

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System )  
Operator Corporation ) Docket No. ER98-992-001  
)  
)

**ANSWER OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
TO MOTIONS TO INTERVENE AND PROTEST**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (1997), the California Independent System Operator Corporation ("ISO") submits this answer to the motions to intervene submitted in this docket. The ISO does not oppose any of the interventions. For the reasons discussed herein, the protest filed by CalEnergy Company, Inc. ("CalEnergy") should be denied. The protest does not concern any of the changes reflected in the compliance filing, but rather seeks to interject new issues that CalEnergy failed to raise in a timely manner when the agreements were filed and originally noticed by the Commission.

## I. BACKGROUND

On June 1, 1998, the ISO submitted a compliance filing amending the ISO Tariff (including the ISO Protocols), the ISO Code of Conduct, the Transmission Control Agreement, certain of the ISO's pro forma operating agreements, and certain of the ISO's bilateral operating agreements.<sup>1</sup> Included in the June 1, 1998, compliance filing were amendments to the pro forma and bilateral Participating Generator Agreements ("PGAs").<sup>2</sup>

The Commission noticed the ISO's filing on June 9, 1998, with interventions and protests due by August 5, 1998. The Commission specified that comments related to the pro forma and bilateral PGAs were to be submitted in Docket No. ER98-992-001.

Interventions were filed by five parties: the California Electricity Oversight Board, the Western Area Power Administration, the California Department of Water Resources, Enron Power Marketing, Inc., and CalEnergy. Only CalEnergy raised substantive issues concerning the PGAs, but these issues are not compliance issues. The ISO will discuss these concerns below.<sup>3</sup> By order dated

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<sup>1</sup> Capitalized terms used herein and not defined are used with the meanings given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

<sup>2</sup> By orders dated February 25, 1998, California Independent System Operator Corporation, 82 FERC ¶ 61,174 and March 30, 1998, California Independent System Operator Corporation, 82 FERC ¶ 61,326, the Commission conditionally accepted the PGAs for filing and directed the ISO to revise the PGAs to conform to the order issued December 17, 1997, Pacific Gas and Electric Co., et al., 81 FERC ¶ 61,320 (1997). The amendments were to be filed within 60 days of the start of ISO operations. 82 FERC at 61,620 and 62,286.

<sup>3</sup> Notwithstanding Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), the Commission has accepted answers to protests that assist the Commission's understanding and resolution of the issues raised in a protest, Long Island Lighting Co., 82 FERC ¶ 61,129 at 61,462 (1998), clarify matters under consideration, Arizona Public Service Co., 82 FERC ¶ 61,132 at 61,477 n.11 (1998); Tennessee Gas Pipeline Co., 82 FERC ¶ 61,045 at 61,186 n.5 (1998), or materially aid the Commission's disposition of a matter, El Paso Natural Gas Co.,

August 14, 1998, the Commission granted the ISO's motion for an extension of time to respond to all of the interventions in the various compliance dockets, including this matter.

## II. DISCUSSION

The ISO does not oppose the intervention of the parties that have moved to intervene in this proceeding. CalEnergy does not oppose any of the specific amendments to the PGAs submitted in the June 1, 1998 compliance filing. Instead, CalEnergy attempts to interject three new issues into the proceeding. CalEnergy seeks an order from the Commission that would: (1) eliminate the requirement that a PGA be signed by a generator who wishes to schedule Energy and Ancillary Services to the ISO Controlled Grid if that generator is located outside of the ISO's control area; (2) make the terms of the PGA subject to other contractual commitments of the generation owner and the orders of the local control area operator; and (3) require that the exemption in Section 2.2.1 of the PGA (concerning generators with existing power purchase arrangements with Utility Distribution Companies) be made binding on the ISO. CalEnergy Protest at 5.

