

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

)
)
)

Docket No. EL98-71-000

**RENEWED MOTION TO INTERVENE AND LIMITED COMMENTS OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, and the Commission's March 23, 1999 Notice of Filing, the California Independent System Operator Corporation ("California ISO") hereby renews its motion to intervene in the above-captioned proceeding and submits limited comments upon the filing made by PJM Interconnection, L.L.C. ("PJM") in this proceeding on March 16, 1999.

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

N. Beth Emery
Vice President and General Counsel
Roger E. Smith, Regulatory Counsel
The California Independent System

Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-2334
Fax: (916) 351-2350

Edward Berlin
Kenneth G. Jaffe
Sean A. Atkins
Swidler Berlin Shereff Friedman,
LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
Tel: (202) 424-7504
Fax: (202) 424-7643

II. BACKGROUND

On August 14, 1998, PJM filed a petition in the above-captioned docket requesting a temporary waiver of Part 382 of the Commission's regulations, 18 C.F.R.

Part 382, governing the assessment of annual charges under Parts II and III of the Federal Power Act and related statutes. PJM is the Independent System Operator ("ISO") for the five-state PJM control area. In its petition, PJM noted that there is significant uncertainty as to the applicability of the Commission's annual charge regulations to the activities of ISOs and Power Exchanges ("PXs"). PJM contends either that it should not be subject to the Commission's annual charge regulations or that the Commission should temper the application of those regulations to prevent the imposition of a disproportionate assessment of annual charges on PJM. In the petition, PJM requests that the Commission provide the following relief:

- grant PJM a temporary waiver, to the extent necessary, of Part 382 of the Commission's regulations and exempt PJM from the assessment of annual charges until the Commission clarifies the applicability of annual charges to ISOs;
- in the alternative, grant PJM a temporary waiver and exemption from the assessment of annual charges for 1998 transactions; or
- in the event the Commission does not grant a waiver, permit PJM to collect the costs of the Commission's annual charges retroactively through its Schedule 1 formula rate from customers that conducted transactions in 1998.

On September 18, 1998, the California ISO submitted a Motion to Intervene and Comments in the above-captioned proceeding ("September 18 Motion"). As noted below, the ISO generally supports PJM's petition and offers a number of comments on the applicability of the Commission's annual charge regulations to Independent System Operators.

To date, the Commission has not acted on PJM's petition. On March 16, 1999, PJM filed an amendment to its petition for temporary waiver of the Commission's annual charge regulations. In that amendment, PJM explained that it is still not in a

position to collect the cost of annual charges from PJM's customers due to the ongoing uncertainty as to the applicability of the annual charge regulations to an entity such as PJM. PJM therefore requested that the relief requested in its petition be modified such that a temporary waiver apply for all transactions occurring prior to the date the Commission issues an order in the above-captioned proceeding; or, in the event the Commission does not grant such a waiver, that PJM be permitted to collect the costs of FERC annual charges retroactively from customers that conducted transactions prior to the date the Commission issues an order in the above-captioned proceeding.

III. RENEWED MOTION TO INTERVENE

The California ISO is a non-profit public benefit corporation organized under the laws of the State of California as the ISO for the California market. The California ISO is responsible for the reliable operation of a grid comprising the transmission systems of Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas and Electric Company. All costs associated with fulfilling this function, including those costs associated with ensuring California ISO compliance with regulatory requirements and with the operation and administration of the California ISO, are recovered from market participants through cost-recovery mechanisms that include a monthly Grid Management Charge ("GMC"). The California ISO therefore has a unique interest in any FERC proceeding that could affect the operation of ISOs, impose new or expanded regulatory requirements upon ISOs, or result in the assessment of any costs or charges against ISOs.

As explained in the California ISO's September 18 Motion, this proceeding raises certain issues not yet addressed by the Commission concerning the applicability of Part 382 of the Commission's regulations to ISOs and the assessment of annual charges

against ISOs. The California ISO therefore has an interest in this proceeding which cannot adequately be represented by any other party. Accordingly, the California ISO respectfully requests that it be permitted to intervene herein with full rights of a party.

