123 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator Corporation — Docket No. EL06-10-000

Pacific Gas and Electric Company — Docket No. EL06-11-000

ORDER ON PETITIONS FOR REVIEW OF ARBITRATION AWARD

(Issued May 15, 2008)

1. On January 12, 2006, the Commission established a schedule for the submission of pleadings in response to petitions for review of an arbitration award (Arbitration Award), which were filed by the California Independent System Operator Corporation (ISO) in Docket No. EL06-10-000 and Pacific Gas and Electric Company (PG&E) in Docket No. EL06-11-000. We also consolidated Docket No. EL06-10-000 and Docket No. EL06-11-000 for purposes of briefing and decision.[1] In this order we affirm the Arbitration Award in ordering the ISO to refund PG&E must-offer obligation (MOO) charges, and deny the ISO's petition for review. However, we reverse the Arbitration Award in disallowing interest on the refunds ordered and, accordingly, grant PG&E's petition for review.

Arbitration Award

2. According to the arbitrator, this dispute had its roots in the California energy crisis of 2001 and focused on MOO charges (i.e., emissions cost, start-up cost, and minimum load cost charges) which the ISO billed PG&E beginning in June 2001. The arbitrator found that, under the ISO Tariff, the ISO must levy MOO charges on the scheduling coordinator. Thus, the arbitrator framed the issue as whether PG&E was a scheduling coordinator for the California-Oregon Transmission Project (COTP) transactions or the Sacramento Municipal Utility District (SMUD) and Western Area Power Administration

[1] *California Independent System Operator Corporation*, 114 FERC ¶ 61,022 (2006) (Procedural Order).

(WAPA) (collectively, Bubble) transactions.[2] The arbitrator concluded that there was no record evidence or decisional authority supporting the ISO's claim that PG&E was a scheduling coordinator for these transactions, and ordered the ISO to refund to PG&E $14,319,378.14, in MOO charges for Bubble transactions. In addition, the arbitrator stated that, since neither PG&E nor the intervenors requested that any interest attach to the ordered refunds and the ISO Tariff did not provide for interest, the arbitrator would order none.

3. Specifically, as to the billing of MOO charges for Bubble transactions, the arbitrator stated that the starting point must be the ISO Tariff since it was the applicable rate schedule and was the controlling law in effect. The arbitrator noted that, the parties agreed that if the ISO lacked authority under rates on file with the Commission, then the ISO could not bill PG&E for MOO charges for Bubble transactions. Reviewing the ISO Tariff, the arbitrator found that it explicitly stated that MOO charges are levied on scheduling coordinators, and only scheduling coordinators are obligated to make payments.[3]

4. Thus, the arbitrator found that the ISO's first argument that it was proper to bill for any load on the grid, regardless of whether a Bubble transaction was involved or whether PG&E was a scheduling coordinator, was incorrect. In this regard, the arbitrator stated that, to accept this theory, the scheduling coordinator language in the ISO Tariff was irrelevant, but the arbitrator found that the ISO Tariff clearly stated that it was scheduling coordinators who are to be billed, and those billings should be determined by "demand for energy within the control area." The arbitrator also noted that Joint Intervenors persuasively argued that the charges assessed in this case were actually billed based on Bubble transactions and not on load or demand as the ISO urged. The arbitrator added that the ISO's sole witness appeared to concede and concur that charges could only be imposed on scheduling coordinators.

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[2] For the convenience of the reader, in this order we will define all three transactions, *i.e.*, COTP, SMUD, and WAPA, collectively as Bubble transactions.

[3] Section 2.5.23.3.6.1 of the ISO Tariff states that "each scheduling coordinator shall be obligated to pay a charge . . . incurred by a Must-Offer Generator . . . ." "The ISO shall levy this administrative charge . . . against all Scheduling Coordinators based upon each Scheduling Coordinator's Control Area Gross Load and Demand within California outside of the ISO Control Area . . . ."

