



**ISO's Petition For Review in Docket No. EL06-10-000**

3. On October 24, 2005, as amended on October 26, 2005, the ISO filed a petition for review of the above arbitration award. The ISO argues that the arbitrator erred in finding that PG&E was not a scheduling coordinator for COTP and Bubble transactions. The ISO also claims that the arbitration decision is contrary to the Commission's ruling in *California Independent System Operator Corporation*, 106 FERC ¶ 61,032 (2004), and that the arbitrator failed to reconcile Commission precedent regarding cost responsibility for must-offer charges. Therefore, the ISO asks that the Commission reverse the arbitration award because the arbitrator ignored both the content and context of Commission orders and did not engage in reasoned decision making. The ISO also asserts that the Commission should review the proceeding under a *de novo* standard since the proceeding involves only issues of law regarding the proper interpretation of Commission precedent.

4. Finally, the ISO asks that the Commission establish appropriate procedures for reviewing the arbitration award that will allow all parties to fully present their arguments. The ISO requests a minimum of 30 days between briefs because of the scope of the record.

**PG&E's Petition For Review in Docket No. EL06-11-000**

5. On October 24, 2005, PG&E filed a petition for review of the above arbitration award. PG&E states that the underlying arbitration was initiated by PG&E against the ISO, and that it sought an award ordering that, among other things: (1) the ISO comply with the Commission's decision in Docket No. EL02-45-000 which found that PG&E was not a scheduling coordinator for COTP and Bubble transactions;<sup>1</sup> (2) the ISO reverse the charges it imposed on PG&E, with interest, as of October 10, 2005; (3) the ISO promptly pay all charges owing PG&E, with interest. PG&E states that the arbitrator granted the relief requested by PG&E, except for the granting of interest, and that its petition for review is thus limited to that one issue. PG&E argues that the arbitrator's failure to award interest is in error. PG&E claims that it requested interest in its statement of claim, and in its testimony and briefs filed with the arbitrator, and also in oral argument. PG&E also contends that the ISO Tariff allows interest, and that interest was awarded to PG&E in the arbitration in Docket No. EL02-45-000. Therefore, PG&E asserts that it is filing this petition to reverse the arbitrator's failure to award interest.

---

<sup>1</sup> See *California Independent System Operator Corporation*, 107 FERC ¶ 61,152 (2004), *reh'g denied*, 111 FERC ¶ 61,078, *order denying motions for clarification*, 113 FERC ¶ 61,133 (2005).

6. Finally, PG&E asks that the Commission establish appropriate procedures for reviewing the arbitrator's award, and asks that the Commission follow the briefing schedule established in Docket No. EL02-45-000.

### **Notice, Interventions, Comments, and Protests**

7. Notice of the ISO's petition in Docket No. EL06-10-000 was published in the *Federal Register*, 70 Fed. Reg. 70,601 (2005), with motions to intervene or protests due on or before November 21, 2005. Notice of PG&E's petition was published in the *Federal Register*, 70 Fed. Reg. 67,157 (2005), with motions to intervene or protests due on or before November 14, 2005.

8. On November 8, 2005, Southern California Edison Company (Edison) filed a motion to intervene in Docket Nos. EL06-10-000 and EL06-11-000. In support of its motion Edison states that it is a scheduling coordinator in the ISO and will be directly affected by the outcome of the proceedings, because the outcome could impact the allocation of charges to scheduling coordinators. Therefore, Edison contends that it has an immediate interest in the outcome of these proceedings and its interest cannot be represented by any other party.

9. On November 14, 2005, Sacramento Municipal Utility District (SMUD), the Modesto Irrigation District (Modesto), the City of Redding, California (Redding), and the Transmission Agency of Northern California (TANC) (collectively, Joint Intervenors) filed a motion to intervene and comments in support of PG&E's petition for review in Docket No. EL06-11-000. Joint Intervenors ask that the Commission: (1) grant the Joint Intervenors' motion to intervene; and (2) adopt a briefing schedule consistent with that in Docket No. EL02-45-000, and establish a procedural schedule for the submission of pleadings, with initial briefs due 30 days after the order's issuance date, reply briefs due 30 days after filing of initial briefs, and rebuttal briefs due 20 days after filing of reply briefs.

