

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System	)	
Operator Corporation	)	Docket No. ER99-2407-000
	)	
	)	

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

On April 7, 1999, the California Independent System Operator Corporation (“ISO”) filed Amendment No. 15 to the ISO Tariff,<sup>1</sup> necessary to implement portions of the Reliability Must-Run Settlement filed on April 2, 1999, in Docket Nos. ER98-441-000, ER98-495-000, ER98-496-000 *et al* (“RMR Settlement”). Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 CFR § 385.213, the ISO hereby submits its Answer to the Motions to Intervene and Comments submitted in response to the April 7<sup>th</sup> filing.

The ISO does not oppose any of the requests to intervene and, as explained below, does agree that certain non-substantive modifications to Amendment No. 15 are appropriate. However, to the extent that substantive changes have been advanced, they should be rejected as unsupported and as inconsistent with the carefully crafted balance that Amendment No. 15 seeks to achieve in furtherance of the agreements reached by the settling parties.

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<sup>1</sup> Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.

## **I. Introduction**

### **A. Amendment No. 15**

As explained in the transmittal letter that accompanied Amendment No. 15, the proposed tariff changes are necessary to implement portions of the RMR Settlement. The parties to that settlement engaged in negotiations for more than a year. The content of Amendment No. 15, like all elements of the RMR Settlement, reflects a delicate compromise and any substantive modification would be inconsistent with an interest important to some party whose active support is critical to implementation. Furthermore, as the ISO noted in its transmittal, because Amendment No. 15 is integrally related to the Settlement it should be accepted only if and when the Commission approves both the RMR Settlement and the Tariff changes without substantive change.

The revisions proposed by Amendment No. 15 can be grouped into five major categories: 1) provisions concerning billing and payment procedures; 2) provisions concerning reliability must-run payments and charges computation; 3) provisions concerning the generation capacity bid into the Ancillary Services Day-Ahead Market; 4) provisions relating to calling RMR Units for addressing Intra-Zonal congestion; and 5) provisions updating and adding to the Master Definitions Supplement.

### **B. Interventions**

A notice of intervention was filed by the Public Utilities Commission of the State of California (“CPUC”) and motions to intervene were filed by numerous

parties.<sup>2</sup> In addition several parties filed motions to intervene and comments.<sup>3</sup> Most intervenors indicated support for the majority of changes proposed by Amendment No. 15.

## **II. Answer to Comments<sup>4</sup>**

### **A. Comments of Modesto, TANC and MWD**

Modesto, TANC and MWD submitted identical comments, without taking issue with any specific portion of Amendment No. 15 as it relates to the implementation of the RMR Settlement. Their concern relates to the incorporation of a Tariff modification originally proposed as part of the ISO's Amendment No. 14,<sup>5</sup> and they request that consideration of these changes occur in the earlier docket. To the extent that Amendment No. 15 would add modifications, no objections are advanced to those changes.

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<sup>2</sup> Timely motions to intervene were filed by California Department of Water Resources ("DWR"); California Electricity Oversight Board; Turlock Irrigation District ("Turlock"); Western Area Power Administration ("WAPA"); The Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency; Southern Energy California, L.L.C., Southern Energy Potrero, L.L.C. and Southern Energy Delta, L.L.C.; Southern California Edison Company ("SCE"); San Diego Gas & Electric Company ("SDG&E"); and California Power Exchange Corporation ("PX"). In addition Electric Clearinghouse, Inc. filed a motion to intervene out of time.

<sup>3</sup> The following parties filed motions to intervene and comments: Sacramento Municipal Utility District ("SMUD"); The Metropolitan Water District of Southern California ("MWD"); Pacific Gas and Electric Company ("PG&E"); Transmission Agency of Northern California ("TANC"); and Modesto Irrigation District ("Modesto").

<sup>4</sup> There is no prohibition on the ISO's responding to the comments in these pleadings. The ISO is entitled to respond to these pleadings and requests notwithstanding the label applied to them. *Florida Power & Light Company*, 67 FERC ¶ 61,315 (1994). In the event that any portion of this answer is deemed an answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R. §385.213) to permit it to make this answer. Good cause for this waiver exists here given the nature and complexity of this proceeding and the usefulness of this answer in ensuring the development of a complete record. *See, e.g., Enron Corporation*, 78 FERC ¶ 61,179 at 61,733, 61,741 (1997); *El Paso Electric Company*, 68 FERC ¶ 61,181 at 61,899 & n.57 (1994).

<sup>5</sup> Amendment No. 14 to the California Independent System Operator Tariff and Protocols, Docket No. ER99-1971-000, filed March 1, 1999 ("Amendment No. 14").

The ISO agrees that consideration of the concerns raised by these parties should take place in the Amendment No. 14 docket. If, as a result of that consideration, modifications to the Tariff filing are determined to be necessary, the ISO will file appropriate compliance modifications to Amendment No. 15.

