

109 FERC ¶61,162
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator
Corporation

Docket No. ER01-313-004

Pacific Gas and Electric Company

Docket No. ER01-424-004

ORDER DEFERRING REHEARING REQUESTS AND ESTABLISHING
LIMITED HEARING PROCEDURES

(Issued November 16, 2004)

1. In Opinion Nos. 463¹ and 463-A,² the Commission addressed a number of issues arising from the California Independent System Operator Corporation's (ISO) unbundled grid management charge (GMC), as well as Pacific Gas and Electric Company's (PG&E) filing to pass through the GMC to its existing contract customers in a new tariff. As relevant here, Opinion No. 463 generally upheld the judge's determination that the collection of the Control Area Services (CAS) component of the GMC charge should be based on Control Area Gross Load (CAGL). However, the Commission did require an exception to CAGL for wholesale or retail customers with behind-the-meter generation who rely on that generation to meet their energy needs. In Opinion No. 463-A, the Commission modified this exception so that it applied to (*i.e.*, exempted from payment of CAS on a gross load basis) those generators which were not modeled by the ISO in its regular performance of transmission planning and operation.³

¹ *California Independent System Operator Corp.*, 103 FERC ¶ 61,114 (2003). Opinion No. 463 largely affirmed, but reversed in part, the Initial Decision in this proceeding. *California Independent System Operator Corp.*, 99 FERC ¶ 63,020 (2002).

² *California Independent System Operator Corp.*, 106 FERC ¶ 61,032 (2004). Opinion No. 463-A also dismissed a complaint filed by San Diego Gas & Electric Company against the ISO on a GMC-related issue.

³ *Id.* at P 20.

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2. Several parties have filed requests for rehearing and/or clarification of Opinion No. 463-A, raising, among other arguments, the contention that the Commission's CAGL exception is not supported by record evidence. Upon consideration of this argument, the Commission defers further action on the requests for rehearing pending the compilation of a sufficient record on this issue. To this end, we establish limited (with respect to both time and subject matter) hearing procedures so that such a record may be compiled. Our decision benefits customers by assuring that the Commission will have a complete record supporting its determination of the reasonable allocation of the ISO's costs among its customers.⁴

Background

3. As Opinion Nos. 463 and 463-A fully describe the filings by the ISO and PG&E and the Commission responses to them, we will only provide the minimal necessary background here. In Opinion No. 463, the Commission explained its decision to establish an exception to CAGL, and the terms of that exception, as follows:

Customers with behind-the-meter generation who primarily rely on that generation to meet their energy needs have made a convincing argument that use of gross load results in this customer class being allocated too great a share of CAS costs. To take into account the more limited impact such customers have on the ISO's grid, the Commission finds that they should be allocated CAS costs on the basis of their highest monthly demand placed on the ISO's grid, rather than on gross load. In this manner, their more limited dependence on the ISO grid will be reflected in their allocation of the CAS costs. Customers eligible for such treatment are those with generators with a 50 percent or greater capacity factor.^{5]}

4. In Opinion No. 463-A, however, the Commission granted rehearing and clarified several of our findings with respect to the use of CAGL. As relevant here, we concluded that the exception for those customers with generators with a 50 percent or greater capacity factor was not supported by record evidence and created implementation problems. The

⁴ PG&E and Turlock Irrigation District have filed requests for clarification and/or rehearing of Opinion No. 463-A concerning the scope of their Interconnection Agreement. PG&E also requests on rehearing that the Commission authorize the ISO to bill governmental entities directly for their behind-the-meter loads. The Commission will also defer its determination on these claims until it reaches a final decision in these dockets. However, these claims are not included in the remand, which is limited to the CAGL exemption issue.

⁵ Opinion No. 463, 103 FERC ¶ 61,114 at P 28 (footnote omitted).

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Commission nevertheless reiterated that “certain behind the meter generators should be subject to an exception from the use of CAGL for the billing of CAS charges.”⁶ We therefore concluded:

In light of the nature of the CAS charges, in particular expenses incurred for the continued planning [and] operation of the transmission grid, it appears appropriate that generators which are not modeled by the ISO in its regular performance of transmission planning and operation should be exempted from the CAGL charge. That is, those generators that will not cause the ISO to incur administrative or operating expenses should, therefore, have the load exempted from the CAS charge.^[7]

For those behind-the-meter generators coming within this exception, the use of net metered load would be the basis for allocating CAS costs.