5. Next, the arbitrator rejected the ISO's contention that Opinion No. 463-A's[4] holding that PG&E was the scheduling coordinator for the ISO to bill for grid management (GMC) control area services charges whose loads were served by Bubble transactions, and that the Responsible Participating Transmission Owner Agreement (RPTOA), and Opinion No. 463-A's interpretation of that agreement applied to the MOO charges at issue here. In rejecting the ISO's argument, the arbitrator found no specific language in Opinion No. 463-A or any related documents stating that the analysis in Opinion No. 463-A applied to MOO charges. In addition, the arbitrator found that there was language in the GMC charges section of the ISO Tariff interpreted in Opinion No. 463-A that permitted those charges to be billed to an "other appropriate party" in addition to the scheduling coordinator, but the "other appropriate party" language was not in the ISO Tariff section on MOO charges. Therefore, the arbitrator concluded that under the ISO Tariff section on MOO charges only scheduling coordinators are permissible billing entities.

6. The arbitrator also stated that the ISO acknowledged that its reliance on Opinion No. 463-A was based on the "logic" and not the language in Opinion No. 463-A. The arbitrator rejected the ISO's argument, and noted that, instead of relying on Opinion No. 463-A, the Commission ruled in the COTP I proceeding that PG&E was not a scheduling coordinator with regard to Bubble transactions.[5] Furthermore, the arbitrator noted that the ISO conceded in the GMC charges proceeding that the then-pending COTP I proceeding would determine whether the ISO could impose any charges for Bubble transactions.

7. Moreover, the arbitrator added that, under the terms of the RPTOA, PG&E was not a scheduling coordinator for MOO charges. The arbitrator stated that the RPTOA's language was clearly limiting in scope, and under the RPTOA, PG&E was a scheduling coordinator for transactions under the contacts listed in Appendix A of that agreement exclusively. The arbitrator found that for the ISO to have authority through the RPTOA to bill PG&E as a scheduling coordinator, the Coordinated Operations Agreement (COA)

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[4] *California Independent System Operator Corporation*, Opinion No. 463-A, 106 FERC ¶ 61,032 (2004), *reh'g denied and affirmed in part, and reversing initial decision*, 113 FERC ¶ 61,135 (2005), *reh'g denied*, 116 FERC ¶ 61,224 (2006), *rejecting request for reh'g*, 118 FERC ¶ 61,061 (2007), *aff'd, Western Area Power Administration v. FERC*, Nos. 04-1090, *et al.* (D.C. Cir. May 2, 2008).

[5] *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), *order dissolving stay*, 114 FERC ¶ 61,307 (2006) (*COTP I*), *appeal docketed*, No. 06-1002 (D.C. Cir. Jan. 3, 2006).

governing PG&E's relationship to Bubble transactions would have been listed in Appendix A and it was not (which the arbitrator noted the ISO did not dispute). Thus, the arbitrator concluded that neither the RPTOA nor Opinion No. 463-A supported a finding that PG&E was a scheduling coordinator that could be billed MOO charges for Bubble transactions.

8. In contrast to the ISO's arguments, the arbitrator found that PG&E and Joint Intervenors presented evidence that was ultimately persuasive. The arbitrator agreed with PG&E and Joint Intervenors that the COTP I orders found that the ISO only had authority to bill in accordance with the ISO Tariff and that PG&E was not a scheduling coordinator for Bubble transactions, and that COTP I orders were the controlling precedent here. The arbitrator stated that, in the COTP I orders, the arbitrator and the Commission concluded that PG&E was not an ISO Tariff-certified scheduling coordinator, but was a "proxy" scheduling coordinator. Likewise, the arbitrator found in the instant proceeding that it was clear that PG&E relayed information to the ISO for billing MOO charges using a proxy identification, and there was no basis to assess charges on the proxy scheduling coordinator. Referring to the COTP I orders, the arbitrator agreed with Joint Intervenors that it would be inconsistent for PG&E to not be a scheduling coordinator for ancillary services charges for Bubble transactions but to be a scheduling coordinator for MOO charges for Bubble transactions. Thus, the arbitrator found that the PG&E was not a scheduling coordinator for the MOO charges at issue here.

