UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company	**)**	**Docket Nos. ER00-565-000, *et al*.**

MOTION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION FOR RECONSIDERATION SO AS TO PERMIT CONSIDERATION OF ANSWER, OR, IN THE ALTERNATIVE, MOTION TO LIMIT DISCOVERY

To: The Honorable Karen V. Johnson
Presiding Administrative Law Judge

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedures, 18 U.S.C. §§ 385.212, 835.213, the California Independent System Operator Corporation ("ISO") respectfully submits this Motion for Reconsideration to Permit Consideration of Answer to Motions and Answer, or, in the alternative, Motion to Limit Discovery.

Background

This proceeding began on November 12, 1999, when Pacific Gas and Electric Company ("PG&E") filed its Scheduling Coordinator Services Tariff. A procedural schedule was adopted on June 11, 2003, calling for a hearing to commence on January 6, 2004. In the months leading up to the hearing parties conducted discovery. As part of that discovery process, the ISO was served with and responded to 96 data requests, including subparts. On August 11, 2003, the Presiding Administrative Law Judge ordered that this proceeding be conducted in two phases. Discovery has now commenced

in Phase II. Unlike the first phase, the issues in this phase primarily concern the actual costs PG&E is seeking to pass through under its Scheduling Coordinator Services Tariff.

On May 21, 2004, pursuant to Rule 216(a) of the Commission's Rule's of Practice and Procedure, 18 C.F.R. § 385 § 385.216, the ISO submitted a Notice of Withdrawal from this proceeding. The Presiding Judge rejected the ISO's withdrawal on June 8, 2004.

Motion to Allow Consideration of Answer

The ISO respectfully requests that the Presiding Judge reconsider the Order Denying Withdrawal issued June 8, 2004 in the above-captioned proceeding so that she may take into consideration the ISO's Answer to the motions filed in response to the ISO's Notice of Withdrawal. The ISO's Answer represents its **only** opportunity to explain the reasons for its desire to withdraw from this proceeding. It also represents the ISO's opportunity to respond to suggestions of some parties, such as PG&E, that there may be alternative means of addressing the ISO's concerns.

Notably, Rule 216(a) does not require the ISO to proceed by motion, but only by notice. Rule 216(b) allows parties to file a motion in opposition to a notice of withdrawal. 18 CFR § 216(b). Pleadings in opposition to the ISO's withdrawal were filed by PG&E on June 4, 2004, and on June 7, 2004 by the City of Santa Clara and Modesto Irrigation District; the City and County of San Francisco; the Northern California Power Agency ("NCPA"); Sacramento Municipal Utility District ("SMUD"); Turlock Irrigation District

("TID"); and the FERC Trial Staff.[1]

Under Rule 213, 18 C.F.R. § 385.213, a party has 15 days in which to answer a motion. Because the ISO's original filing was only a notice, the ISO's Answer would have been the ISO's only opportunity to explain the reasons for its desire to withdraw from the proceeding and to offer alternative resolutions of its concerns. In this instance, however, the Presiding Judge ruled on the motions before the 15-day period had elapsed. The ISO therefore requests that the Presiding Judge reconsider her ruling on this matter in order to allow consideration of the ISO's Answer to the various parties' motions.

If the Presiding Judge deems the June 4 and June 7 pleadings to be answers, the ISO requests that the Presiding Judge accept the ISO's instant filing in response nonetheless, as Rule 213(a)(2) allows a Presiding Judge to accept an answer to an answer. Moreover, the Commission does not preclude consideration of replies to answers. *See, e.g., Egan Hub Partners L.P.*, 73 FERC ¶ 61,334 (1999). Good cause warrants acceptance of the ISO's filing, as it would assist the Presiding Judge in her decision-making and would clarify mischaracterizations set forth in June 4 and June 7 pleadings.

Answer

The various parties opposing the ISO's withdrawal argue that the ISO's presence in the proceeding is necessary for purposes of discovery. *See, e.g.*, NCPA at 3; PG&E at 2. Indeed, some parties would not oppose the ISO's withdrawal, as long as such withdrawal would be conditioned on a requirement that the ISO be required to respond to

[1] Although many of these pleadings were styled as "Answers," they should properly be deemed motions under Rule 216(b).

discovery as if it remained a party. *See, e.g.*, PG&E at 3; TID at 1-2; CCSF at 1.

Contrary to these arguments, the ISO believes that there is little relevant information in this proceeding that is not already in PG&E's possession. As noted above, unlike the first phase, the issues in this phase primarily concern the costs themselves. The costs in question have all been billed to PG&E in designated ISO accounts that explain their purpose. PG&E's responses to data request will be verified; there is no need for duplicative responses from the ISO. (*See* TID Answer at 3.) The ISO's withdrawal would not, therefore, significantly prejudice these parties, even if they would, in a rare instance, need to subpoena information from the ISO.

