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June 28, 2004

Via Electronic Filing

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: California Independent System Operator Corporation
Docket No. ER03-1102-___

Dear Secretary Salas:

Enclosed please find the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Protests, submitted today in the above-captioned proceeding.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas

Counsel for the California Independent System Operator Corporation

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	))	**Docket No. ER03-1102-___**

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO PROTESTS

On May 20, 2004, the California Independent System Operator Corporation ("ISO")[1] submitted a filing ("Compliance Filing") to comply with the Commission's February 20, 2004 order in the above-captioned proceeding concerning Amendment No. 55 to the ISO Tariff ("Amendment No. 55"), 106 FERC ¶ 61,179 ("Compliance Order"). The ISO, in drafting the Compliance Filing, also took into account the direction provided in the Commission's May 6, 2004 order on rehearing of the Compliance Order, 107 FERC ¶ 61,118 ("Rehearing Order"). On May 21, 2004, the ISO submitted an errata filing ("Errata Filing") concerning the Compliance Filing.

Five protests were submitted concerning the Compliance Filing and Errata Filing.[2] Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO hereby requests leave

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[1] Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] The following parties submitted protests: Automated Power Exchange, Inc. ("APX"); Duke Energy North America LLC and Duke Energy Trading and Marketing L.L.C. ("Duke"); Dynegy Power Marketing, Inc., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, and Williams Power Company, Inc. ("Dynegy/Williams"); Independent Energy Producers Association ("IEP"); and Powerex Corp. ("Powerex"). Dynegy/Williams state that they incorporate by reference the arguments made by IEP and request the same relief as IEP. Dynegy/Williams at 3.

to file an answer, and files its answer, to the protests.[3] For the reasons described below and subject to the discussion below, the Commission should accept the Compliance Filing.

I. ANSWER

A. It Was Appropriate for the ISO to Propose to Add More Specific Provisions to Revised EP 1.6 Concerning the Scope of the Enforcement Protocol

Powerex argues that the Commission should require the ISO to explain why the Enforcement Protocol should apply to Control Area Operators as provided in revised EP 1.6(f)[4] and should allow stakeholders an opportunity to comment on the appropriateness of the proposal. Powerex at 8. Control Area Operators were already covered by the scope of EP 1.6 in Amendment No. 55 to the extent they became Market Participants. The revisions to EP 1.6 were simply intended to list with greater particularity all of the entities that are subject to the Enforcement Protocol. Powerex itself recognizes that "it may be useful to specify to whom the EP applies." A number of the ISO Protocols list the specific entities

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[3] The ISO requests waiver of Rule 213(a)(2) (18 C.F.R. § 385.213(a)(2)) to permit it to make this answer to protests. Good cause for waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. *See, e.g.*, *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,2551, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

The ISO notes that three of the five protesters in this proceeding, whose protests contain the majority of the arguments to which this answer responds, submitted their filings on June 14, 2004, and that the ISO filed the present answer within 15 days of the submission of those protests. *See* 18 C.F.R. § 385.213(d).

[4] As was the case in the Compliance Filing, in this answer the ISO will refer to each of the specific revised sections of the Enforcement Protocol contained in the Compliance Filing as "revised EP [section number]," and will refer to each of the specific sections from the original Amendment No. 55 filing (submitted on July 22, 2003) as "former EP [section number]" or by using a construction such as "EP [section number] in Amendment No. 55."

to which the Protocols apply.[5] The ISO adopted a similar approach with respect to the Enforcement Protocol. For example, the listing of "Control Area Operators, to the extent the agreement between the Control Area Operators and the ISO so provides" in revised EP 1.6(f) is exactly the same as one of the listings in the section describing the scope of the Dispatch Protocol ("DP"). *See* DP 1.3.1(e).

In any event, it is appropriate to apply the Enforcement Protocol to Control Area Operators. To the extent they participate in the ISO's markets or have jurisdictional dealings with the ISO, Control Area Operators should be required to comply with the Rules of Conduct just like all other Market Participants that engage in similar activities. It would be unduly discriminatory to exempt Control Area Operators from the Rules of Conduct.

There is no need to have a stakeholder process to discuss the applicability of the Enforcement Protocol to Control Area Operators. Powerex provides no reason, and the ISO is unaware of any valid reason, why Control Area Operators should be exempt from the Enforcement Protocol's requirements.