9. In addition, the arbitrator found that PG&E and Joint Intervenors made persuasive evidentiary presentations to support the conclusion that PG&E was not a scheduling coordinator for billing MOO charges for Bubble transactions. The arbitrator rejected the ISO's argument that only legal issues arose in this case, stating that the scheduling coordinator issue appeared to be a factual, or at least mixed issue. The arbitrator added that interpreting complex tariffs and Commission decisions could not be purely legal, and weight must be given to extrinsic and expert evidence. The arbitrator also noted that in the COTP I proceeding, the arbitrator also found extrinsic evidence helpful, and the Commission explicitly upheld the arbitrator's reliance on extrinsic supporting evidence.

10. Specifically, the arbitrator found that the testimony established that PG&E was never willing to be a scheduling coordinator for Bubble transactions, and the arbitrator noted that the ISO did not present evidence to rebut this testimony. The arbitrator also noted that the Interim Agreement, entered into by the ISO, PG&E, and SMUD in 1998, established that PG&E was the "proxy" scheduling coordinator for Bubble transactions, and not a scheduling coordinator for Bubble transactions.[6]

[6] The arbitrator explained that the Interim Agreement memorialized the parties' understanding that PG&E was not a scheduling coordinator for Bubble transactions but (continued…)

11. The arbitrator also gave weight to the testimony regarding the RPTOA and the meaning of Opinion No. 463-A. In particular, the arbitrator found persuasive and credible the testimony of PG&E's witness who explained why Opinion No. 463-A did not cover Bubble transactions, which was not rebutted by the ISO. The arbitrator also found persuasive and credible the testimony of PG&E's witness who stated that PG&E's intent in entering into the RPTOA was to be the scheduling coordinator only for the contracts listed in Appendix A of the RPTOA, and that for the ISO to have authority through the RPTOA to bill PG&E as a scheduling coordinator, the COA would have to be listed in Appendix A of the RPTOA, and the COA was not listed. The arbitrator concluded that, while none of the testimony extrinsic to the ISO Tariff or Commission opinion language was dispositive of the ultimate issues here, it did provide almost totally unrebutted support to buttress the interpretations and legal conclusions that undermined the ISO's theory.

12. In addition, the arbitrator found that the ISO's reliance on a "behind-the-meter" analogy from (Opinion No. 463-A) was misplaced. The arbitrator noted that SMUD's witness established that behind-the-meter load was distinct and separate from Bubble transactions. The arbitrator also noted that the ISO suggested that MOO charges were introduced for reliability purposes during the energy crisis, and thus the arbitrator should rule in the ISO's favor. However, the arbitrator stated that no evidence was presented on this issue, and thus rejected it as a basis for concluding that the ISO had authority to bill MOO charges for Bubble transactions.

13. In summary, the arbitrator stated that the ISO had the obligation to establish that it had the authority to impose the MOO charges at issue here. The arbitrator concluded, however, that the intricate ISO's arguments did not establish that the ISO had the authority to bill the charges at issue to PG&E as a scheduling coordinator. In contrast, the arbitrator found that the arguments and evidence of PG&E and Joint Intervenors were more persuasive.

14. Therefore, based on the determinations above, the arbitrator ordered the ISO to adjust billings to PG&E to reflect a full refund of all MOO charges for Bubble transactions through the close of the record ($14,319,378.14) and any additional amounts reflected in PG&E settlement statements after the close of the evidentiary record. The

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was a "proxy" scheduling coordinator, with a special identification to distinguish it. PG&E agreed to perform scheduling duties with the understanding that it would not be liable for the ISO charges associated with being a scheduling coordinator for those transactions. Arbitration Award at 34-35 (citing, *inter alia*, 111 FERC ¶ 61,078 at P 22); *see generally*, *Pacific Gas & Electric Company*, 93 FERC ¶ 61,322 at 62,102, 62,104-05 (2000), *reh'g denied*, 91 FERC ¶ 61,204 (2001).

arbitrator ordered the ISO to make all final, required adjustments to the bills of PG&E fully within 30 days of the award unless stayed. Finally, the arbitrator stated that, since neither PG&E nor the Joint Intervenors requested that any interest attach to the refunds and the ISO Tariff did not provide for refunds, the arbitrator would not order refunds.