10. On November 14, 2005, PG&E filed a motion to intervene and to consolidate in Docket Nos. EL06-10-000 and EL06-11-000. PG&E asks that the Commission consolidate Docket Nos. EL06-10-000 and EL06-11-000 because the parties and the record evidence in each case are identical, and the arbitration award at issue in each case is the same. PG&E explains that if, in Docket No. EL06-10-000, the Commission decided that PG&E is not entitled to the award, the issue presented in Docket No. EL06-11-000 would be moot; and if, in Docket No. EL06-10-000, the Commission decided that PG&E is entitled to the award, the amount of the award would be affected by the decision on the issue presented in Docket No. EL06-11-000. Therefore, PG&E asserts that because the two dockets both address petitions for review of the same

arbitration decision the cases should be consolidated and the issues decided together. PG&E also asks that, if its motion to consolidate is not granted, the record of evidence the ISO filed in Docket No. EL06-10-000 should be deemed filed in Docket No. EL06-11-000.

11. On November 21, 2005, the Cogeneration Association of California and the Energy Producers and Users Coalition (collectively, Coalition) filed a motion to intervene in Docket No. EL06-10-000.

12. On November 21, 2005, Joint Intervenors filed a motion to intervene, a motion to reject, a motion to consolidate dockets, a protest, and an answer to the petition for review in Docket No. EL06-10-000. They argue that the ISO petition for review should be rejected as deficient because the ISO failed to provide a "Statement of Issues" in violation of new Rule 203(a)(7) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(a)(7). They also claim that the ISO's amended petition is also deficient since it fails to list each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the ISO is relying as required by new Rule 203(a)(7). In addition, they assert that the ISO's amended petition is deficient because the ISO failed to request waiver under Rule 2001(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2001(b) (2005), of the requirement to include the statement of issues. Joint Intervenors ask that, in the event that the Commission does not summarily reject the ISO's petition, the Commission consolidate Docket No. EL06-10-000 with Docket No. EL06-11-000.

13. Joint Intervenors add that, if the Commission consolidates Docket EL06-10-000 with EL06-11-000, they protest the ISO's mischaracterizations of the issues in this case and the ISO's requested standard of review, *i.e.*, *de novo* review, of the arbitrator's award. They assert that the Commission should apply the standard of review specified in the ISO Tariff, *i.e.*, substantial deference to the factual findings of the arbitrator. Joint Intervenors also protest the ISO's attempt to expand the scope of the Commission's review of the arbitration award beyond the record assembled by the arbitrator by, *e.g.*, examining the ISO's grid management charge record in Docket No. ER01-313-000. Finally, Joint Intervenors ask that the Commission establish a briefing schedule consistent with the briefing schedule in Docket No. EL02-45-000, with initial briefs due 30 days after the order's issuance date, reply briefs due 30 days after filing of initial briefs, and rebuttal briefs due 20 days after filing of reply briefs.

14. On November 21, 2005, Joint Intervenors filed an answer opposing Edison's motion to intervene in Docket Nos. EL06-10-000 and EL06-11-000. They claim that Edison has not shown that it has a permissible, relevant, or direct interest in this proceeding, and any interest it has is speculative and indirect as a scheduling coordinator. They add that Edison lacks standing to intervene and seek review of the arbitrator's award because it waived its rights and interests by voluntarily withdrawing from the

arbitration proceeding. They also claim that Edison has failed to show that it is in the public interest to allow its intervention, but rather will frustrate the interests of judicial efficiency by relitigating issues that were resolved elsewhere. Alternatively, they ask that the Commission treat Edison's intervention as a late-filed intervention so that Edison accepts the record that was developed in the arbitration proceeding. They further ask that the Commission clarify that Edison's intervention will be limited so as to exclude issues that are outside the scope of the proceeding.

15. On December 5, 2005, in Docket Nos. EL06-10-000 and EL06-11-000, Edison filed a motion for leave to respond and a response to the Joint Intervenors' answer opposing Edison's motion to intervene. Edison asks that the Commission permit it to intervene in these proceedings. Edison asserts that to adopt a policy under which non-participants in alternative dispute resolution (ADR) proceedings are prohibited from participating in reviews of ADR awards at the Commission is not in the public interest since: (1) parties may not have the resources to participate in ADR; (2) entities may not realize that an ADR proceeding may impact their interests at the time; and (3) parties with sufficient resources to participate in ADR proceedings may decide to not participate when their interests are limited to legal issues that are solely within the Commission's jurisdiction, as is Edison's situation. Edison asserts that since its interest in the arbitration proceeding was purely legal, it saw no reason to expend further resources by continuing to participate in the arbitration proceeding. Edison adds that in its motion to intervene Edison stated that it was a scheduling coordinator and, therefore, would be directly affected by the outcome of these proceedings since their outcome could impact the allocation of charges to scheduling coordinators.