B. The Commission Should Accept the Proposed Modifications to Revised EP 2, Concerning the Requirement to Comply with Operating Orders

1. Revised EP 2 only Applies to Non-Automated Dispatch Instructions

IEP asserts that revised EP 2.1 does not clearly provide that revised EP 2 applies only to non-automated Dispatch Instructions. It states that the Commission should direct the ISO to further revise EP 2 to specifically exclude

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[5] *See* Section 1.3.1 of the Ancillary Services Requirements Protocol; Section 1.3.1 of the Dispatch Protocol; Section 1.3.1 of the Outage Coordination Protocol; Section 1.3.1 of the Scheduling Protocol.

application of that Rule of Conduct to automated Dispatch Instructions. IEP at 6-7. As IEP notes, the Commission and the ISO have both made clear that the Rule of Conduct does not pertain to automated Dispatch Instructions. *See id.* However, the ISO offers the following revision in the last sentence of revised EP 2.5 to further clarify this limitation (with the revision reflected in the text that is struck):

> Notwithstanding the foregoing, violations of EP 2.1 through EP 2.4 ~~that result in circumstances in which an Uninstructed Deviation Penalty under Section 11.2.4.1.2 of the ISO Tariff may be assessed~~ are subject to penalty under this rule only to the extent that the ISO has issued a separate and distinct non-automated Dispatch Instruction to the Market Participant.

2. The ISO Has Fully Justified the Maximum Penalties Contained in Revised EP 2

Duke and IEP argue that the ISO has not justified the maximum penalties of $10,000 per violation (as opposed to $10,000 per day) proposed in revised EP 2 and that the proposal contravenes the Commission's orders. Duke at 1-2; IEP at 7-10. In the Compliance Order, the Commission directed that the ISO employ a maximum penalty of $10,000 per day. Compliance Order at P 58. The ISO sought clarification of the directives in the Compliance Order concerning the maximum penalty.[6] In the Rehearing Order, the Commission found that "[t]o the extent that the ISO now wants to support its proposal on compliance based upon the CAISO markets and operations, we withhold judgment on the issue until the Commission has had an opportunity to evaluate the CAISO's compliance filing." Rehearing Order at P 31. Thus, contrary to the assertions of Duke and IEP, the

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[6] *See* Request for Rehearing and Motion for Clarification of the California Independent System Operator Corporation, Docket No. ER03-1102-002 (Mar. 22, 2004), at 28-30.

Commission *did not* flatly reject the ISO's proposal to employ the same maximum penalty as the Midwest Independent Transmission System Operator ("Midwest ISO"), *i.e.*, $10,000 for each violation that occurs in a day. *See* Duke at 2; IEP at 9.[7] Rather, the Commission declined to adopt the ISO's proposal at that time, but stated that it would withhold judgment on the issue until it had evaluated the Compliance Filing.

In the Compliance Filing, the ISO stated that in light of the Commission's retention of the sole authority to administer and to charge penalties under the Enforcement Protocol at this time, the maximum penalty approved for the Midwest ISO is also appropriate for inclusion in the Enforcement Protocol. Transmittal Letter for Compliance Filing at 7 n.10. Certainly the Commission is not concerned about its own ability to fairly apply the maximum penalty.

The ISO also stated that a per-violation penalty would serve as a more effective deterrent than a per-day penalty. Transmittal Letter for Compliance Filing at 7 n.10. This is illustrated by a simple example. Suppose that, early in the morning of a particular day, a UDC were to fail to comply promptly with an ISO operating order to curtail load issued pursuant to Section 4.4.4 of the ISO Tariff. That action would subject the UDC to a penalty of $10,000 per violation pursuant to revised EP 2.2. If the penalty could only be applied on a per-day basis instead of a per-violation basis, then revised EP 2.2 would provide no incentive to comply with any subsequent operating order (based on new and

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[7] The Commission approved penalties proposed by the Midwest ISO related to violations of operating orders that are "up to $10,000 per day per violation." *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶ 61,231, at 62,161 (1998). This Commission directive was cited in footnote 10 of the Compliance Filing (though the ISO inadvertently listed the citation to the Commission's order as 84 FERC ¶ 62,230).

different operating conditions) that might be issued to the UDC to curtail load that same day. Only if the penalty were to be applied on a per-violation basis would revised EP 2.2 provide the UDC an incentive to comply. The ISO also clarifies that the ISO cannot merely repeat the same operating order, thereby imposing multiple penalties each time the UDC fails to curtail load in response to such orders.

