

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

California Independent System Operator
Corporation

Docket No. ER05-292-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 28, 2005)

1. In this order, we accept the proposed unexecuted Meter Service Agreement (MSA) for California Independent System Operator Corporation (CAISO) Metered Entities, unexecuted Participating Generator Agreement (PGA), and unexecuted Utility Distribution Company Agreement (UDC Operating Agreement) (collectively, unexecuted agreements) between the CAISO and the City of Corona, California (Corona) for filing, suspend them for a nominal period, make them effective on December 15, 2004 and January 1, 2005, as requested, subject to refund, and set them for hearing and settlement judge procedures. This order benefits customers by enabling Corona to operate within the CAISO system.

Background

2. On December 2, 2004, pursuant to section 205 of the Federal Power Act (FPA), the CAISO filed the unexecuted MSA, PGA and UDC Operating Agreement. These agreements are intended to establish the contractual relationship between Corona and the CAISO in advance of commercial operation of Corona's new Clearwater Power Project.¹

¹ The Clearwater Power Project is a 30 MW natural gas-fired, power generation facility that will be located in Corona's Wastewater Treatment Plant No. 1. Corona Protest at 5. It will be integrated with portions of the wastewater treatment facility,

(continued)

The CAISO requests an effective date of December 15, 2004 for the MSA and PGA and an effective date of January 1, 2005 for the UDC Operating Agreement.

Notice of Filing and Responsive Pleadings

3. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 75,527 (2004), with comments, protests and interventions due on or before December 23, 2004. Corona, the Modesto Irrigation District (Modesto), and Southern California Edison Company (SoCal Edison) filed timely motions to intervene and protests. The CAISO, SoCal Edison and Corona filed answers.

4. In its protest, Corona challenges the CAISO's filing of the unexecuted agreements rather than the Metered Subsystem (MSS) Agreement that had been negotiated by the CAISO and Corona. Corona requests that the Commission find that the unexecuted agreements have not been shown to be just and reasonable, accept them subject to refund, suspend them for a nominal period, and establish settlement procedures. Modesto supports Corona's protest and efforts to become an MSS.

5. In its protest, SoCal Edison raises concerns regarding the provisions of the UDC Operating Agreement, net metering of loads under the MSA, SoCal Edison's inclusion as an authorized user under the MSA, and loads exempted from the metering standards in the MSA.

Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed and will, therefore, reject them.

which will use the heat exhaust from the combustion turbine in the treatment process. *Id.* Corona anticipates that commercial operations will begin in January 2005. *Id.*

B. Hearing Procedures

8. The unexecuted agreements raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below, especially the rate allocation issues raised.

9. Our preliminary analysis indicates that the unexecuted agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept the unexecuted agreements for filing, suspend them for a nominal period, make the MSA and PGA effective December 15, 2004 and the UDC Operating Agreement effective January 1, 2005, as requested, subject to refund, and set this matter for hearing and settlement judge procedures.

10. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.³ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

² 18 C.F.R. § 385.603 (2004).

³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) The unexecuted agreements are hereby accepted for filing, suspended for a nominal period, to become effective on December 15, 2004 and January 1, 2005, subject to refund, and set for hearing and settlement judge procedures, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the unexecuted agreements. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall within fifteen (15) days of the date of the presiding judge's designation, convene a conference in these proceedings, in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural

schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.