

July 16, 1999

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 Nos. EC96-19-047 and ER96-1663-049**

Dear Secretary Boergers:

This letter supplements the January 8, 1999, and July 8, 1999, filings of the California Independent System Operator Corporation ("ISO") in the above-identified dockets. Those filings comprised amendments to the ISO's Bylaws in compliance with the Commission's November 24, 1998, order in these dockets. The January 8, 1999, filing, if approved, would make certain revisions to the Bylaws that the Commission directed in orders dated November 26, 1996, and October 30, 1997 (the "Authorizing Orders"). The July 8, 1999, filing would extend the initial term of the Board of Governors ("Board") until March 31, 2000, to facilitate compliance with the resolution of the petitions for review of the Authorizing Orders that are currently pending before the United States Court of Appeals for the District of Columbia Circuit.

As described below, legislation pending in the California legislature is intended to address the issues that gave rise to the Commission's directives in the Authorizing Orders. The Commission has pending before it in Docket No. EL99-75-000 a petition seeking a declaratory order that the pending legislation will satisfy the Commission's concerns about the Bylaws. If the petition is granted and the legislation is enacted, the ISO will file conforming amendments to its Bylaws. The ISO believes that, in light of these developments, the Commission's acceptance of the January 8, 1999, amendments at this time would be unnecessary and could be counterproductive. By this letter, the ISO therefore respectfully requests that the Commission, in order to facilitate resolution of the issues concerning ISO governance, accept the July 8, 1999, filing but withhold action at this time on the January 8, 1999, filing.

## **1. The Commission's Orders**

Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company first filed proposed Bylaws for the ISO with the Commission on April 29, 1996. The Commission conditionally approved the Bylaws, subject to modifications, on November 26, 1996, Pacific Gas & Electric Co., et al. 77 FERC ¶ 61,204 (1996). See also Pacific Gas and Electric Co., et al. 81 FERC ¶ 61,122 (October 30, 1997); and Pacific Gas and Electric Co., et al. 82 FERC ¶ 61,223 (March 4, 1998).

On August 31, 1998, the ISO requested that FERC delay enforcement of its prior orders requiring changes to the Bylaws (i.e., the Authorizing Orders), which are now the subject of petitions for review pending before the U.S. Court of Appeals for the D.C. Circuit.<sup>1</sup> On November 24, 1998, the Commission refused the ISO's request. California Power Exchange Corp., et al., 85 FERC ¶ 61,263 (1998). The Commission directed the ISO to file Amended and Restated Bylaws changing certain ISO governance provisions within 45 days of the date of the order. Specifically, the Commission ordered that the ISO remove the following provisions from the Bylaws: 1) the California residency requirement; 2) references to the California Electricity Oversight Board (CEOB) in the process of appointing Governing Board members; 3) the requirement that the CEOB approve certain changes to the ISO Bylaws; and 4) the authority of the CEOB in hearing appeals of ISO Governing Board decisions, except with respect to state-jurisdictional matters or to mediate disputes between or among ISO Board members on a voluntary basis. *Id.*

## **2. The January 8, 1999, Filing**

On January 5, 1999, in open session following public and stakeholder comment, the Governing Board adopted Amended and Restated Bylaws to comply with the Commission's orders. The effectiveness of the amendments was expressly conditioned upon acceptance by the Commission. The ISO filed the Amended and Restated Bylaws with the Commission on January 8, 1999. The Commission has not as yet accepted the amendments.

## **3. S.B. 96 and the July 1999 Filings**

At this time, legislation (S.B. 96) is moving forward in the California legislature that is intended to resolve the issues that are currently pending judicial review. After such legislation is enacted, the Board of Governors will be

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<sup>1</sup>Case Nos. 98-1225, 98-1226 and 98-1384.

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able to entertain new amendments to the Bylaws in order to comply with the legislation.

On July 7, 1999, the CEOB filed a Petition for Declaratory Order requesting the Commission to determine that S.B. 96, if enacted, would sufficiently modify State law as to resolve the disputed issues in the petitions for review. The Petition has been assigned Docket No. EL99-75-000. The CEOB notes that issuance of the requested order will allow the ISO to make the necessary Bylaw changes.

Under the currently effective Bylaws, the terms of the current Board members will expire on the earlier of November 30, 1999, or 120 days after resolution of the petition for review. The ISO anticipates enactment of S.B. 96 prior to that expiration date. That expiration date, however, will leave insufficient time to elect a new Board in compliance with the procedures included in S.B. 96. The Board, therefore, on June 24, 1999, adopted a resolution amending the Bylaws to extend the initial term to March 31, 2000. This resolution was filed with the Commission on July 8, 1999.

#### **4. Requested Commission Action**

At this time, the ISO Bylaws comply with relevant California law. The ISO has also complied with the Authorizing Orders through its January 8, 1999, filing. If the Commission accepts the January 8, 1999, filing, however, the Bylaws as amended would conflict with California law. If, instead, the Commission grants the CEOB's Petition for a Declaratory Order and, as expected, the legislature approves S.B. 96, the ISO will be able to submit new amendments to the Bylaws that will comply with both Commission Orders and State law.

The ISO believes that the preferable course is to allow the ISO to remain in compliance with all applicable law. In light of the pending Petition for a Declaratory Order and Bylaws amendment to extend Board terms, acceptance of the January 8, 1999, filing is not necessary at this time. Further, fashioning appropriate amendments to comply with S.B. 96 will be more difficult if the Commission and the State of California have differing opinions regarding the validity of the underlying documents. The ISO therefore requests that the Commission withhold action on the ISO's January 8, 1999, filing until such time as the Commission acts on the CEOB's Petition for Declaratory Order and, if the Petition is granted, the ISO is able to implement S.B. 96. Should the Commission deny the Petition for Declaratory Order or should the legislature fail to enact S.B. 96 in a manner that accords with the declaratory order, the Commission would, of course, still have the option at any time of accepting the filing.

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This request that the Commission withhold action does not apply to the amendment included in the July 8, 1999, filing which remains necessary in light of the upcoming Board elections. The ISO therefore urges the Commission to accept the July 8, 1999, amendment on a schedule such that the ISO can avoid unnecessary preparation and conduct of the elections.

In compliance with Commission regulations, 14 copies of this original letter are enclosed. Also enclosed is a 3½ inch diskette containing the notice of filing in WordPerfect format. In addition, an extra copy of the letter is enclosed. We would appreciate your having the extra copy stamped with the time and date and returned to the messenger.

Respectfully submitted,

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## **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 proceeding.

Dated at Washington, D.C., on this 16<sup>th</sup> day of July, 1999.

Michael E. Ward