As IEP notes, the Commission Enforcement Staff can always investigate an entity that may have intentionally flouted the requirements of the ISO Tariff. *See* IEP at 9-10. However, one purpose of the Enforcement Protocol is to deter violations by Market Participants, thus reducing the amount of investigating the Commission is required to do. *See* Transmittal Letter for Amendment No. 55 at 16-17, 22-23. As shown in the example above, the deterrent effect of revised EP 2 is greater where penalties are applied under that section on a per-violation rather than a per-day basis.[8] Also, the Commission lacks general stand-alone civil penalty authority beyond that accorded to it in the Enforcement Protocol. *See* Transmittal Letter for Amendment No. 55 at 14-18 (discussing the Commission's civil penalty authority). Thus, even though the Commission has the ability to investigate an entity that may be "flouting" the requirements of the ISO Tariff, there are limitations on the Commission's inherent authority to remedy it.

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[8] While the ISO believes that revised EP 2, as drafted, provides sufficient deterrence, it also notes that revised EP 2 provides for penalties that are much smaller than some of those proposed in Amendment No. 55. *See* former EP 2.2(c)(i) (providing for a maximum penalty of $110,000 per event and an amount equal to $1,000 per megawatt-hour of firm load not curtailed, for failure of a UDC to implement an order issued by the ISO to curtail Load in order to manage a System Emergency); Compliance Order at P 20 n.19 (discussing the application of this same maximum penalty).

Duke argues that the $5,000 and $10,000 penalties under revised EP 2 are excessive compared with the penalties approved by the Commission for ISO New England. Duke at 2. As explained above, the maximum penalty under revised EP 2 is the same as a penalty approved by the Commission for the Midwest ISO; the Commission has imposed no requirement that independent system operators set penalty levels at or below the level approved for ISO New England rather than the level approved for some other independent system operator.

3. Revised EP 2 Sufficiently Explains what Constitutes a Single Violation

IEP states it is unclear what constitutes a single violation for penalty purposes in revised EP 2, but does not suggest any specific clarification. IEP at 10. The ISO respectfully submits that revised EP 2 clearly indicates what constitutes a single violation. Revised EP 2.1(a) defines an operating order as "an order(s) from the ISO directing a Market Participant to undertake a single, clearly specified action (*e.g.*, the operation of a specific device, or change in status of a particular Generating Unit) that is feasible and intended to resolve a specific operating condition." Under revised EP 2.1, a violation occurs every time a Market Participant fails to comply with an operating order issued by the ISO. Under revised EP 2.2, a violation occurs every time a UDC or MSS Operator fails to promptly comply with any operating order to curtail interruptible or firm load issued pursuant to the ISO's authority under Section 4.4.4 of the ISO Tariff. Under revised EP 2.3, a violation occurs every time a Market Participant fails to undertake such operating and maintenance practices as necessary to avoid

contributing to a major outage or prolonging response time as indicated by Section 2.3.2.9.3 of the ISO Tariff. Under revised EP 2.4, a violation occurs every time a Market Participant fails to start a Generating Unit within 30 minutes of the time at which a revocation of a must-offer waiver becomes effective, or fails to report the derate, outage, or other event outside the control of the Market Participant that prevents the Generating Unit from being started by such time. The ISO submits that what these provisions require, and what constitutes a violation of them, is clear on their face.

IEP asserts that the provisions in EP 2 give the ISO "unbridled discretion to determine what constitutes a single, sanctionable 'violation'." IEP at 10. The ISO notes that the Commission, not the ISO or its Market Monitoring Staff, will be administering and applying penalties under the Enforcement Protocol. *See* Transmittal Letter for Compliance Filing at 2-3; revised EP 1.10. Therefore, the Commission will make all final determinations as to the application of penalties, which will preclude the type of discretion that IEP describes.

4. Revised EP 2.3 and 2.4 are Clear and Do not Present any "Double Jeopardy Situation"

IEP suggests that in revised EP 2.4, the ISO should further define the criterion used for "starting" a generator. IEP also states that revised EP 2.4 directly affects revised EP 2.3, "creating a double jeopardy situation." According to IEP, the Commission should direct the ISO to eliminate ambiguous language in revised EP 2.3 and 2.4 or else develop comprehensive language that better describes expected behavior consistent with "actual operation experience." IEP at 13.

