

December 22, 1999

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket No. ER00-____ - ____**

Dear Secretary Boergers:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, the California Independent System Operator Corporation ("ISO") submits for Commission filing and acceptance (1) the attached Interim Agreement between Pacific Gas and Electric Company, the Sacramento Municipal Utility District, and the ISO (the "Interim Agreement"); and (2) the attached Amendment 1 to the Interim Agreement ("Amendment 1").¹ The Interim Agreement establishes the means by which information concerning the generation and load internal to SMUD's Service Area is communicated to and accounted for by the ISO. Amendment 1 modifies the Interim Agreement in order to permit one of SMUD's Generating Units to participate in the ISO's Ancillary Services and Imbalance Energy markets.²

¹ Pacific Gas and Electric Company ("PG&E"), the Sacramento Municipal Utility District ("SMUD"), and the ISO are collectively referred to herein as the "Parties."

² Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

The ISO is requesting a waiver of the 60-day notice requirement and requests that the Commission accept the Interim Agreement to become effective as of March 31, 1998 (the date that the ISO commenced operations), and Amendment 1 to become effective as of November 3, 1999 (the date of the amendment's execution).

I. Background

The Interim Agreement was entered into by the Parties on April 21, 1998. The Interim Agreement is intended to address the following matters during an interim period defined by the Agreement: ensuring that the ISO receives information necessary to properly maintain the ISO Controlled Grid, defining better the scheduling and settlement needs of the Parties, and accommodating the operation of SMUD as an entity which has not transferred operational control of its transmission facilities to the ISO. As explained below, the Interim Agreement does not affect the rates or charges assessed against any entity or create any new rates or charges. The Interim Agreement does state that certain charges will be assessed pursuant to the ISO Tariff and certain other agreements, as approved by the Commission.

The Interim Agreement was drafted and executed in the period immediately after the ISO commenced operations on March 31, 1998. The Agreement was necessitated, in part, by the Commission's March 27, 1998 order rejecting a proposed amendment (Amendment No. 2) to the ISO Tariff. *California Independent System Operator Corporation*, 82 FERC ¶ 61,312 (1998) ("March 27 Order"). Prior to the start of ISO operations, Participating Transmission Owners ("PTOs") (i.e., owners of transmission facilities that have transferred Operational Control of those facilities to the ISO) operated Control Areas which included their own transmission facilities as well as the transmission facilities of other entities which did not elect to join the ISO at that time. The PTOs, including PG&E, acted as Control Area operators for the transmission facilities of these other entities under various contractual arrangements. Amendment No. 2 to the ISO Tariff would have required PTOs who were parties to such contractual arrangements to transfer to the ISO the scheduling and other Control Area functions for the facilities of these non-ISO members. One of the goals of the proposed amendment was to ensure that the ISO could obtain scheduling and other information for non-ISO members that was necessary so that the ISO could (1) fulfill its responsibilities as Control Area Operator; and (2) ensure the reliable operation of the ISO Controlled Grid. Amendment No. 2 would also have had an impact on the application of the ISO's Grid Management Charge ("GMC") on non-ISO members.

The Commission rejected Amendment No. 2, based in part on the contentions of intervenors that the proposed changes were not necessary for the

ISO to commence operations. The Commission noted that PG&E had agreed to provide the ISO with certain needed information:

PG&E states that it is willing to continue in its role of accepting schedules for use of the Non-ISO controlled facilities at issue in Amendment No. 2 by serving as the collection point for schedules. PG&E would, in turn, provide the ISO with all of the schedule information that the ISO needs to perform its responsibilities as Control Area Operator.

March 27 Order at 62,241. In addition, the Commission "require[d] all public utilities involved [in ISO operations] to continue to cooperate fully with the ISO to achieve the necessary information flow that has evolved during the testing period." *Id.*

On April 7, 1998, shortly after the Commission issued its order on Amendment No. 2, the ISO filed a revised GMC formula and provisions for assessing the GMC as part of a comprehensive settlement in Docket Nos. ER98-211 *et al.*³

Throughout the first few several weeks of April 1998, the ISO, PG&E, and SMUD engaged in negotiations concerning how information about the generation and load internal to SMUD's system would be communicated to and accounted for by the ISO.⁴ SMUD is an entity which has not transferred operational control of its transmission facilities to the ISO (*i.e.*, it is not a PTO). SMUD does have a pre-existing Interconnection Agreement with PG&E. Consistent with PG&E's commitment in its comments on Amendment No. 2, the negotiations involved the manner in which PG&E would serve as a conduit for the needed information from SMUD. The Interim Agreement developed through those negotiations governs the information to be provided by SMUD to PG&E and the information to be provided by PG&E to the ISO for scheduling and settlement purposes.