16. On December 6, 2005, the ISO filed an answer to the Joint Intervenors' motion to reject the ISO's petition for review. The ISO claims that its statement of issues complies with the intent of, and is in substantial compliance with, new Rule 203(a)(7). The ISO asserts that Rule 203(a) provides that pleadings and tariff and rate filings must meet certain requirements, such as including a statement of issues, "as appropriate." In this regard, the ISO argues that its petition for review was simply an initial filing that does not require the resolution of any substantive issues, but only requests that the Commission establish procedures. The ISO also maintains that there is no allegation that Joint Intervenors have been prejudiced by the ISO's alleged violation of Rule 203. In addition, the ISO asserts that the Commission should not reject its filing since Rule 203(a)(7) states that failing to include an issue constitutes a waiver of that issue, and rejecting its filing would be an extreme sanction. The ISO notes that PG&E, which also filed a petition for review, did not include a statement of issues but the ISO believes that PG&E's petition should not be rejected on that basis. The ISO states that since its petition is merely a request to establish procedures for review of the arbitration award, if the Commission determines the ISO has waived the issues in its petition, the Commission should only disregard the ISO's proposed procedures and establish procedures without regard to the

ISO's recommendations. Alternatively, the ISO asks that the Commission grant the ISO's request for a waiver of Rule 203(a) to the extent necessary to bring the ISO's petition for review into compliance with the Commission's rules.

## **Discussion**

### **Procedural Issues**

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely unopposed motions to intervene of Joint Intervenors and Coalition serve to make them parties. Notwithstanding Joint Intervenors' motion opposing Edison's intervention, we will grant Edison's timely motion to intervene, in light of the interests it represents, the absence of undue prejudice or delay, and the early stage of the proceedings. In addition, we note that Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Edison's answer because it has provided information that has assisted us in our decision making process.

18. Because there are common issues of law and fact we will grant PG&E's, the ISO's, and Joint Intervenors' motions to consolidate Docket No. EL06-10-000 with EL06-11-000 for purposes of briefing and decision.

19. We will deny Joint Intervenors' motion to reject the ISO's petition for review for failing to comply with new Rule 203(a)(7). We note, in fact, that neither the ISO nor PG&E complied with new Rule 203(a)(7) by listing each issue and supporting legal precedent in their separate petitions for review of the arbitration award. However, we will not reject or deem waived issues presented in these petitions. The Commission has treated prior petitions for review of arbitration awards under the ISO Tariff as essentially ministerial filings that served to provide notice of such an appeal to the Commission. Thus, in orders addressing these petitions we have established procedural schedules for the submission of briefs on the substantive issues, rather than addressing the merits of the parties' positions.<sup>2</sup> Therefore, we find that this limited context, involving a petition for review of an arbitration award under the ISO Tariff, is distinguishable from cases such as *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,264 at P 15 (2005), where the Commission deemed waived all of the issues that were raised in a protest that did not comply with new Rule 203(a)(7).

---

<sup>2</sup> See, e.g., *California Independent System Operator Corporation*, 98 FERC ¶ 61,047 (2002); *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California and City of Vernon, California v. California Independent System Operator Corporation*, 104 FERC ¶ 61,099 (2003).

**Schedule for Submission of Pleadings**

20. The Commission hereby establishes a schedule for the submission of briefs in this proceeding:

- \* 30 days from the date of issuance of this order, the ISO and PG&E, as well as intervenors may file initial briefs addressing the Award and the ISO's and PG&E's separate appeals of the Award;
- \* 30 days from the date of filing of initial briefs, the ISO and PG&E, as well as intervenors, may submit reply briefs addressing the Award and the ISO's and PG&E's separate appeals of the Award; and
- \* 20 days thereafter, the ISO and PG&E, as well as intervenors, may file rebuttal briefs.

21. As required by section 13.4.1 of the ISO Tariff, parties must limit their briefs to a discussion of whether or not the arbitrator's award is contrary to or beyond the scope of the relevant ISO documents, federal law, or state law. Furthermore, consistent with section 13.4.2 of the ISO Tariff, the parties are prohibited from expanding the record beyond that assembled by the arbitrator (unless they can demonstrate that they fall within one of the exceptions specified in section 13.4.2 of the ISO Tariff).

**The Commission orders:**

(A) PG&E's, the ISO's, and Joint Intervenors' separate motions to consolidate Docket No. EL06-10-000 with EL06-11-000 for purposes of briefing and decision are hereby granted.

(B) Joint Intervenors' motion to reject the ISO's petition for review is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.