The ISO Tariff and Operating Procedures clearly explain when a generator is required to start. A Must-Offer Generator is obligated to start a thermal Generating Unit when the ISO revokes a must-offer waiver under Section 5.11.6 of the ISO Tariff. ISO Operating Procedure M-432 requires that the ISO specify a "certain date and time" for the Generating Unit to "parallel to the system." In revoking a must-offer waiver, the ISO respects any applicable operating constraint, derate, or outage that may affect the date and time at which a resource is available to synchronize to the ISO system. Should such limitations change or cause the Generating Unit to be unavailable at minimum load by the specified time, then such limitation should be reported to the ISO, as provided in Section 5.11 of the ISO Tariff and revised EP 2.4. So long as any limitation or derate that prevents compliance is properly reported, no violation of revised EP 2.4 occurs.

The ISO is willing to modify the beginning of revised EP 2.4(a) so that it reads (with the new language shown in boldface type), "A Market Participant shall start a Generating Unit **and have that Generating Unit operating at minimum load** within 30 minutes of the time . . . ." With this revision, the ISO believes the performance expected under revised EP 2.4 is clear both with respect to the action required (*i.e.*, operation at minimum load) and when that action must be completed (*i.e.*, the specified time at which the must-offer waiver is revoked).

It is unclear what "double jeopardy situation" IEP believes is created by the interaction of revised EP 2.3 and 2.4. Revised EP 2.3 addresses operation

and maintenance practices that contribute to a major outage. Even if the Commission were to make a determination that a penalty under revised EP 2.3 was appropriate, the Operator could still avoid any penalty under revised EP 2.4 by simply reporting the limitation that prevented start-up within 30 minutes of the time directed by the ISO. A separate finding by the Commission under revised EP 2.3 that a limitation causing a delay in start-up was related to a failure to employ appropriate maintenance practices would not affect the outcome of the inquiry into whether that limitation was properly reported. The violations addressed by revised EP 2.3 and 2.4 are different, and they present no "double jeopardy situation."

5. The Commission Should Accept the Use of Penalty Enhancements Under Revised EP 2.5 (and Revised EP 4.4)

Duke and IEP assert that the ISO failed to comply with the Commission's direction to demonstrate how the ISO's use of penalty enhancements (now contained in revised EP 2.5 and 4.4) is consistent with penalty provisions approved for other independent system operators and that the ISO did not sufficiently justify its use of penalty enhancements. Duke at 3-4; IEP at 10-11. As the ISO explained in the Compliance Filing, the market rules used in ISO New England state that a sanction may be increased to an amount up to triple the base amount of the sanction if the sanctionable behavior occurs during a system emergency. Transmittal Letter for Compliance Filing at 8. Revised EP 2.5 and 4.4 provide that the penalty amount will be exactly tripled in System Emergency

conditions. Thus, the enhancement of a penalty under the Enforcement Protocol is equal to the maximum enhancement of a penalty in ISO New England.

The ISO proposed to exactly triple the penalty amount, rather than provide for an amount up to triple the penalty amount, because the Commission directed the ISO to "specifically state . . . the specific amount to be assessed for each 'enhancement' under" the Enforcement Protocol. Compliance Order at P 31. A provision stating that a penalty will be "up to triple" an amount indicates a discretionary range and is not specific. In contrast, a provision stating that a penalty will be exactly triple is as specific as possible. Thus, the ISO's proposed enhancement is more specific than ISO New England's. Transmittal Letter for Compliance Filing at 8. The ISO's penalty enhancement proposal is also consistent with the general intent of the Compliance Order that there not be any discretion regarding the imposition and level of penalties. *See* Compliance Order at PP 29-30, 71.

Duke and IEP also assert that the enhancements of penalties under revised EP 2.5 and 4.4 should not apply in all circumstances, *e.g.*, a penalty should not be enhanced when a Market Participant inadvertently overlooks an operating order or the ISO issues an operating order in error. Duke at 4; IEP at 12. The revised Enforcement Protocol provides that no Sanctions may be assessed by the ISO's Market Monitoring Staff without prior Commission approval. Revised EP 1.10. Moreover, the Commission will have the authority to waive, reduce, or increase a Sanction specified in the Enforcement Protocol when it determines that such an adjustment is just and reasonable; such an

adjustment generally will be deemed appropriate if the circumstances suggest that some mitigating circumstances exist. Revised EP 9.1. Thus, the Commission has the authority to waive or reduce a penalty amount where it believes the circumstances warrant a waiver or reduction.