On the other hand, there is good reason to allow the ISO's withdrawal. The ISO reluctantly filed its motion to withdraw from this proceeding for the simple reason that the discovery demands of multiple proceedings at the Commission are placing excessive strains on the ISO's resources at the same time that the ISO must devote those resources to the resolution of the complex issues facing the California electricity markets. As the Presiding Judge is aware, the ISO is in the midst of a multi-year effort to redesign its markets. This effort requires significant work by ISO personnel in all aspects of the ISO's operations, who must not only develop proposals but respond to Commission and ISO Governing Board directives as well as stakeholder input.

At the same time, the ISO Settlements personnel, who would be primarily responsible for much of the discovery in this proceeding, remain heavily engaged with the work flowing from the Commission's Refund proceeding. As part of that proceeding, Settlements personnel are currently performing a complete "preparatory" rerun of the

ISO's settlements system for the period October 2000 through June 2001 (the "Refund Period") in order to make corrections relating to multiple issues. This extensive effort consumes a large portion of the time of the ISO Settlements personnel that would be responsible for discovery in this proceeding. The ISO currently estimates that this "preparatory" rerun will be concluded by September, 2004. At that time, however, the ISO will begin a rerun to apply the Commission-mandated mitigated price to transactions that took place during the Refund Period. This "refund" rerun, which the ISO estimates will not be completed until December, 2004, will involve many of the same activities and processes as the "preparatory" rerun, and thus will require the same extensive time commitment by ISO Settlements personnel. In addition, Settlements personnel must perform these reruns at the same time that they perform their day-to-day settlement functions.

Although the parties have suggested that a withdrawal be conditioned upon the ISO's responding to discovery, such a conditional withdrawal would thus be of no value to the ISO. The ISO fully recognizes the importance of discovery; the ISO has nonetheless concluded that, in light of the demands on ISO resources, it should seek to limit its exposure to discovery in this proceeding. Although discovery in this phase of the proceeding has not been propounded against the ISO as yet, the ISO's concerns arise from recent experience in other proceedings.

Placing excessive discovery demands on ISO personnel can be counter-productive. Such demands can lead to the filing of late responses, and to the need for amended responses, often multiple times. The ISO believes it can be of greater assistance to

parties if it is able to focus its resources where they are truly needed. The ISO has also found in recent proceedings, both its own and proceedings in which it is an intervenor, that a small number of parties fail to exercise any reasonable restraint in the use of discovery: they take a shotgun approach, hoping to find some morsel they can use to their advantage. As a result, the ISO, as an intervenor, has been subject to data requests numbering in the hundreds (as in the ongoing proceeding in Docket No. EL03-15), and thousands when it was the filing party (as in the ISO Transmission Access Charge filing, Docket No. ER00-2019), not including multiple subparts. Because the questions usually have some marginal relevance to the issues, the ISO can usually find little protection through objections.[2] Such tactics simply impose additional burdens on the ISO without advancing the purpose of discovery.

Moreover, the costs in terms of the labor of ISO personnel and attorneys to provide discovery responses can be considerable, and serves to increase the ISO's Grid Management Charge, which has a negative impact on all ISO customers.

In light of these factors, the ISO sought to withdraw from the proceeding based on a belief that, if a party must subpoena the ISO for information, the party will think more seriously about whether it is really necessary to obtain the information from the ISO. The ISO recognizes, however, that the same objectives could be served by placing some reasonable limits on discovery, and, in the alternative, would ask the Presiding Judge to

[2] Worse, some parties have even chosen to use discovery in one proceeding to pursue an agenda unrelated to that proceeding. In one case, a party attached a deposition from one proceeding (Docket Nos. EL03-15, *et al*.) to a Brief on Exceptions in another proceeding (Docket Nos. EL00-2019, *et al.*), even though the record of the other proceeding was closed.

impose such limits.

Motion to Limit Discovery

If the Presiding Judge believes that it is preferable that the ISO remain a party to this proceeding, then the ISO would request that the Presiding Judge impose limits on data requests directed to the ISO. Such a limitation was suggested by PG&E in its Motion. PG&E at 3. In light of the above discussion, the ISO would request, first, that no data request be directed to the ISO unless it has been directed first to PG&E and PG&E has been unable to respond because that data is held only by the ISO. Second, because most of the information is available from PG&E, the ISO would also ask that each party be limited to 25 data requests to the ISO, including subparts, absent good cause.

Further, given the currently pressing commitments of ISO Staff, the ISO generally needs more than 10 days to respond to discovery. In that regard, in recent proceedings, the ISO has had difficulty responding to discovery requests within the 10-day limit and, in fact, has had to file numerous data responses "out-of-time." A 15-day response time is more appropriate given the current over-commitment of ISO Staff.

Conclusion

Accordingly, the ISO requests that the Presiding Judge provide the relief requested above.

Respectfully submitted,

/s/ Julia Moore

Charles Robinson
General Counsel
Anthony J. Ivancovich
Senior Regulatory Counsel
Gene L. Waas
Regulatory Counsel
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630

David B. Rubin
Michael E. Ward
Julia Moore
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, DC 20007

Date: June 21, 2004

CERTIFICATE OF SERVICE

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

Dated at Folsom, CA, on this 21st day of June, 2004.

/s/ Gene L Waas
Gene L. Waas