**B. Comments of SMUD**

SMUD has submitted three comments. The first concerns the modifications to Sections 2.5.14 and 2.5.17 that would permit the ISO to procure Ancillary Services after the close of the PX Day-Ahead Market. Under these modifications, suppliers would be compensated at their bid price, probably in excess of the Market Clearing Price. SMUD's concern is that out-of-market purchases will increase and add to the uplift charges that are shared by all Market Participants and, further, that it will be difficult for Market Participants to identify the source of uplift charges.

SMUD's representation that the cost of Ancillary Services procured by the ISO is an uplift cost is unique. To the contrary, the cost of Ancillary Services procured by the ISO is charged only to the Scheduling Coordinator requiring such specific Ancillary Service.

SMUD argues that the cost of Ancillary Services procured at bid price after the close of the Day-Ahead Market should be reported to Market Participants or, alternatively, that the bids should be considered as offered and accepted in the Hour-Ahead Market.

The reason for the procurement of such Ancillary Services after the close of the Day-Ahead Market, and prior to the start of the Hour-Ahead Market, is

likely to be because of a special operating condition which has arisen or a potentially critical operating situation which requires the Ancillary Service to be available prior to the start of the Hour-Ahead Market.

The requirement for publication of the data that SMUD requests was not considered in the context of the RMR Settlement, and the ISO believes that it would thus be inappropriate to incorporate such a requirement in Amendment No. 15. However, with the benefit of market experience gained under the ISO Tariff as revised by Amendment No. 15, the ISO would, if justified by that experience, reconsider the publication of such data.

Amendment No. 15 revises Sections 2.5.22.8 and 7.2.6.2 of the ISO Tariff to give the ISO the flexibility to use RMR units for managing Intra-Zonal Congestion. SMUD is concerned that when RMR generation is used and priced in this manner, Market Participants are not necessarily aware of whether these above-market costs are considered by the ISO in its review of zone configurations. Therefore, SMUD recommends that the ISO be required to calculate and report its total above-market variable operating costs for RMR Units used for local area voltage support and other Intra-Zonal Congestion management. SMUD also suggests that these above-market costs should be included in the 5% criteria for the ISO's consideration of whether it needs to modify its existing price zones or create new zones.

The RMR variable cost information that SMUD requests the ISO be required to report is filed with the Commission, and is therefore a matter of public record. In addition, Article IX.A.(iv) of the Stipulation and Agreement submitted in

Dockets Nos. ER98-441-000, ER98-495-000, ER98-496-000 *et al.* requires the ISO to publish annual reports that will include variable cost payments. The ISO believes that these sources provide sufficient public information and additional reporting is not required.

SMUD's suggestion that the variable operating costs used for managing Intra-Zonal Congestion be considered for the purpose of determining whether to create new zones is more problematic. The market design reflected in the ISO Tariff relies upon RMR Units both to address local reliability concerns and to manage Intra-Zonal Congestion. There is no mechanism for segregating the RMR costs associated with each of those separate RMR functions, which are borne by the Responsible Utilities rather than the market. The ISO does not believe at this time that the benefits of including RMR costs in the section 7.2.7.2.1 zonal determination justify the effort and expense of creating the mechanisms to track these costs separately.

Among the changes in Amendment No. 15, the ISO amended Section 7.2.6.2 to incorporate the ISO's ability to use RMR units for Intra-Zonal Congestion (and the limitations on that ability) included in Section 5.2 of the ISO Tariff. In Docket No. ER98-3760-000, the unresolved tariff issues docket, several parties, including SMUD, protested the sentence "[t]he ISO will also use Adjustment Bids to decrement Generation in order to accommodate Reliability Must-Run Generation which the ISO requests under Reliability Must-Run Contracts" that is included in Section 7.2.6.2. The parties have reached a settlement in Docket No. ER98-3760-000 and are preparing the Offer of

Settlement to be submitted to the Commission for approval. SMUD is concerned that the above-quoted sentence, which is contained in the Amendment No. 15 filing, might conflict with the outcome of the unresolved issues proceeding. However, the ISO has agreed with the parties numerous times that any changes agreed to in the unresolved issues proceeding will be included in the unresolved issues Offer of Settlement, and once the parties have agreed to the draft, the filing will be made with the Commission.

### **C. Comments of PG&E**

PG&E generally supports the proposed tariff changes in ISO Amendment No. 15 and believes that they are consistent with the Settlement. PG&E did suggest three non-substantive changes that the ISO agrees to adopt.

