UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Modesto Irrigation District	**)**	**Docket No. EL06-70**
	)	

MOTION TO INTERVENE AND PROTEST OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission") and 18 C.F.R. §§ 385.211 and 385.214, the California Independent System Operator Corporation ("ISO") submits this Motion to Intervene and Protest in the above captioned proceeding. This proceeding concerns the Petition for a Declaratory Order and Request for Waiver of Filing Fee ("Petition") filed by the Modesto Irrigation District ("MID") on May 2, 2006. In the Petition, MID seeks a declaration that its obligation to make certain fixed monthly payments directly to the ISO in lieu of paying Pacific Gas and Electric Company ("PG&E) for its share of Grid Management Charges ("GMC") incurred by PG&E (as Scheduling Coordinator for certain MID load) under the ISO Tariff ended upon its departure from the ISO Control Area and the termination of its contract with PG&E.[1] As explained below, as the jurisdictional entity whose tariff and charges are implicated by the Petition, the ISO has a manifest interest in this proceeding. The ISO's motion to intervene should accordingly be granted. On the merits, the Commission should deny MID's Petition, because the ISO Tariff, as well as the settlement agreement in Docket Nos. ER04-115-000, *et al.*,

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

that added the relevant language to the Tariff, clearly require MID to continue to make the payments at least through December 2006.

I. DESCRIPTION OF THE ISO AND COMMUNICATIONS

The ISO is a non-profit public benefit corporation organized under the laws of the State of California with its principal place of business at 151 Blue Ravine Road, Folsom, CA 95630. The ISO is the Control Area operator responsible for the reliable operation of the electric grid comprising the transmission systems of a number of utilities as well as the coordination of the ancillary services and real-time electricity markets in California.

The ISO requests that all communications and notices concerning this motion and these proceedings be provided to:

Judith B. Sanders
Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7143
Fax: (916) 608-7222
E-mail: jsanders@caiso.com

Kenneth G. Jaffe
Ronald E. Minsk
Alston & Bird
950 F Street, N.W.
Washington, DC 20004
Tel: (202)756-3300
E-mail: kenneth.jaffe@alston.com
E-mail: ron.minsk@alston.com

II. ISO'S INTEREST AND MOTION TO INTERVENE

MID is contesting its obligation to pay a $75,000 monthly payment to the ISO in lieu of its share of certain GMC charges incurred by PG&E (as a Scheduling Coordinator for certain MID load), pursuant to a 2004 Offer of Partial Settlement in Docket Nos. ER04-115-000, *et al.*, ("Settlement Agreement") and the ISO Tariff. MID's payment obligation is set forth in Attachment F to the ISO Tariff as part of the GMC. The GMC funds the ISO's administrative and overhead expenses; any modifications to the GMC or reduction in payments from MID will shift the burden of supporting those expenses to other Scheduling Coordinators and Market Participants. Accordingly, the ISO has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party. The ISO should accordingly be permitted to intervene in this proceeding with full rights of a party.

III. PROTEST

A. Background

On October 31, 2003, the ISO submitted to the Commission revisions to its GMC for 2004. As noted above, the GMC is the rate through which the ISO recovers its administrative and operating costs, including the costs incurred in establishing the ISO prior to the commencement of operations. The Commission accepted and suspended the ISO's revised GMC rates subject to refund, directed the appointment of a settlement judge, directed the parties to seek to reach a settlement, and directed the initiation of an administrative hearing in the event that the parties could not resolve their differences in settlement.

During the proceedings on the 2004 GMC, MID expressed concern about the GMC rate design and its own GMC charges, including a share of GMC charges incurred by PG&E and charged to MID under PG&E's pass-through tariff ("PTT"). As part of a settlement addressing numerous issues, including MID's concerns, the ISO, MID and PG&E agreed that, for the duration of the moratorium on the filing of changes to the GMC rate design established by the Settlement Agreement, MID would make a fixed monthly payment of $75,000 directly to the ISO in lieu of compensating PG&E for a share of PG&E's GMC charges through the PG&E PTT.