5. The Modesto Irrigation District (Modesto), Sacramento Municipal Utility District (SMUD), Southern California Edison Company (SoCal Edison), the Transmission Agency of Northern California (TANC), and City of Santa Clara/Silicon Valley Power filed requests for clarification and/or rehearing on the CAGL exception issue.⁸ The Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC) jointly filed a request for clarification on this issue.

6. On rehearing, SoCal Edison argues that there is no record evidence supporting the conclusion that load served by unmodeled generation does not cause the ISO to incur costs. Rather, according to SoCal Edison, the record indicates that, while “no generators under 10 MW in size are modeled by the ISO,” there are a number of qualifying facility (QF) generators which are under 10 MW and sell their excess power to utility distribution companies.⁹ SoCal Edison asserts that the Commission’s reasoning on this point is further undermined because “the largest generators, which are clearly modeled by the ISO, are not assessed the CAS charge on their behind-the-retail meter station power loads.”¹⁰

⁶ Opinion No. 463-A, 106 FERC ¶ 61,032 at P 20.

⁷ *Id.*

⁸ The City of Santa Clara, California and Silicon Valley Power filed a joint rehearing on the CAGL issue, incorporating by reference the arguments made by TANC.

⁹ SoCal Edison Request at 4.

¹⁰ *Id.*

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7. SoCal Edison maintains that because the CAS charge is based on the load of scheduling coordinators, rather than generation, the focus should be on whether “particular loads cause the ISO to incur costs[.]”¹¹ In this regard, SoCal Edison observes, “there is ample record evidence that the ISO does not perform CAS tasks on behalf of unmodeled load.”¹²

8. TANC argues on rehearing that the exception to the use of CAGL will fail to reflect the stated purpose of the exception, which is to take into account the more limited impact customers with behind-the-meter generation have on the ISO grid. According to TANC, “[t]he inference to be drawn” from the record “is that the ISO would be expected to maintain a position that behind-the-meter generation is included in its studies and is modeled for operational purposes.”¹³ This would result, TANC maintains, in “no generation [being] exempt from the use of CAGL for billing the CAS charges.”¹⁴ TANC further argues that, by basing the exemption from CAGL on whether generators are modeled by the ISO, the Commission “has given the ISO unfettered discretion to deny” the exemption to potentially eligible customers.¹⁵ TANC believes that the Commission has abdicated its regulatory responsibility by not setting guidelines on this issue. As an alternative, TANC suggests permitting the ISO to charge customers with behind-the-meter load the CAS charge based upon the customers’ use of the ISO grid.¹⁶

9. Modesto argues on rehearing that the revised exemption in Opinion 463-A does not capture the Commission’s intent in Opinion No. 463, which recognized the more limited impact that entities which balance behind-the-meter generation and load place on the ISO grid. Modesto requests that the Commission clarify that: (1) the Commission did not grant the ISO authority to implement an eligibility test that results in customers relying primarily on behind-the-meter generation to serve load being denied the rate treatment intended by the Commission in Opinion No. 463; (2) “customer” should be defined as a unique wholesale or retail Load Serving Entity, not narrowly defined as a Scheduling Coordinator; (3) “primarily” serving load from behind-the-meter generation should be defined to apply to a customer that serves a greater portion of its load from a portfolio of behind-the-meter

¹¹ *Id.* at 5 (emphasis added).

¹² *Id.* at 7 (emphasis deleted).

¹³ TANC Request at 7.

¹⁴ *Id.*

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 10.

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generation than it does from the ISO-controlled grid; and (4) any generator-specific eligibility test should apply after the customer has met the threshold test of “primarily” serving load from behind-the-meter generation.

10. Modesto requests, in the event the Commission denies its request for clarification, rehearing of Opinion No. 463-A. First, Modesto argues that the generator-specific eligibility criterion has the potential to conflict with the Commission’s prior express intent for proportionate relief from CAS charges. Specifically, Modesto opines that under certain scenarios, an eligibility test based on modeling could produce unreasonable results, excluding certain behind-the-meter generators because they are no longer deemed to “primarily” serve load from behind-the-meter resources.

11. SMUD argues on rehearing that its behind-the-meter generation resources and Western Area Power Administration (Western) generation resources that directly serve SMUD native load qualify for the exception from CAGL-based CAS charges. SMUD asserts that the ISO model simply assumes SMUD-owned behind-the-meter resources as a constant, “always-on” resource, and that Western’s resources are also considered in the ISO model as a non-variable “given,” reflecting their historic output levels as a constant. Thus, SMUD concludes that the ISO does not incur any modeling expenses in accounting for either, because it does not have to monitor, manipulate, or otherwise massage SMUD or Western data. SMUD also states that the Commission should bear in mind that the ISO had previously pledged to SMUD that SMUD’s Scheduling Coordinator would be assessed the CAS charge only for the amount of power delivered to or transported by the ISO from the SMUD service area, an arrangement that would “net out” the substantial amount of load served by SMUD in its service area.