³ The settlement, *inter alia*, established that the GMC would be charged equally by MWh to all Scheduling Coordinators, except that 50% of the volumes flowing over the ISO Controlled Grid pursuant to Existing Contracts are excluded, and all volumes which are in the ISO Control Area but not on the ISO Controlled Grid as well as all volumes located within the Service Areas of municipal and governmental utilities that are served by generation located within those utilities' Service Areas are excluded. The GMC settlement was subsequently accepted by letter order. *California Independent System Operator Corp.*, 83 FERC ¶ 61,247 (1998).

⁴ The ISO needs (and needed) to know, for each Settlement Period, the amounts of SMUD's total generation and total demand, in combination with any imports into or exports from the ISO Control Area, schedules between SMUD and the Western Area Power Administration, and any Inter-Scheduling Coordinator Trades. As the Commission recognized in the March 27 Order, the ISO must have such information in order to fulfill its responsibilities as Control Area Operator and to maintain the reliability of the ISO Controlled Grid.

The Interim Agreement expressly does not supersede any provisions of either the Responsible Participating Transmission Owner ("RPTO") Agreement between PG&E and the ISO⁵ or the Interconnection Agreement between PG&E and SMUD. Interim Agreement, Section 3.1. The Interim Agreement establishes that all Imbalance Energy and Ancillary Service charges will be assessed in accordance with the ISO Tariff against either PG&E, in its capacity as SMUD's Scheduling Coordinator for Existing Contracts pursuant to the RPTO Agreement, or against a Scheduling Coordinator appointed by SMUD for new firm transmission uses to and from its Lake Substation. *Id.*, Sections 4.2 and 4.4. The Parties to the Interim Agreement also agree to be bound by all Commission orders with respect to the GMC settlement and other ISO charges and Scheduling Coordinator requirements. *Id.*, Section 4.3.

The Interim Agreement was executed on April 21, 1998 to be effective from March 31, 1998, the date the ISO commenced operations. The Interim Agreement was intended to be a short-term fix, by which the ISO would obtain needed information in the initial period of ISO Operations and which would be replaced by a more long-term resolution of the scheduling and settlement issues addressed in the Agreement.⁶ Thus, Sections 2.1 and 8 of the Interim Agreement contemplate that further negotiations would result in a long-term agreement (the "ultimate solution" mentioned in the Agreement) which would be filed with the Commission and which would supersede the Interim Agreement upon acceptance by the Commission. Because it was intended to be temporary in nature and to be superseded by an agreement to be filed with the Commission, the Interim Agreement was not filed with the Commission in April 1998. Although the ISO continued negotiations with PG&E and SMUD concerning the subject matter of the Interim Agreement, that Agreement has remained in effect since that time.

Over the past few months, the ISO, PG&E and SMUD have revisited the issues addressed by the Interim Agreement. As explained in Amendment 1 to the Interim Agreement, the University of California Davis Medical Center has made arrangements with the ISO to enable its Generating Unit, which is internal to SMUD's Service Area, to participate in the ISO's Ancillary Services and

⁵ The RPTO Agreement with PG&E was filed with the Commission in Docket No. ER98-1057. The Commission accepted an offer of settlement with respect to the RPTO Agreement by letter order dated July 16, 1999.

⁶ The executed Interim Agreement provided in Attachment A contains a footer stating that the document is "Privileged and Confidential" subject to the Commission's settlement rules. The ISO does not now submit the Interim Agreement subject to any claim of privilege or confidentiality; rather, the footer merely reflects the fact that the Interim Agreement was originally intended to remain in effect for a limited time.

Imbalance Energy markets as a Participating Generator.⁷ It became apparent that changes to the Interim Agreement would be necessary so that the amount of the output of the UC Davis Medical Center Generating Unit participating in the ISO's markets, as metered at SMUD's Mid-City Substation, could be accounted for separately. It also became apparent that the Interim Agreement not only had remained in effect for longer than originally anticipated but that the original Agreement had not previously been filed with the Commission. The ISO determined at that time to file the Interim Agreement with the Commission as soon as the amendment to the Agreement that was necessary to facilitate participation of the UC Davis Medical Center Generating Unit in the ISO markets could be finalized.⁸

On November 3, the Parties to the Interim Agreement entered into Amendment 1 to that Agreement. Amendment 1 modifies the Interim Agreement to ensure that the ISO is provided with necessary information for the UC Davis Medical Center Generating Unit separately. Amendment 1 also modifies the Interim Agreement to clarify that the Scheduling Coordinator for the UC Davis Medical Center, and not PG&E, will be assessed charges in accordance with the ISO Tariff as a result of the participation of the UC Davis Medical Center Generating Units in the ISO markets.

