MID is entitled to

⁸ The Commission rejected any such right when it initially approved the ISO Tariff, over the objections of various parties to Existing Contracts. *Pacific Gas and Elec. Co.*, 81 FERC ¶ 61,122 at 61,471 (1997).

receive any “revenues for the CAISO’s use of MID’s allocation of SOTP capacity as [New Firm Use] NFU.” MID Protest at 8-9.

Although MID asserts a right to resell its service under the SOTP, which is a reference to PG&E Rate Schedule FERC No. 143, MID does not assert that the Instructions have interfered with this alleged right, let alone establish that this right, in fact, exists. Fundamentally, there is nothing in the SOTP that entitles TANC or its members to compensation related to transmission capacity they do not use. As long as MID and other TANC members receive the service they schedule under the SOTP, up to the SOTP’s limit of 300 MW, PG&E, and now the ISO, may make whatever use of transmission capacity not needed for that service they deem fit, without having to compensate TANC (or MID).

Moreover, MID is confused regarding phantom Congestion. Based on Operating Instructions provided by Participating TOs, the ISO reserves transmission capacity in the Day-Ahead and Hour-Ahead Markets to meet the obligations of Existing Contracts. If instructions are received from a Participating TO that capacity does not need to be held for Existing Contracts, however, then this capacity is available for NFU.

3. Revision of Operating Instructions

MID argues that the language contained in Exhibit B-1 to PG&E Appendix B allows the Instructions to be revised too easily, and that the Commission should require the ISO and PG&E “to establish firmer and clearer criteria to delineate when and why future revisions to the Path 15 Instructions should be made.” MID Protest at 10.

The changes about which MID complains are an addition to the prior Path 15 Operating Instructions intended to allow the ISO and PG&E to respond to the legitimate needs of parties to Existing Contracts in a more efficient manner. If MID objects to the possibility that the Instructions can be revised, it should have raised that point in Docket No. ER99-1770. MID has suggested no other harm than the potential for the ISO's filing with FERC further revisions presented by PG&E that are contrary to MID's wishes. As its Protest in this docket indicates, MID has the opportunity and the knowledge as to how to raise concerns with the Commission to which it believes PG&E and the ISO were inadequately responsive. Accordingly, this concern on the part of MID is not a sufficient basis on which to bog the process down by requiring the ISO to file criteria that would limit PG&E's ability to respond to future Existing Contract or system developments through future possible revisions to the Instructions.

4. Discretion of the ISO

MID alleges that the Instructions leave the ISO with too much discretion as to implementation, especially in that such implementation is linked to ISO operating procedures including M-423. MID states that M-423 and other ISO operating procedures "have substantive and detrimental effects on the honoring of [Existing Rights]," and notes that MID has had occasion to protest M-423 in other proceedings. MID Protest at 11. MID further contends that ISO operating instructions are not subject to stakeholder or Commission review. In light of this contention, MID requests that the Commission require that any operating procedures for implementation of the Instructions be clearly spelled out in the

Instructions themselves, and that they be subject to stakeholder and Commission review. MID Protest at 12.

The addition of proposed ISO operating procedures in the Instructions, however, has had and can have no impact on the rights of parties to Existing Contracts, and therefore MID's protest is misplaced. Once again MID fails to provide any substance behind its allegation that ISO operating procedures, including M-423, have been detrimental to honoring Existing Rights.⁹ Moreover, the language cited by MID deals with the amount of capacity reserved with the ISO by PG&E for use by Existing Rights holders. This amount is for administrative convenience only and *cannot limit* the service an Existing Rights holder has under its contract; it is based on PG&E's role as Path 15 Existing Contract Facilitator, a role which neither exists in, nor modifies rights under, any Existing Contract. The added reference to the ISO's operating procedures is merely to provide clarity to all interested parties as to what procedure will be employed to modify the reserved capacity for Existing Contract service after the specified times for routine reservation submissions for Hour-Ahead scheduling.

5. North-to-South Curtailment Priorities

MID criticizes the Instructions for including South-to-North curtailment priorities but leaving North-to-South priorities for a later filing. By preventing these priorities from being reviewed at the same time, MID argues, the ISO "may

⁹ MID notes that it already has raised this issue in both Docket Nos. ER00-2019, *et al.*, and the MD02 proceeding, Docket No. ER02-1656. Even if MID had presented substance here, the Commission should not allow the same issue to be litigated in *three* different cases.

prejudice the ability of stakeholders to remedy flaws in the north-to-south curtailment priority Operating Instructions.” MID Protest at 12-13.