On July 29, 2004, the ISO and PG&E submitted the Settlement Agreement as the resolution of all issues in the 2004 GMC case, as well as PG&E's companion case to pass 2004 GMC costs to certain of its wholesale customers, with the exception of a single reserved issue that is not relevant to this proceeding. Section 3.8.1 of the Settlement Agreement stated that:

> Until the end of the moratorium under Section 2.4.1, MID shall pay the ISO directly $75,000.00 each month, subject to adjustment in Section 3.8.2, in settlement of MID's obligation under PG&E's PTT to pay a share of the GMC charges payable by PG&E with respect to Scheduling Coordinator ID "PGAB." The ISO shall not assess MID for any additional amount for GMC payable with respect to SCID PGAB. MID shall pay the GMC charges assessed in accordance with this Settlement Offer and the ISO Tariff against MID's Loads, Schedules, and other activities under other SCIDs including, without limitation, MID's MID1 SCID, except that in the event that MID accepts responsibility for scheduling any load currently scheduled by PG&E under SCID PGAB, the ISO will not charge any additional GMC at the tariffed GMC rate, but rather will attribute such schedules and load to the fixed $75,000.00 per month payment set forth above, provided that MID schedules such load under a new and separate SCID and the ISO shall not assess GMC charges to such SCID.

Settlement Agreement, Section 3.8.1, at 10-11 (included in Petition, Appendix A).[2]

The Settlement Agreement included as an appendix the replacement sheets for the ISO Tariff necessary to implement its provisions. This element of the settlement was implemented through the addition of a new paragraph in Appendix F, Part F, Section 3 of the ISO Tariff, stating as follows:

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[2] Section 2.4.1, referenced in this section, provides as follows:

> The ISO shall not file an application under Section 205 of the Federal Power Act to modify the rate design of the components of the GMC set forth in Article III of this Settlement Offer and in the replacement tariff sheets included in Attachment that proposes an effective date for the modified GMC rate design that is earlier than the first to occur of (a) January 1, 2007 or (b) the effective date of modifications to the ISO Tariff to implement a revised market design based in whole or in part on a nodal system of Congestion Management employing locational marginal pricing.

Settlement Agreement, Section 2.4.1, at 6 (included in Petition, Appendix A). Section 2.4.2 establishes a restriction of the same duration on Section 206 filings by any party bound by a Commission order accepting the Settlement Agreement. Apparently mindful of this restriction, MID does not ask the Commission to declare that it is unjust, unreasonable, or unduly discriminatory to require continued $75,000 monthly payments if the Commission concludes that the Settlement Agreement and ISO Tariff establish that requirement, as the ISO believes they do.

> Modesto Irrigation District (MID) is a Scheduling Coordinator and also is responsible for a portion of the GMC charges payable by another Scheduling Coordinator, Pacific Gas and Electric Company (PG&E) pursuant to a contract between them. MID and PG&E have agreed that MID shall pay the ISO directly $75,000 each month, in lieu of any payments to PG&E for its share of the GMC charges payable by PG&E and the ISO shall credit a portion of the amount received from MID to PG&E as an offset to PG&E's obligation for GMC charges. Any difference, positive or negative, between the amount credited to PG&E and the amount paid by MID to the ISO under this provision shall be reflected in the Operating and Capital Reserves Account. The payment arrangement described in this paragraph is subject to the conditions, and will be implemented pursuant to the procedures, set forth in the Offer of Partial Settlement accepted by the FERC in Docket Nos. ER04-115-000, et al. This arrangement shall not apply to MID's obligation for GMC charges as a Scheduling Coordinator, which shall be governed by the provisions of this Schedule 1 and the other applicable provisions of the ISO Tariff, except that in the event that MID accepts responsibility for scheduling any load currently scheduled by PG&E under SCID PGAB, the ISO will not charge any additional GMC at the tariffed GMC rate, but rather will attribute such schedules and load to the fixed $75,000.00 per month payment set forth above, provided that MID schedules such load under a new and separate SCID and the ISO shall not assess GMC charges to such SCID.

ISO Tariff, Appendix F, Part F, Section 3, First Revised Sheets 376H-376I (included in Petition, Appendix A).

The Commission accepted the Settlement Agreement as the resolution of all issues within its scope on February 2, 2005. *California Independent System Operator Corp.*, 110 FERC ¶ 61,090 (2005).

Effective December 1, 2005, MID transferred its electric operations from the ISO Control Area to a neighboring Control Area and terminated its contract with PG&E through which PG&E acted as MID's Scheduling Coordinator for the submission of certain Schedules to the ISO. MID takes the position that the termination of this contract and the withdrawal of its Loads formerly scheduled under the contract from the ISO Control Area also terminated its obligation to make the fixed monthly payments specified in ISO Tariff and the Settlement Agreement. Pending resolution of this issue, however, MID has continued to make $75,000 monthly payments to the ISO.