Without elaborating, IEP also asserts that the enhancement of penalties under the Enforcement Protocol "serve[s] the CAISO's agenda." *See* IEP at 11. The ISO has no "agenda" other than the just, reasonable, and efficient administration of the ISO Tariff; in any event the ISO has no authority to impose penalties under the Enforcement Protocol without prior Commission approval.

IEP argues that the proposed tripling of a penalty may actually exacerbate a System Emergency, because, for example, the threat of triple penalties will cause plant operators to make their first priority the timely reporting of an outage rather than identifying and solving the problem that caused the outage. IEP at 12. There is no foundation for this concern. The plant operators who are tasked with identifying and fixing the outage of a Generating Unit need not be, and generally will not be, the same persons who are responsible for notifying the ISO of an outage. In any event, the ISO needs to be quickly informed of outages in order to take necessary and prompt actions to maintain the reliability of the grid. Failure to provide timely notice of an outage to the ISO could jeopardize grid reliability and cannot be permitted. The ISO needs to know about outages, and certainly entities that are interconnected to the grid should be notifying the ISO promptly of any outages given the potential adverse impact of outages on the ISO. Indeed, Operators' routine practice and obligation under the ISO Tariff is to

contact the ISO promptly whenever an outage occurs or threatens to occur. *See* Section 6 of the Outage Coordination Protocol. Under these circumstances, the provisions in the Enforcement Protocol do not place any greater informational burden on the personnel at Generating Units than would exist in the absence of those provisions.

C. The Commission Should Accept Revised EP 3.2, Concerning the Proposed Self-Certification Process

IEP asserts that the Commission should reject the proposed self-certification process contained in revised EP 3.2 as being beyond the scope of the Compliance and Rehearing Orders. In addition, according to IEP, the ISO failed to provide any specific reason why resources should be "burdened" with the self-certification procedure. IEP at 13-16.

The Commission made clear that the ISO must specify the violations covered under the Enforcement Protocol and that it will not allow the ISO to have any open-ended discretion with regard to the violations. Compliance Order at P 29. Revised EP 3 requires feasible schedules, and in accordance with the Commission's direction to specify the violations, the ISO has identified undispatched Ancillary Services as being infeasible schedules for which no mechanism has been implemented to enforce compliance. Rather than simply impose penalties – an action to which suppliers would most certainly object – the ISO proposed the self-certification process as a reasonable alternative. The self-certification process gives suppliers the opportunity and obligation to report any deficiency based on reasonably available information. Suppliers possess the requisite information and, if it is maintained on a regular basis, they should be

able to consider, without incurring a significant burden, whether such information indicates an Ancillary Service Schedule could not be performed.

The ISO Tariff already requires that a resource (1) meet the ISO's technical requirements, (2) be capable of responding in accordance with the terms of the associated bid, and (3) notify the ISO immediately should an Ancillary Service be unavailable for any reason. ISO Tariff, §§ 2.5.6, 2.5.24. The only additional requirements imposed by the self-certification process are the requirements to consider whether any information indicates a resource was incapable of performing and to identify any Ancillary Service Schedules that could not have been performed based on such information. The same technical factors that should be considered in determining the availability and capability of a resource in the forward markets and real time still apply. The self-certification process simply allows information that may not have been available in real time to be considered in verifying undispatched Ancillary Service Schedules.

Currently, the ISO Tariff provides a supplier no opportunity to report an inability to perform after real time and thus mitigate the risk that such inability will be subject to investigation and further action. The self-certification process will mitigate the risk of such action, and provide increased certainty of final resolution of violations. Self-reporting that a resource was unable to perform will provide a safe harbor against further enforcement action. As explained in revised EP 3.2(b):

> Unless some other obligation under the ISO Tariff is violated, the only consequence for unavailable Ancillary Service identified through a timely self-certification form shall be the rescission of payment in accordance with this EP 3.2(b).

Rescission of the capacity payment eliminates compensation for a service that is not provided, but does not constitute a financial penalty.[9] Because pro-rated rescission of payment is the only consequence, a Market Participant that has no violations of other Rules of Conduct retains the opportunity to participate in the penalty redistribution process described in revised EP 9.4.