Petitions For Review

15. On October 24, 2005, as amended on October 26, 2005, the ISO filed a petition for review of the Arbitration Award. The ISO argued that the arbitrator erred in finding that PG&E was not a scheduling coordinator for Bubble transactions. The ISO also claimed that the Arbitration Award was contrary to the Commission's ruling in Opinion No. 463-A, and that the arbitrator failed to reconcile Commission precedent regarding cost responsibility for MOO charges. Therefore, the ISO asked 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. In addition, the ISO asserted 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. The ISO also asked that the Commission establish appropriate procedures for reviewing the Arbitration Award that would allow all parties to fully present their arguments.

16. On October 24, 2005, PG&E filed a petition for review of the Arbitration Award. PG&E stated 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 orders in the COTP I proceeding, which found that PG&E was not a scheduling coordinator for Bubble transactions; (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 stated 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 argued that the arbitrator's failure to award interest is in error because PG&E 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 contended that the ISO Tariff allows interest, and that interest was awarded to PG&E in the COTP I orders. Therefore, PG&E petitioned to reverse the arbitrator's failure to award interest. PG&E also asked that the Commission establish appropriate procedures for reviewing the arbitrator's award.

Procedural Order

17. In the Procedural Order, among other things, the Commission granted the motions to intervene of Southern California Edison Company (Edison) and Joint Intervenors. It also found common issues of law and fact, and granted PG&E's and Joint Intervenors' motions to consolidate Docket Nos. EL06-10-000 and EL06-11-000 for purposes of

briefing and decision. In addition, the Commission established a schedule for the submission of briefs in this proceeding. In so doing, it stated that, 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. It added that, 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).

Initial Briefs

ISO

18. On February 13, 2006, the ISO filed its initial brief, stating that it is not challenging the refunds to PG&E that were ordered in the Arbitration Award, but only seeks to reverse the arbitrator's interpretations of Opinion No. 463-A. The ISO contends that, although section 13.4.2 of the ISO Tariff states that the Commission should afford substantial deference to the factual findings of the arbitrator, the arbitrator's legal conclusions should not receive such deference. Therefore, the ISO argues that since the Arbitration Award does not present legal analysis to support its conclusions, the Commission should review those conclusions *de novo*.

19. The ISO asserts that, as the basis for its position that PG&E was the responsible scheduling coordinator for Bubble transactions, it relied on the principles in Opinion No. 463-A. The ISO states that the arbitrator rejected these arguments, and reached legal conclusions regarding Opinion No. 463-A without explanation. Furthermore, the ISO contends that the arbitrator incorrectly found that applying Opinion No. 463-A did not make PG&E the responsible scheduling coordinator since it was not an "other appropriate party." Rather, the ISO claims that in Opinion No. 463-A the Commission found that PG&E was responsible, as a scheduling coordinator, for control area gross load charges. The ISO adds that, even if the Commission does not review the matter *de novo*, the Commission should conclude that the arbitrator failed to use reasoned decision-making.

20. Next, the ISO asserts that the arbitrator incorrectly relied on the COTP I orders to find that PG&E was not the scheduling coordinator for Bubble transactions. In this regard, the ISO asserts that the limited scope of the COTP I orders did not implicate the billing of charges allocated to control area gross load. In addition, the ISO asserts that the arbitrator incorrectly concluded that the ISO conceded in the GMC charges proceeding that the COTP I proceeding would be controlling as to whether it could impose any charges for Bubble transactions. The ISO also argues that the arbitrator incorrectly found that the RPTOA did not support a finding that PG&E was a scheduling coordinator for Bubble transactions.

Joint Intervenors

21. On February 13, 2006, as corrected on March 15, 2006, Joint Intervenors filed an initial brief arguing that the Commission should affirm the arbitrator's finding that the ISO had no authority to bill costs at issue to PG&E, and that PG&E was not the scheduling coordinator for Bubble transactions. They also ask that the Commission: (1) deny the ISO's request that the Commission review the award *de novo*; (2) deny the ISO's attempt to impermissibly expand the scope of the Commission's review of the Arbitration Award beyond the record that was before the arbitrator; and (3) grant other appropriate relief.