MID’s protest about the Instructions’ failure to address *real-time* curtailments of North-to-South use of Path 15 might be cause for concern if MID had presented any evidence that this is a current problem. MID has not done so previously, *e.g.*, in PG&E’s discussions with parties to Existing Contracts about the Instructions. Nor has it presented any justification to compel development of such Operating Instructions immediately, other than pure speculation that “the CAISO may prejudice the ability of stakeholders to remedy flaws in the north-to-south curtailment priority Operating Instructions.” Protest at 12-13. In other words, in seeking unnecessary delay in Commission acceptance of the South-to-North Instructions, MID has shown neither flaws in current operations nor even the source of any potential prejudicial treatment as a result of the October 21 Filing.

In summary, none of MID’s objections to the Instructions justifies delaying or conditioning their acceptance or imposing further requirements.¹⁰

B. State Water Project

The State Water Project of the California Department of Water Resources (“SWP”) states that although it “concurs with the categories of priorities of firm contractual rights on Path 15” as contained in the October 21 Filing, it has the following issues with regard to the filing. First, SWP argues that it should be able

¹⁰ MID seeks outright rejection of the Instructions. Protest at 13. It has failed to show either any facial deficiency in the filing or any *Mobile-Sierra* barrier to acceptance of the Instructions.

to schedule directly with the ISO. Second, SWP argues that holders of firm contract rights should not be assessed usage charges. Third, SWP argues that the TCA should ensure that Existing Rights are fully met. As described below, SWP's concerns regarding these issues are unwarranted.

1. Direct Scheduling

SWP states that it has requested from PG&E the right to schedule SWP's firm transmission rights on Path 15 directly with the ISO, and forego PG&E's services as "Path 15 Facilitator", but that PG&E has not permitted it to do so. SWP Protest at 2. SWP argues that Exhibit B-1 should be revised to allow the Existing Rights holder to seek revision of the Instructions from FERC, instead of from PG&E, and to allow Existing Rights holders to schedule their rights directly with the ISO.

One of the changes proposed in the Instructions is the express recognition that PG&E may agree with an Existing Rights holder to allow it to schedule its service over Path 15 directly with the ISO.¹¹ This accommodation apparently is not enough for SWP, though, which insists that it must have that right to schedule without taking on any responsibility for preserving for all Market Participants the benefits of the Existing Contract Facilitator function. The protection needed, and which is absent from SWP's discussion of the issue, is referenced generally in note 5 to Exhibit B-1: "Any such arrangements will preserve the purpose and objectives of these Operating Instructions."

¹¹ See Attachment B, Exhibit B-1, page 2, paragraph 1 and note 5.

When it approved the ISO Tariff and allowed the ISO to begin operations, the Commission required only that Participating Transmission Owners such as PG&E have the ability to submit schedules for parties to Existing Contracts.¹² This, in conjunction with the Commission direction that the ISO not interpret Existing Contracts (memorialized in the ISO Tariff Section 2.4.4.4.1.1), has provided a single source of information regarding the terms and conditions of Existing Contracts to the ISO. The Instructions offer exceptions to that requirement, but this broadening of rights must be done in a way that does not interfere with sound ISO operations or PG&E's ability to manage risk and preserve the beneficial aspects of the Path 15 Facilitator's function.

SWP's proposal would result in PG&E's retaining the risk of Usage Charges and remaining required to honor all other Existing Contracts with rights on Path 15, while no longer having the ability to control that risk. If SWP wants to submit its own schedules to the ISO for service involving Path 15, the revised Instructions expressly offer that opportunity. What SWP cannot do, and the Commission should not allow it to do, is unilaterally set the terms for assuming that function.

2. Usage Charges

SWP objects to the revision to the Instructions that limits exemption from Usage Charges to schedules submitted by an Existing Contract Path Facilitator.

¹² *Pacific Gas and Elec. Co.*, 81 FERC ¶ 61,122, at 61,473 (1997). Since Order No. 888, cited by SWP as authority for its demand, was issued well before this, and since the 1997 ISO/PX order contains a number of variations from the *pro forma* approach in Order No. 888, there is no reason for the Commission to revisit its 1997 decision.

SWP argues that Existing Rights holders should not be liable for Usage Charges regardless of how their rights are scheduled. SWP Protest at 2-3.