II. Request for Waiver

Pursuant to Section 35.11 of the Commission's regulations, 18 C.F.R. § 35.11, the ISO respectfully requests a waiver of the 60-day prior notice requirement if it is deemed applicable to this filing, so that the Interim Agreement may be accepted for filing and become effective as of March 31, 1998 (the date that the ISO commenced operations), and Amendment 1 may be accepted for filing and become effective as of November 3, 1999 (the date of the amendment's execution).

As explained above, although intended to be effective for a limited term only and to be superseded by an agreement to be filed with the Commission, the Interim Agreement has nevertheless become a more long-lasting arrangement. The ISO regrets the delay in the filing of the Interim Agreement with the Commission; however, the ISO also notes that no harm has resulted to any party from this delay. The Interim Agreement applies solely to scheduling, metering,

⁷ The ISO submitted a Participating Generator Agreement with the Regents of the University of California for the UC Davis Medical Center Generating Unit in Docket No. ER99-4011 on August 6, 1999. The Commission issued a letter order on September 29, 1999 accepting this Participating Generator Agreement to become effective as of July 26, 1999.

⁸ Although two jurisdictional utilities are Parties to the Interim Agreement, when it became clear that the Agreement had not previously been filed with the Commission, the ISO agreed to take the primary role in preparing the filing.

and the provision of information necessary for ISO settlements. More specifically, the Interim Agreement provides implementing detail on how the ISO will be provided certain information in accordance with the ISO Tariff, the RPTO Agreement with PG&E, and the Commission's March 27 Order on Amendment No. 2. The Interim Agreement therefore does not establish any additional responsibilities or requirements for any entities other than the Parties to the Interim Agreement.

Moreover, by its terms, the Interim Agreement does not affect the rates or charges assessed against any entity or create any new rates or charges. It simply states that certain charges will be assessed pursuant to the ISO Tariff and certain other agreements, as approved by the Commission. The terms of the Interim Agreement thus have no financial impact on ratepayers. The Commission has stated that it will grant waiver of the prior notice requirement for filings that do not change rates.⁹ Such a waiver is justified in this case. In addition, granting the waiver with respect to Amendment 1 to the Interim Agreement will permit the UC Davis Medical Center Generating Unit to fully participate in the ISO's markets in its capacity as a Participating Generator at the earliest opportunity, which will enhance the competitiveness and efficiency of the market.

III. Expenses

No expense or cost associated with this filing has been alleged or judged in any judicial or administrative proceeding to be illegal, duplicative, unnecessary, or demonstratively the product of discriminatory employment practices.

IV. Service

Copies of this filing have been served on PG&E, SMUD, the California Electricity Oversight Board, and the California Public Utilities Commission. A copy of this filing is also available for public inspection at the ISO's principal office located at 151 Blue Ravine Road, Folsom, CA.

Attachment A to this filing is the executed Interim Agreement. Attachment B is the executed Amendment 1. Attachment C is a version of the Interim Agreement showing, in blackline format, the revisions made to the Agreement by Amendment 1. Attachment D is a form Notice of Filing suitable for publication in the Federal Register. Also enclosed is a diskette containing the Notice of Filing saved in WordPerfect format.

⁹ See, e.g., *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106 (1992).

V. Correspondence

The ISO requests that all correspondence, pleadings, and other communications concerning this filing be served upon the following:

Roger E. Smith*
Deborah A. Le Vine
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-2207
Fax: (916) 351-4436

Kenneth G. Jaffe
David B. Rubin*
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, DC 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

* Individuals designated for service pursuant to Rule 203(b)(3),
18 C.F.R. § 385.203(b)(3).

Respectfully submitted,

Kenneth G. Jaffe
David B. Rubin
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
Telephone: 202-424-7500
Facsimile: 202-424-7643

Attorneys for the California Independent
System Operator Corporation

ATTACHMENT A

ATTACHMENT B

ATTACHMENT C

ATTACHMENT D

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

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211, 385.214). All such motions or protests should be filed on or before []. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

CERTIFICATE OF SERVICE

I hereby certify I have this day served this document upon Pacific Gas and Electric Company, the Sacramento Municipal Utility District, the California Electricity Oversight Board, and the California Public Utilities Commission in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 22nd day of December, 1999.

Bradley R. Miliauskas