22. Specifically, Joint Intervenors argue that the arbitrator's conclusion that PG&E was not the scheduling coordinator for MOO charges for Bubble transactions is consistent with the ISO Tariff, the COTP I orders, the RPTOA, and the Interim Agreement and is not inconsistent with Opinion No. 463-A. They assert that under the ISO Tariff the ISO is only authorized to impose MOO charges on scheduling coordinators, and PG&E was not a scheduling coordinator. They claim that the arbitrator correctly found that Opinion No. 463-A did not extend its holding to MOO charges, and that Opinion No. 463-A did not state that PG&E was the scheduling coordinator for Bubble transactions. They also argue that in the COTP I orders the Commission clearly found that PG&E was not a scheduling coordinator for Bubble transactions.

23. Next, they state that the arbitrator found that under the RPTOA, PG&E agreed to be a scheduling coordinator for "transactions under the contracts listed in the agreements Appendix A, exclusively," and the existing contract that concerns Bubble transactions is the COA and the COA is not listed in Appendix A to the RPTOA. Thus, they contend that the arbitrator reasonably found that the RPTOA did not obligate PG&E to act as a scheduling coordinator for Bubble transactions. They also contend that the ISO and SMUD agreed that PG&E would act as proxy scheduling coordinator for Bubble transactions and not as an ISO-defined scheduling coordinator. They add that the extrinsic evidence, i.e., witnesses that testified that PG&E was never willing to be a scheduling coordinator for Bubble transactions, supported the arbitrator's finding.

24. Joint Intervenors next assert that the Commission should deny the ISO's request that the Commission review the Arbitration Award *de novo*. They claim that the substantial deference standard should be applied in reviewing the Arbitration Award, and that *de novo* review would be contrary to the language of the ISO Tariff. They add that the arbitrator stated that mixed issues of fact and law rather than purely legal interpretations underpin the arbitrator's conclusions.

PG&E

25. On February 13, 2006, PG&E filed an initial brief asking that the Commission find that the arbitrator erred in failing to award PG&E interest, and also asking that the Commission reject the ISO's claim that the proper standard of review on appeal of the merits is *de novo*.

26. PG&E argues that it has a right to interest on the Arbitration Award because: (1) it properly requested interest on the record during the arbitration hearing and in its pleadings and briefs; and (2) the ISO Tariff provides that the arbitrator shall award the relief requested by a party. In addition, PG&E maintains that no party will dispute its right to interest on the Arbitration Award, and, in fact, interest was not a disputed issue before the arbitrator. Therefore, PG&E maintains that the Commission can simply take notice of the record to reverse the arbitrator's holding.

27. PG&E also contends that the Commission should reject the ISO's request that the Commission review the arbitrator's findings *de novo*. PG&E argues that the ISO is attempting to litigate issues that were not before the arbitrator and, thus, are not properly before the Commission. PG&E claims that, under the ISO Tariff and Commission precedent, substantial deference is owed to the arbitrator's findings. PG&E also notes that the arbitrator found that this case involves mixed questions of law and fact, and mixed questions are reviewed under a substantial deference standard.

Reply Briefs

Joint Intervenors

28. On March 15, 2006, Joint Intervenors filed a reply brief arguing that the ISO's appeal is not based on any grounds specified in section 13.4.1 of the ISO Tariff. They state that under section 13.4.1 of the ISO Tariff, parties must limit their briefs to a discussion of whether or not the Arbitration Award is contrary to or beyond the scope of the relevant ISO documents, federal law, or state law, and that the ISO's issues relate to dicta in the arbitrator's decision and not the award itself. They argue that nothing in section 13.4.1 allows the ISO to seek review of an award on the basis of ensuring that the Arbitration Award is not accorded precedential value. They assert that the only issue properly before the Commission is the ISO's authority to bill the MOO charges at issue to PG&E, and not the ISO's authority to allocate GMC charges to loads within the Bubble. Thus, they ask that the Commission reject the ISO's petition.