B. The ISO Tariff and the Settlement Agreement Obligate MID to Make the Specified Payments Through December 2006

The Petition seeks a ruling on the interpretation of the provisions of the ISO Tariff and the Settlement Agreement that establish MID's obligation to make fixed monthly payments of $75,000 for a stated period. On such questions of contract or tariff interpretation, the Commission's lodestar is the language of the contract or tariff at issue. *See Cambridge Electric Light Co*., 84 FERC ¶ 61,049, 61,225 (1998) ("We find that the language of the Memorandum is sufficiently clear on this point so that it is unnecessary to use extrinsic evidence to interpret it."); *Pacific Gas and Electric Co*., 65 FERC ¶ 61,312, 62,431 (1993) ("When presented with a dispute concerning the interpretation of a contract, the Commission looks first to the contract itself, and only if it cannot discern the meaning of the contract from the language of the contact does it then look to extrinsic evidence."); *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1565 (D.C. Cir. 1993) ("Where the meaning of the agreement is clear on its face, . . . , an evidentiary hearing into extrinsic evidence of the parties' intent during negotiations is unnecessary.").

MID states that "[t]he Settlement language [governing its obligation to make the $75,000 monthly payments] is clear and unambiguous," and supports its position that the termination of its contract with PG&E ended that obligation. MID Petition at 7.[3] The first part of MID's statement is correct: the ISO agrees that the language of the Settlement Agreement is "clear and unambiguous." However, MID's interpretation of that language is insupportable. Section 3.8.1 of the Settlement Agreement "clear[ly] and unambiguous[ly]" states that MID must pay the ISO directly $75,000 each month "*[u]ntil the end of the moratorium under Section 2.4.1*." Settlement Agreement, Section 3.8.1 (emphasis added). By the equally clear terms of Section 2.4.1, that

3 MID's Petition disregards the ISO Tariff provision implementing the Settlement Agreement.

moratorium runs until January 1, 2007.[4] The Settlement Agreement thereby establishes a clear duration for MID's obligation to make the $75,000 monthly payments, subject to no exception for changes in the contractual relationship between MID and PG&E or for any reduction in the volume of ISO transactions scheduled by PG&E on MID's behalf. The ISO Tariff likewise states, without qualification, "that MID shall pay the IS0 directly $75,000.00 each month." This provision faithfully implements the Settlement Agreement, because it could only be modified by a filing under Section 205 or Section 206, which could not take effect before the end of the moratorium established by Section 2.4.1 of the Settlement Agreement.

Thus, contrary to the premise of MID's Petition, the Settlement Agreement and the ISO Tariff unambiguously require MID to continue to make the $75,000 monthly payments directly to the ISO through December 2006. MID's assertion that its obligation to make those payments ended when it terminated its contract with PG&E because PG&E is no longer scheduling any MID transactions for which GMC charges would be payable is inconsistent with the plain language of the Settlement Agreement and the ISO Tariff. MID would interpret the Settlement Agreement as though it stated, "Until the end of the moratorium under Section 2.4.1 *and as long as MID is obligated to pay a share of the GMC charges payable by PG&E*, MID shall pay the ISO directly $75,000.00 each month, . . ." and as though similar language were included in the ISO Tariff. (Emphasized language added to Settlement Agreement, Section 3.8.1.) But neither the Settlement Agreement nor the ISO Tariff contains such a limitation on MID's payment obligation. The significance of this omission is underscored by the fact that the Settlement Agreement includes a provision imposing a surcharge on the fixed payments in the event that

[4] As the Commission is aware, the market redesign that would otherwise end the moratorium is not scheduled to take effect until November 2007. *See* California Independent System Operator Corporation Electric Tariff Filing to Reflect Market Redesign and Technology Upgrade, filed at the Commission on February 9, 2006 in Docket No. ER06-615 at p. 8.

MID's load grew significantly above its historical usage.[5] The Settlement Agreement contains no corresponding provision for reductions in MID's fixed payments if its load decreased, let alone one that terminated those payments if PG&E stopped submitting schedules for MID entirely. MID's cannot now ask the Commission to add such a provision to the Settlement Agreement and the ISO Tariff under the guise of interpretation.