First, CalEnergy's pleading is untimely. The issues raised by CalEnergy are unrelated to the changes reflected in the ISO's June 1, 1998, compliance filing, and CalEnergy failed to express these concerns when the PGAs were first

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82 FERC ¶ 61,052 at 61,200 (1998). The ISO's Answer will clarify matters under consideration, aid the Commission's understanding and resolution of the issues and help the Commission to achieve a more accurate and complete record, on which all parties are afforded the opportunity to respond to one another's concerns. Northern Border Pipeline Co., 81 FERC ¶ 61,402 at 62,844 n.16 (1997); Hopkinton LNG Corp., 81 FERC ¶ 61,291 at 62,382 n.4 (1997). The Commission should accordingly accept this Answer.

filed. It is improper for it to do so now. Second, CalEnergy's substantive concerns regarding the PGA are misplaced. Third, the ISO has always recognized that the pro forma PGA may have to be modified to reflect a party's individual circumstances. The ISO maintains, however, that the proper time to raise such issues is when the particular agreement is being negotiated between the ISO and the generator. Fourth, the ISO believes CalEnergy's concern with respect to Section 2.2.1 of the PGA is unfounded.

The ISO has filed approximately 25 PGAs. CalEnergy has failed to intervene and raise these issues in response to any of these submissions. The ISO notes that CalEnergy is absent from the list of intervenors for the PGA dockets in the appendices to the Commission's February 25, 1998, and March 30, 1998, Orders. See California Independent System Operator Corporation, 82 FERC at 61,627; California Independent System Operator Corporation, 82 FERC at 62,288-89. Prior to its August 5, 1998, filing, CalEnergy has not sought to participate in the ongoing proceedings before Judge Delbert R. Terrill, Jr. in Docket Nos. ER98-992-000 et al. The parties in that case have agreed to a Joint Statement of Issues that does not include the new concerns raised by CalEnergy.<sup>4</sup>

The concerns raised by CalEnergy, even if timely, are not founded. Section 5.1.5 of the ISO Tariff explicitly provides that the ISO shall honor all contractual right and obligations for Regulatory Must-Take Generation. The PGA specifically provides for the honoring of Existing Contracts.<sup>5</sup> Regarding CalEnergy's concern with being required to sign a PGA if the generator is outside

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<sup>4</sup> See Joint Statement of Issues filed on August 17, 1998, in Docket Nos. ER98-992-000 et al.

<sup>5</sup> PGA at Section 2.2.1 and 4.2.

of the ISO Control Area, a PGA is not required. Energy scheduled into the ISO Control Area is an import, not a generation resource and therefore does not require an executed PGA. Additionally, with the implementation of Amendment No. 10 to the ISO Tariff, Scheduling Coordinators outside of the ISO Control Area may schedule Ancillary Services also as an import.

With regard to CalEnergy's concern with the orders of other control Area operators, the ISO already has agreements with adjacent Control Areas to resolve issues of control. In fact, the ISO has filed with the Commission six Interconnected Control Area Operating Agreements with adjacent Control Areas and two others are being finalized. If CalEnergy has a concern with operating orders from local Control Area operators, such issues should be raised with the Control Area operator where the plant resides.

As noted above, the ISO is not seeking to preclude Participating Generator seeking to schedule electricity deliveries to California from raising particular concerns when negotiating its individual PGA. If there are specific or unique circumstances concerning that generator that warrant modification to the pro forma PGA terms and conditions, these should be addressed in the bilateral negotiations between the ISO and that generator. This approach properly places the burden on the generator, with better knowledge of its specific circumstances, to explain why the pro forma terms would impose an undue hardship.

The ISO believes CalEnergy's concern with respect to Section 2.2.1 of the PGA is unfounded. Section 2.2.1 of the PGA establishes the specific requirements of exemptions allowed in Section 5.1.4 of the ISO Tariff. This practice is consistent with everything the ISO has done. Each of the ISO's agreements and the ISO Protocols are meant to be the explicit requirements addressed in the ISO Tariff.

### III. CONCLUSION

Wherefore, for the reasons stated herein, the ISO respectfully requests that the motions to intervene be granted and that its compliance filing concerning the pro forma and bilateral PGAs be accepted without modification. The ISO also respectfully requests that CalEnergy's protest be denied.

Respectfully submitted,

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Dated: September 3, 1998

**CERTIFICATE OF SERVICE**

I hereby certify I have this day served this document upon each person designated on the official service list compiled by the Secretary in this docket 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. on this 3<sup>rd</sup> day of September, 1998.

David B. Rubin

September 3, 1998

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. ER98-992-001**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Answer of the California Independent System Operator Corporation To Motions To Intervene and Protest in the above-captioned docket.

Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,

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Enclosures  
cc: Service List