As discussed in response to the previous issue, SWP's proposal, which it did not raise at the time the predecessor Path 15 Operating Instructions were being developed and vetted with parties to Existing Contracts initially, has the fatal flaw that it would impose the risk of Usage Charges on PG&E without PG&E's ability to avoid such charges. If parties to Existing Contracts fail to provide PG&E with schedules in a way that enables it to avoid such charges, or if parties to Existing Contracts were to schedule their service involving Path 15 directly with the ISO without holding PG&E harmless for such charges, then PG&E would be at risk for charges it did nothing to incur and could do nothing to avoid. There is nothing in the Instructions that makes Existing Rights holders subject to Usage Charges, *if* they submit their schedules in a manner consistent with their contract obligations. SWP seeks to be relieved of any such obligation, a result that would not be just and reasonable.

3. Existing Rights

SWP expresses two further concerns regarding how the Instructions affect Existing Rights. First, SWP contends there is an inconsistency between what it characterizes as the ISO's position that the ISO adjusts SWP's schedules only after all New Firm Use entitlements have been adjusted, and what SWP characterizes as PG&E's position that PG&E retains an entitlement of equal curtailment priority to that of SWP. SWP Protest at 3.

SWP's second concern with regard to Existing Rights is why PG&E, having turned over Operational Control of Path 15 to the ISO, has the need to retain its role of Path Facilitator "even as [Existing Contracts] expire and additional capacity is made available through the Trans-Elect upgrade." SWP Protest at 3. SWP argues that PG&E should use any capacity obtained through the Path 15 upgrade first to meet its contractual obligations. SWP Protest at 3-4. SWP also questions whether these Instructions should be revised when the Path 15 upgrade is completed. SWP Protest at 4.

SWP's first remaining concern appears to be the result of a misunderstanding by SWP. There is no inconsistency between SWP's Existing Rights and how they are implemented under the Instructions. As the table in Attachment A to Exhibit B-1 shows, PG&E does *not* retain any entitlement of equal curtailment priority to that of SWP under its contracts (EHV Agreement and Comprehensive Agreement) for New Firm Use. PG&E's equal curtailment priority is only for its must-take Encumbrances (explained in note 4 to this table) and in implementation has no effect on SWP's calculated Existing Rights. Attachment 1 to the Instructions makes clear, in paragraph number 5, that New Firm Uses are accommodated only *after* all transmission capacity needed for parties to Existing Contracts has been provided. Further, PG&E's must-take encumbrance is a quantity of capacity that is made available for New Firm Use, and is only used in the determination of curtailments to lower priority rights holders. As such, SWP has mischaracterized the Instructions and their implementation.

SWP's claim that PG&E should end its role as Path 15 Facilitator apparently even before all Existing Contracts have terminated is impractical and conflicts with the Commission's requirement that PG&E schedule these services, given its status as Participating Transmission Owner. It is a role PG&E would prefer not to have, but this is the soundest way identified to date to assure that all Existing Rights holders receive the service to which they are entitled over Path 15 based on the Existing Contracts they executed with PG&E. Moreover, due to the number of contracts and contract capacity on Path 15, it is impractical for the ISO to attempt to perform the Path 15 Facilitator role, as this would entail continuously interpreting the Existing Contracts in contravention of Commission orders and the ISO Tariff.

SWP's other proposal is to "first allocate the newly available capacity to meet [Existing Contract] obligations" when Existing Contracts expire. SWP appears to misunderstand how available transfer capability on Path 15 is treated. It is not permanently allocated for each Existing Rights holder's use; instead, service scheduled by Existing Rights holders has a curtailment priority relative to other uses, for use when curtailments are necessary. SWP's proposal would result in unused Path 15 capacity, exacerbating the problem of "phantom congestion" and imposing additional inefficiencies on the California and Western markets generally.

As to whether the Instructions should be revised after the Path 15 Upgrade Project is completed, they may well be revised. That is one of the reasons why PG&E indicated that it did not intend to revise the Instructions

before January 1, 2005, which is when Path 15 is currently expected to be operational, unless Existing Rights or ISO market design changes necessitate that, but changes may well be appropriate at that later time. Since the proposed Instructions recognize that any party to an Existing Contract may propose revisions to PG&E at any time, SWP and other parties will be able to address such concerns at that time, even if PG&E does not initiate changes itself.

III. CONCLUSION

Wherefore, for the foregoing reasons, the ISO and PG&E respectfully request that the Commission approve the October 21, 2003 revisions to the TCA as filed.

Respectfully submitted,

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Date: November 26, 2003

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 the above-captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, DC, on this 26th of November, 2003.

 /s/ **Julia Moore**
Julia Moore