MID's attempts to overcome the plain language of the Settlement Agreement and the ISO Tariff are in vain. MID makes two principal arguments. MID first latches on to the statement in Section 3.8.1 that the $75,000 monthly payments are made in settlement of "MID's obligation under PG&E's PTT to pay a share of the GMC charges payable by PG&E." MID contends that this language allows it to stop making those payments if and when it no longer is obligated to compensate PG&E for a share of PG&E's GMC charges. Petition at 7. That, however, is not what the Settlement Agreement and the ISO Tariff say. As explained above, they both establish a clear duration for MID's payment obligation that extends for the full moratorium period; that obligation is not dependent upon the maintenance of MID's contractual obligation with PG&E. The recitation that this fixed payment obligation was established "in settlement" of MID's contractual obligations to PG&E in no way implies that the former was dependent on the latter. MID decided in 2004 that the benefits of fixing the level of its obligation to pay the GMC associated with the schedules PG&E submitted on its behalf for the full duration of the

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[5] Section 3.8.2 of the Settlement Agreement stated that:

> As soon as practicable after the end of each year, MID shall provide the ISO with the maximum NCP and total retail metered load for MID's system during the year. If MID's annual energy load for the year exceeded the energy load during 2003 by more than 10 percent, or if MID's annual peak demand during the year exceeded the peak demand during 2003 by more than 10 percent, then MID shall pay the pro-rata increase in GMC attributable to such excess, which shall be computed as follows: the percentage increase in MID's annual energy delivered to its retail customers or peak demand, as compared to 2003, whichever is greater, reduced by ten percent, multiplied by $900,000.

Settlement Agreement at Section 3.8.2.

Settlement Agreement moratorium period outweighed the risk that other factors might reduce or eliminate that obligation at some point during that period. It cannot now demand that the Settlement Agreement and the ISO Tariff be interpreted to allow it to have it both ways.

MID finally resorts to misstating the ISO's position, claiming that the ISO based its interpretation on the phrase in "Section 3.8.1 . . . [that] allowed MID to accept responsibility for scheduling load currently scheduled by PG&E . . . without incurring GMC charges in addition to the $75,000 per month Settlement payment." Petition at 8. As described above, however, the ISO's position is not based on this language, but on the unequivocal phrase in the first sentence of Section 3.8.1, establishing the duration of MID's payment obligation as extending "[u]ntil the end of the moratorium period," a phrase that MID studiously ignores throughout its Petition.[6] As a point of emphasis, the ISO noted that Section 3.8.1 of the Settlement Agreement also specifically addressed the possibility that, during the term of the Settlement , MID might submit schedules directly to the ISO for load that was previously handled under SCID PGAB, rather than through PG&E (via SCID PGAB), providing that, in that case, MID would not be obligated to pay any *additional* GMC charges for such schedules and load, but would only remain liable for the $75,000 monthly payment. In that regard, Section 3.8.1 expressly provides that such schedules and load previously scheduled under SCID PGAB would be attributed to the $75,000 payment under such circumstances. This hardly supports MID's position in the Petition that the end of its contract to submit schedules for load to the ISO through PG&E entitles it to cease

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6 MID quotes (without citation or attribution) from the ISO's February 8, 2006 letter to MID, but disregards the basis of the ISO's position, as stated in that letter:

> A reading of both the Settlement and the CAISO Tariff provisions that implement it make it clear that MID's obligation to make the fixed $75,000 monthly payment remains in force through the effective period of the Settlement. This is clear from Section 3.8.1 of the Settlement, which states, "Until the end of the moratorium . . ., MID shall pay the ISO directly $75,000 each month" . . . .

Letter from William J. Regan, Jr., to Roger VanHoy at 1 (Feb. 8, 2006) (included as Petition, Appendix C).

making the fixed monthly payments. To the contrary, it underscores the fixed nature of MID's obligation to continue making those payments throughout the moratorium period, regardless of any changes in its contractual relationship with PG&E or its scheduling practices.

In sum, the language of the Settlement Agreement and the ISO Tariff make absolutely clear MID's obligation to continue its $75,000 monthly payments through the end of 2006. The Commission should accordingly decline to issue the declaration to the contrary requested in MID's Petition.

V. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission grant this Motion to Intervene and deny MID's Petition for Declaratory Order.

Respectfully submitted,

/s/ *Kenneth G. Jaffe*
Kenneth G. Jaffe
Ronald E. Minsk
Alston & Bird
950 F Street, N.W.
Washington, DC 20004

Dated: May 31, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have, this 31st day of May 2006, caused to be served a copy of the forgoing document upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

/s/ *Judith B. Sanders*
Judith B. Sanders