IV. LIMITED COMMENTS

The California ISO submitted substantial comments on the issues raised by PJM's petition in its September 18 Motion. The ISO incorporates those comments herein by reference. The ISO continues to support PJM's petition, while noting that there are significant differences between an entity like PJM and the California ISO. Of greatest significance is the fact that the rates for recovering the embedded costs of the transmission facilities operated by the California ISO are recovered under individual tariffs filed by the public utility owners of those facilities. In addition, unlike PJM, the California ISO does not discharge the function of a PX. In addressing PJM's petition, the Commission should recognize that differences among the structures and operations of ISOs may lead to the application of Part 382 in different ways.

Nonetheless, there are a number of common issues concerning the applicability of Part 382 to all ISOs which the California ISO briefly reiterates here. First, ISO's should not be assessed transmission-based annual charges when such charges are already collected from the owners of transmission facilities. Such an assessment would be contrary to the plain meaning of the Commission's annual charge regulations and would result in duplicative assessments of FERC annual charges for a single transaction being borne by the end-use consumers in control areas serviced by an ISO. To the extent that excessive charges might be assessed against ISOs, the consumers in those control areas would be placed at an economic disadvantage. This could only

discourage the formation of and participation in ISOs, contrary to Commission policy. A similar result would be reached if transactions which would not otherwise be subject to FERC annual charge assessment become subject to such charges when conducted through an ISO. As explained more fully in the California ISO's September 18 Motion, all of these issues must be taken into account in the Commission's determination of how Part 382 will apply to ISOs.

Moreover, the continued uncertainty as to the applicability of Part 382 to Independent System Operators has placed many ISOs in a dilemma. ISOs have been uncertain what amount, if any, to collect from customers or market participants for FERC annual charge assessment. As noted in the September 18 Motion, many ISOs, like PJM and the California ISO, are structured as non-profit entities, whose only revenue is through customer and market participant cost-recovery mechanisms. To the extent that the Commission assesses annual charges against ISOs for past transactions in excess of any amount so collected, the California ISO urges the Commission to recognize that such ISOs must be provided a make-whole adjustment mechanism. While this make-whole mechanism will probably have to vary based on the distinctions between individual ISOs, in the case of PJM, the relief requested in its amended petition appears to be appropriate. The ISO therefore supports the granting of PJM's amendment to its petition in this proceeding and requests that the Commission recognize that other ISOs may properly seek similar forms of relief once the Commission has acted in this proceeding or made its position on the applicability of Part 382 to ISOs more clear.

V. CONCLUSION

Based on the foregoing, the California ISO respectfully requests that the Commission permit it to intervene and accord it full party status in this proceeding and that the Commission act on PJM's amended petition in this proceeding consistent with the comments submitted on September 18, 1998, and the limited comments above.

Respectfully submitted,

N. Beth Emery
Vice President and General Counsel
Roger E. Smith, Regulatory Counsel
The California Independent
LLP
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-2334
Fax: (916) 351-2350

Edward Berlin
Kenneth G. Jaffe
Mark R. Klupt
Swidler Berlin Shereff Friedman,

3000 K Street, N.W., #300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Attorneys for the California Independent System Operator Corporation

Date: April 15, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this Docket No. EL98-71-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (1998).

Dated at Washington, D.C. on this 15th day of April, 1999.

Mark R. Klupt

April 15, 1999

David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: PJM Interconnection, L.L.C.
Docket No. EL98-71-000

Dear Secretary Boergers:

Enclosed for filing is one original and 14 copies of the Renewed Motion to Intervene and Limited Comments of the California Independent System Operator Corporation in the above-referenced docket. An additional copy of the filing is also enclosed. Please stamp the additional copy with the date and time filed and return it to the messenger.

Thank you for your assistance in this matter.

Respectfully submitted,

Edward Berlin
Kenneth G. Jaffe
Mark R. Klupt

Attorneys for the California
Independent System Operator Corporation