29. They also maintain that the Commission should not review the arbitrator's decision *de novo* since the ISO has not shown any compelling reason why the Commission should depart from its policy, and section 13.4.2 of the ISO Tariff, according substantial deference to the arbitrator. They assert that the ISO is incorrect in

stating that this proceeding only involves issues of law, but rather the arbitrator stated that the issues are mixed fact and law. They argue that in this case, in addition to the ISO Tariff and contracts, experienced witnesses testified regarding the ISO Tariff and regarding the chronolology, context, and interrelation of the ISO Tariff and contract terms, and the extrinsic evidence provided by witnesses involved in the negotiations all provided factual evidence to support the Arbitration Award.

30. Joint Intervenors claim that the Commission should rule that the ISO arguments are outside the scope of this proceeding since it is an attempt to relitigate portions of the GMC charges proceeding and the COTP I orders, which are outside the scope of this proceeding. They argue that the arbitrator recognized that MOO charges can only be imposed on scheduling coordinators, not "other appropriate parties," because the relevant language in the ISO Tariff is limited to scheduling coordinators and only they are to be billed. They assert that, by taking issue with the arbitrator's ultimate conclusion as to "other appropriate parties" but not challenging the arbitrator's conclusion on appeal, the ISO is attempting to improperly invite the Commission to determine and identify to who the ISO may bill these charges. They claim that this issue was not before the arbitrator, and thus is not within the scope of issues that the ISO is allowed to appeal.

31. Joint Intervenors next argue that the merits of the ISO's arguments concerning Opinion No. 463-A are incorrect. Specifically, they claim that the ISO incorrectly seeks to apply Opinion No. 463-A's ruling that RPTOs may be billed GMC charges to find that PG&E is a scheduling coordinator and may be assessed ISO costs through the RPTOA. They argue that the ISO ignores that the specific transactions and contracts upon which the ISO seeks to assess MOO costs are not covered by the RPTOA, and thus the ISO's arguments are irrelevant. They maintain that Opinion No. 463-A does not support a finding that PG&E is the responsible billing entity here. Moreover, they argue that the arbitrator found that PG&E is the "proxy scheduling coordinator" for Bubble transactions and not the tariff-recognized scheduling coordinator, and thus there was no basis to assess PG&E MOO charges for Bubble transactions. They add that extrinsic evidence further shows that the RPTOA does not render PG&E a scheduling coordinator for MOO charges.

32. In addition, they assert that the Commission has found that PG&E was not a scheduling coordinator for Bubble transactions, and the ISO no longer contests the COTP I orders. They also argue that the ISO's request that the Commission clarify that it may bill PG&E ISO charges for Bubble transactions would be a collateral attack on the COTP I orders, and should be rejected.

PG&E

33. On March 15, 2006, PG&E filed a reply brief, noting that, while the ISO has decided not to continue to challenge the refunds ordered, the rest of the relief the ISO

requested should be rejected. PG&E argues that the ISO's request for a ruling to correct or vacate the arbitrator's alleged misstatements regarding Order No. 463-A should be denied because it fails to meet the "extraordinary circumstances" standard for vacatur. PG&E asserts that collection of control area services charges is not an issue in this case, and it is inappropriate for the ISO to ask for a ruling on that issue here since it is not a proper issue on appeal under the ISO Tariff. Thus, the ISO's request is an attempt to relitigate the GMC charges proceeding, and is an improper collateral attack.

Edison

34. On March 15, 2006, Edison filed a reply brief stating that Joint Intervenors erroneously implied that issues relating to the application of 2001-2003 GMC charges to Bubble transactions were outside the scope of the GMC charges proceeding. Edison argues that the Commission should disregard the statements made by Joint Intervenors regarding the scope of the GMC charges proceeding.

Rebuttal Briefs

ISO

35. On April 4, 2006, the ISO filed a rebuttal brief again arguing that the Commission should review the arbitrator's interpretation of Opinion No. 463-A *de novo*. The ISO states that it is only challenging the arbitrator's interpretation of Opinion Nos. 463 and 463-A and the underlying initial decision, and that the meaning of those decisions is clearly a legal issue. The ISO contends that questions of law are reviewed *de novo* and even though the Arbitration Award may include some legal issues, it does not justify the application of a substantial deference standard to the legal conclusions of the arbitrator. The ISO next argues that its appeal is properly before the Commission since it is simply asking the Commission to reverse conclusions of the arbitrator that are contrary to Commission orders, and section 13.4.1 of the ISO Tariff allows appeal of an arbitration award on the grounds that it is contrary to Commission decisions.