Further, the ISO already has the authority to impose a penalty over the entire "committed period" as provided in Section 2.5.26.1 of the ISO Tariff. Under this existing authority, a supplier is exposed to losing the capacity payment not only in the hour in which an availability test is failed, but also in all hours in which the Ancillary Service was scheduled since the last time the resource successfully performed, regardless of whether or not the facility was available and capable of performing in such intervening hours. The ISO would agree to clarify that reporting an inability to perform in one hour will not be declared an "availability test" that leads to rescission of all capacity payments since the resource last successfully performed.

The ISO is sensitive to the issue of imposing undue burdens on Market Participants. That is why the ISO proposed in the Compliance Filing features of the self-certification process that minimize that burden. First, no response is required on behalf of a resource that was available and capable of performing. Transmittal Letter for Compliance Filing at 9. Second, recognizing that potential performance is impossible to precisely evaluate without a physical test under the

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[9] Pursuant to Section 2.5.26.4, capacity payments that are rescinded are redistributed to Scheduling Coordinators in proportion to ISO Control Area metered Demand and scheduled exports for the same Trading Day.

conditions that existed at the time of the Schedule, a tolerance band of 10 percent is provided. If all Ancillary Service Schedules could have been performed within the 10 percent tolerance band (*i.e.*, the resource could have delivered at least 90 percent of the scheduled capacity in accordance with the terms of the bid and the ISO Tariff), no action is required. *Id.*[10] The ISO is willing to consider other measures to simplify the administration of the self-certification process, though it notes that IEP did not identify any additional burdens that require mitigation.

Powerex argues that the Commission should reject the proposed self-certification process on the ground that the process is onerous and perhaps unnecessary.[11] As an alternative proposal, Powerex suggests that the ISO could use a NERC tagging requirement for Ancillary Services capacity commitments to ensure that Ancillary Services bids are backed by physical resources. Powerex at 5-7.

The need for a mechanism such as self-certification was demonstrated by Powerex's recent notification to the ISO that several hours of Ancillary Services scheduled by Powerex were unavailable.[12] Powerex's reporting of these Schedules is a positive example of the benefit of the ISO's proposed self-certification process. If adopted, such a process also could provide Powerex with assurance that no further action would be taken by the ISO with respect to the

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[10] However, if definitive information indicates that a self-certification form should have been submitted but was not (*i.e.*, services were incorrectly deemed deliverable), the result will be the false declaration of an Ancillary Service as being available, and the provisions of revised EP 5 will apply. Transmittal Letter for Compliance Filing at 10.

[11] IEP makes a similar argument. *See* IEP at 15.

[12] Powerex advised the ISO that several schedules in April 2004 were unavailable due to technical problems with completing the scheduling process for Spinning Reserve. Consistent with Powerex's request, the ISO rescinded payment for those Schedules that were unavailable.

Ancillary Service Schedules that were reported as unavailable. While the ISO appreciates Powerex's initiative to alert the ISO to these infeasible schedules, this event also emphasizes that a mechanism such as self-certification is necessary.

A subcommittee of the Western Electricity Coordinating Council is considering a business practice requiring capacity tagging.[13] The ISO supports this proposed business practice and concurs that capacity tagging is desirable since it provides assurance that a physical resource behind an import Ancillary Service Schedule is identified and firm transmission is available when control area check-out occurs. However, even if a physical resource is identified, there remains the possibility that the supplier was incapable of performing (*e.g.*, if the service was contingent on the availability of a particular unit that subsequent information indicates was incapable of performing). Therefore, even if a capacity tagging requirement is adopted, it may be appropriate to continue a self-certification process.

D. The ISO Proposes to Implement a Revised Definition of "Outage" Earlier than Originally Proposed in Order to Provide Clarification with Regard to Revised EP 4, Concerning the Requirement to Comply with Availability Reporting Requirements

IEP contends that revised EP 4 is ambiguous, because it is unclear what constitutes an "Outage" for purposes of that revised protocol IEP at 16. The following revised definition of Outage was proposed in Amendment No. 54 to the

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[13] *See* http://www.wecc.biz/ committees/ OC/ ISAS/ documents/ index.html (Internet site containing documents of the Interchange Scheduling and Accounting Subcommittee of the Operations Committee of the Western Electricity Coordinating Council, including documents concerning the "E-Tag" proposal).