12. CAC/EPUC request clarification on two issues. First, CAC/EPUC note that the ISO’s CAGL billing determinant is load based and it is load in the control area for which the ISO is ultimately responsible to plan. Therefore, CAC/EPUC state that the exemption from the imposition of the CAGL billing determinant should be applied to behind-the-meter load and not generators. Secondly, CAC/EPUC argue that the Commission’s exemption could be misinterpreted by alleging that, because a particular resource or load is modeled by the ISO, the CAGL billing determinant would apply to the otherwise exempt behind-the-meter load. CAC/EPUC propose a clarification that would state that it is a customer’s net load which causes the ISO to incur costs and therefore it is only appropriate to assess the ISO’s CAS charge to net load.

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Discussion

13. In Opinion Nos. 463 and 463-A, the Commission found that the CAGL approach was just and reasonable, and we have not and are not deviating from this holding. We also found that the net basis for assessing the CAS component of the GMC charge was not acceptable because it failed to fully take into account the use of the ISO grid. Nonetheless, in an attempt to fine tune the allocation of the CAS charge so as to lessen its impact on those customers who rely on behind-the-meter generation, Opinion No. 463-A created an exemption from assessment of CAS charge based on CAGL for “generators which are not modeled by the ISO in its regular performance of transmission planning and operation[.]”¹⁷

14. As described above, the Commission *sua sponte* established this exemption from CAGL based on load served by behind-the-meter generators that are not modeled by the ISO. In their briefs before the Commission, as in the proceedings before the presiding judge, the parties were split into two camps on the CAGL issue: those who favored CAGL, *i.e.*, charges assessed on a gross load basis, and those favoring customers being charged on a net metered basis. Therefore, the parties did not introduce evidence bearing on the exemption adopted by the Commission.

15. Having reviewed the requests for rehearing on this issue, the Commission continues to subscribe to the concept of an exception from CAGL based on whether the generator and associated behind-the-meter load are modeled by the ISO. However, the requests for rehearing and clarification have made clear that questions concerning the exemption, as well as the manner in which it would be administered, present issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the trial-type evidentiary hearing ordered below.

16. In ordering this hearing, the Commission emphasizes that the hearing is limited to the CAGL exemption issue as set forth in Opinion No. 463-A and shall *not* be treated as an opportunity for the parties to relitigate any other aspect of our decision with respect to CAGL (or any other issue).

¹⁷ Opinion No. 463-A, 106 FERC ¶ 61,302 at P 20.

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17. The material issues of fact on which the Commission seeks factual information include, but are not limited to:

1. The manner and extent to which behind-the-meter generation was included during the time period at issue in the ISO's transmission and operations planning studies, including a listing of generators that were explicitly modeled in these studies. Additionally, we would like to have the same information for the present time.
2. All relevant factors the ISO has considered when modeling behind-the-meter generators in its transmission and operations planning studies, including: (1) WECC requirements for modeling; (2) the generator size and location on the transmission and/or distribution system; (3) load associated with that generation; (4) voltage, stability, and short-circuit concerns; and (5) the impact of the generator on the transmission system.
3. How and to what extent behind-the-meter load netted against unmodeled generation imposes CAS costs, as delineated by ISO witness Lyon, on the ISO.¹⁸
4. What regulatory controls (if any) are necessary for the ISO to report which generation and associated load it does not model.

18. All parties that participated in the hearing in this proceeding (including Trial Staff) -- not just those that sought rehearing -- may participate in the proceeding on remand. Additionally, the ISO's participation would be a significant aid in establishing a record for decision.

19. Finally, the Commission requires that this matter be expedited. Therefore, we direct the presiding judge to issue an Initial Decision by April 15, 2005.

The Commission orders:

(A) Decision on the requests for rehearing and/or clarification in these dockets is hereby deferred, pending the hearing ordered below, as discussed in the body of this order.

¹⁸ See 99 FERC at 65,098.

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(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the limited issues raised in the body of this order.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(D) The evidentiary hearing is limited to the issues raised in this order, and the entire procedure, including the issuance of an Initial Decision, shall be completed by April 15, 2005.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.