Joint Intervenors

36. On April 4, 2006, Joint Intervenors filed a rebuttal brief asserting that, because no party has appealed the ultimate holding of the arbitrator or the refund issue, the Commission should affirm the Arbitration Award and order refunds, with interest. They claim that the ISO and Edison instead are seeking to litigate in this proceeding the GMC charges, an issue that is before the Commission in a separate proceeding in Docket Nos. ER01-313-000, *et al*. In this regard, they argue that the ISO Tariff establishes the parties' right to appeal the Arbitration Award, and does not authorize parties to seek clarification of, or advisory opinions on, collateral and irrelevant issues. They add that

the Commission should reject or ignore any new issues any parties seek to inject in this proceeding.

37. Joint Intervenors next contend that the Commission should reject Edison's reply brief because, under section 13.4.1 of the ISO Tariff, the parties must limit their briefs to a discussion of whether the Arbitration Award was contrary to or beyond the scope of relevant authority. They contend that the issue Edison raises involves Commission interpretation of the scope of the GMC charges proceeding, and that is not relevant to the appeal of the arbitrator's determination that the ISO must refund the MOO charges at issue to PG&E because PG&E is not the scheduling coordinator for Bubble transactions.

38. Joint Intervenors next maintain that the Commission should reject the extra-record evidence that Edison offers. In this regard, Joint Intervenors cite to the Procedural Order in this proceeding that warned the parties not to expand the record. They argue that the documents offered by Edison predate the Arbitration Award, and Edison has not alleged that the Arbitration Award was based on fraud, collusion, misconduct, or misrepresentation. Thus, they ask the Commission to reject the extra-record evidence, and also rule that Edison has waived any right to add extra-record evidence because Edison voluntarily withdrew from the proceeding before the arbitrator.

Discussion

39. The Commission has long recognized the value of parties seeking to resolve disputes through means other than formal litigation before the Commission, and thus has stated that it is desirable and appropriate, if otherwise consistent with the public interest, for the Commission to adhere to the results of a binding arbitration award given that arbitration is a valuable way to avoid time-consuming and expensive administrative proceedings.[7] The ISO Tariff thus provides for arbitration and, specifically, section 13 of the ISO Tariff provides the basis of an appeal of an arbitration award. Section 13.4.1 states that: "A party may apply to the FERC . . . to hear an appeal of an arbitration award only upon the grounds that the award is contrary to or beyond the scope of the relevant ISO documents, United States federal law, including, without limitation, the FPA, and any FERC regulations and decisions, or state law." In addition, section 13.4.2 of the ISO Tariff states that: "The parties intend that FERC should afford substantial deference to the factual findings of the arbitrator."

[7] *E.g.*, *Policy Statement Regarding Regional Transmission Groups*, FERC Stats. & Regs. Regulations Preambles January 1991-June 1996¶ 30,976 at 30,877 (1993). *See also* Cities *of Anaheim*, 107 FERC ¶ 61,070, at P 33 (2004); *California Power Exchange Corporation*, 88 FERC ¶ 61,112, at 61,266 (1999).

40. As discussed below, we affirm the Arbitration Award with regard to refunds, and deny the ISO's petition for review. However, we reverse the Arbitration Award on the issue of interest on refunds, and will grant PG&E's petition for review, accordingly. We also reject the ISO's request that we review the arbitrator's decision *de novo*, and, following the ISO Tariff, we accord substantial deference to the arbitrator's factual findings relating to the meaning of the ISO Tariff provisions in dispute here.