First, PG&E is concerned that the term “Responsible Utility invoice” has been omitted from the first sentence of Section 5.2.7.1.3 that addresses errors, breaches, or defaults under the RMR Contracts. The ISO agrees with PG&E and agrees to make a compliance filing to change the opening of the first sentence of Section 5.2.7.1.3 to read:

If the Responsible Utility disputes a final Estimated RMR Invoice, ~~or~~ final Adjusted RMR Invoice or Responsible Utility invoice based in whole or in part on an alleged error by the ISO or breach or default of the ISO’s obligations to the Responsible Utility, the Responsible Utility shall notify the ISO of such dispute prior to the later to occur of (i) the date 12 months following the date on which the ISO submitted such invoice to the Responsible Utility for payment or (ii) the date 60 days following the date on which a final report is issued in connection with an operational audit, pursuant to Section 12.2.2, of the ISO’s performance of its obligations to Responsible Utilities under this Section 5.2.7 conducted by an independent third party selected by the ISO Governing Board and covering the period to which such alleged dispute relates.

PG&E next comments that Section 5.2.7.2 of the ISO Tariff states that an RMR Owner's rights are subject to Section 13 of the ISO Tariff and that either the ISO or RMR Owner can be a "disputing party" under Section 13. On the other hand, Section 5.2.7.1.4 states that "notwithstanding Article 13," disputes shall be resolved through the dispute resolution process specified in the relevant RMR Contract. PG&E maintains that Section 5.2.7.2 should be modified to be consistent with Section 5.2.7.1.4

The ISO agrees with PG&E and commits to making a compliance filing to change Section 5.2.7.2 to read as follows:

The RMR Owner shall, to the extent set forth herein, be a third party beneficiary of, and have all rights that the ISO has under the ISO Tariff, at law, in equity or otherwise, to enforce the Responsible Utility's obligations to pay all sums invoiced to it in the Responsible Utility invoices but not paid by the Responsible Utility, to the extent that, as a result of the Responsible Utility's failure to pay, the ISO does not pay the RMR Owner on a timely basis amounts due under the Reliability Must-Run Contract. The RMR Owner's rights as a third party beneficiary shall be no greater than the ISO's rights and shall be subject to the dispute resolution process specified in the relevant RMR Contract ~~Section 13 of this ISO Tariff regarding dispute resolution~~. Either the ISO or the RMR Owner (but not both) will be entitled to enforce any claim arising from an unpaid Responsible Utility invoice, and only one party will be a "disputing party" under ~~Section 13 of the ISO Tariff~~ the dispute resolution process specified in the relevant RMR Contract with respect to such claim so that the Responsible Utility will not be subject to duplicative claims or recoveries. The RMR Owner shall have the right to control the disposition of claims against the Responsible Utility for nonpayments that result in payment defaults by the ISO under a Reliability Must-Run Contract. To that end, in the event of nonpayment by the Responsible Utility of amounts due under the Responsible Utility invoice, the ISO will not take any action to enforce its rights against the Responsible Utility unless the ISO is requested to do so by the RMR Owner. The ISO shall cooperate with RMR Owner in a timely manner as necessary or appropriate to most fully effectuate the RMR Owner's rights related to such enforcement, including using its best efforts to enforce the



Responsible Utility's payment obligations if, as, to the extent, and within the time frame, requested by the RMR Owner. The ISO shall intervene and participate where procedurally necessary to the assertion of a claim by the RMR Owner.

Finally, PG&E comments that on page 2 of the transmittal letter to Amendment No. 15, the ISO discusses proposed changes to Section 5.2.7 and Settlement and Billing Protocol Annex 1 which provides that the ISO will establish for each Reliability Must-Run Contract a Facility Trust Account which shall have two segregated bank accounts, the RMR Owner Facility Trust Account and the Responsible Utility Facility Trust Account. The last sentence on page 2 of the transmittal letter states that "[r]efunds, if any, received by the ISO from the RMR Owner under the payment provisions of the Reliability Must-Run Contract following termination of such Contract will be deposited into the Responsible Utility Facility Trust Account and withdrawn from such Account and paid to the Responsible Utility." PG&E points out that the tariff language makes clear that refunds may also be due on a non-terminated contract, as the parties intend. The ISO agrees that refunds may also be due on a non-terminated contract. Since the tariff language itself currently reflects this fact, the ISO does not see the need to take any further action on this matter.

### **III. Conclusion**

For the foregoing reasons, the Commission should accept Amendment No. 15 to the ISO Tariff without modification other than those non-substantive modifications that the ISO has committed to make above, and the Commission

should make Amendment No. 15 effective at such time, and only at such time, as the Commission approves the Settlement and it becomes effective.

Respectfully submitted,

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Dated May 12, 1999

## **CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding and on all parties on the service list for the Settlement in Docket Nos. ER98-441-000, ER98-495-000, and ER98-496-000 et. al., 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 12<sup>th</sup> day of May, 1999.

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Mark Reid Klupt