ISO's Petition for Review

41. Under section 2.5.23.3.6.1 of the ISO Tariff, "each scheduling coordinator shall be obligated to pay a charge . . . incurred by a Must-Offer Generator . . . ." "The ISO shall levy this administrative charge . . . against all Scheduling Coordinators based upon each Scheduling Coordinator's Control Area Gross Load and Demand within California outside of the ISO Control Area . . . ." Thus, the arbitrator correctly found that the ISO Tariff clearly provides that it is scheduling coordinators upon whom MOO charges are to be levied, and it is scheduling coordinators only who are obligated to make payments; we agree with the arbitrator that the issue here is whether PG&E is an ISO-Tariff-defined scheduling coordinator for purposes of assessing MOO charges for Bubble transactions.[8]

42. We emphasize that the ISO does not disagree with the Arbitration Award, but rather with the arbitrator's interpretation of the law. However, the arbitrator correctly stated that, in the COTP I orders, we found that PG&E was not an ISO-Tariff-defined scheduling coordinator for Bubble transactions. Moreover, in the COTP I orders, we found that in rejecting the ISO's Amendment No. 2 we understood that PG&E was not willing to be a scheduling coordinator under the ISO Tariff for Bubble transactions.[9] Thus, we agree with the arbitrator's finding that, as relevant here, PG&E was not the scheduling coordinator for Bubble transactions, and the ISO should not have billed PG&E for those charges.

43. We also give substantial deference to the arbitrator's factual findings. The arbitrator explained that testimony established that PG&E was not willing to be a scheduling coordinator for Bubble transactions, and the arbitrator noted that the ISO did not present evidence to rebut this testimony. The arbitrator also found that the ISO's sole witness appeared to concede and concur that charges can only be imposed on scheduling coordinators. In addition, the arbitrator found that the Interim Agreement, entered into by

[8] As noted above, *see supra* note 2, in this order we define COTP, SMUD, and WAPA transactions collectively as Bubble transactions.

[9] *COTP I*, 111 FERC ¶ 61,078 at P 21-22.

the ISO, PG&E, and SMUD in 1998, established that PG&E was the proxy scheduling coordinator for Bubble transactions, which have a special COTP identification to distinguish them, and not a scheduling coordinator. Furthermore, the arbitrator found that PG&E's intent in entering into the RPTOA was to be the scheduling coordinator only for the contracts listed in Appendix A of the RPTOA, and that for the ISO to have authority through the RPTOA to bill PG&E as a scheduling coordinator, the COA would have to be listed in Appendix A of the RPTOA, and the COA was not listed.

44. We disagree with the ISO and Edison that Opinion No. 463-A in Docket No. ER01-313-000, *et al.*, is pertinent in the proceeding before us. Docket No. ER01-313-000, *et al.*, involved cost allocation for control area services charges with a behind-the-meter exception that is not relevant here. In contrast, the issue in this proceeding is whether PG&E is a scheduling coordinator for Bubble transactions, and the arbitrator properly found that PG&E was not. We also see no reason to re-examine and opine on the issues in the GMC charges proceedings.

45. In addition, consistent with section 13.4.2 of the ISO Tariff, we reject Edison's attempt to expand the record that was before the arbitrator to the extent it has provided extra-record evidence as part of its reply brief.

PG&E's Petition for Review

46. We agree with PG&E that it has a right to interest on the Arbitration Award because it properly requested interest on the record during the arbitration hearing and in its pleadings and briefs. In PG&E's statement of claim before the arbitrator, PG&E expressly stated that it was requesting interest on the MOO charges the ISO had imposed.[10] Furthermore, in PG&E's pre-hearing brief it again expressly requested interest on the improper charges.[11] We also find that, at oral argument, PG&E expressly included interest in its request for relief.[12] In addition, the ISO Tariff provides the arbitrator the "discretion to grant the relief requested by a party."[13] Moreover, we note that in none of the earlier pleadings did any party dispute PG&E's right to interest on the Arbitration Award, and interest was not a disputed issue. Therefore, we will reverse the arbitrator as to interest and order refunds, with interest, as PG&E requested.

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[10] PG&E's Statement of Claim at 4.

[11] *Id.*

[12] Tr. 935 11.14-19.

[13] ISO Tariff section 13.3.5.1.

The Commission orders:

(A) The ISO's petition for review is hereby denied.

(B) PG&E's petition for review is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.