ISO Tariff: "Disconnection, separation or reduction in capacity planned or forced, of one or more elements of an electric system." Amendment No. 54 to the ISO Tariff, Docket No. ER03-1046-000 (July 8, 2003), at Attachment B. The Commission accepted this definition, to become effective after notice by the ISO. *See California Independent System Operator Corporation*, 105 FERC ¶ 61,091, at ordering paragraph (B) (2003). The ISO believes this definition addresses the concern expressed by IEP, and proposes to accelerate the effective date of the revised definition to coincide with the effective date of the Enforcement Protocol as proposed in the Compliance Filing, *i.e.*, on the date the Commission approves the revised Enforcement Protocol. *See* Transmittal Letter for Compliance Filing at 34.

E. The Commission Should Accept Revised EP 5, Concerning the Requirement to Provide Factually Accurate Information

1. The Terms Used in Revised EP 5 Do not Require Further Clarification

IEP asserts that the term "responsible company official," which is used in revised EP 5, requires clarification and should be defined in the ISO Tariff. IEP at 16-17. The term needs no such clarification or definition. As the Commission noted in the Compliance Order, the phrase "responsible company official" is "taken verbatim from the Commission's set of minimum behavioral rules recommended in the SMD NOPR." Compliance Order at P 90. The Commission accepted its use when it was submitted in Amendment No. 55, stating that the term "is sufficiently broad to allow each market participant to select the appropriate management employee to assure the accuracy of submissions."

Compliance Order at P 91. Moreover, the Commission itself has used "responsible company official" in other contexts without seeing a need to further define it. *See San Diego Gas & Electric Company, et al.*, 107 FERC ¶ 61,166, at PP 1, 77 and ordering paragraph (C) (2004) (requiring that fuel cost allowance claims be verified by an independent auditor, attested to by a responsible company official, and submitted to the ISO).

The Commission should also deny IEP's request that the ISO clarify the phrase "consistent with the operational plans of the company," contained in revised EP 5.1, as well as IEP's request in the alternative that the ISO be required to strike the phrase. *See* IEP at 17. This phrase, like the one described in the paragraph immediately above, was contained in the original Amendment No. 55 filing and was approved by the Commission as reasonable without modification or further explanation. *See* Compliance Order at P 91.

2. The Removal of the Penalty for Over-Scheduling of Load from Revised EP 5 is Appropriate

IEP asserts that the ISO's removal of the penalty for over-scheduling of load from revised EP 5, instead of proposing a symmetrical penalty for under-scheduling of load, was unjustified. IEP at 17-18. IEP is incorrect. In the Rehearing Order, the Commission stated that "prior to imposing penalties for overscheduling load pursuant to EP 2.7, we direct the ISO to propose a similar, symmetrical penalty for underscheduling load." Rehearing Order at P 38. The Rehearing Order was clear: the Commission did not require the ISO to propose an under-scheduled load penalty, but simply conditioned the ISO's implementation of an over-scheduled load penalty on such a proposal. Also, the

Commission did not require the ISO to implement a penalty for over-scheduled load. The ISO may at some later date consider whether symmetrical penalties for over-scheduled and under-scheduled load are necessary.

In addition, IEP argues that implementation of an under-scheduled load penalty is necessary for symmetry with the Uninstructed Deviation Penalty for Uninstructed Imbalance Energy, which IEP characterizes as being essentially the same as the over-scheduled load penalty. IEP at 18. Such a linkage is inappropriate. The ISO Tariff imposes a host of requirements on resources that supply Imbalance Energy that do not and should not apply symmetrically to loads. These requirements include standards for communications, metering, and telemetry. In contrast, Imbalance Energy bids are not submitted on behalf of loads that would be subject to an under-scheduled load penalty, and such loads are not dispatchable.

Moreover, the Commission imposed certain conditions when it approved the Uninstructed Deviation Penalty, including a requirement that the ISO develop the ability to accommodate multiple ramp rates and an electronic interface for reporting outages. *See California Independent System Operator Corporation*, 100 FERC ¶ 61,060, at PP 141-50 (2002). These conditions will be fulfilled before Phase 1B of the ISO's comprehensive market redesign is implemented, and no additional conditions on the Uninstructed Deviation Penalty are appropriate.

F. The Commission Should Accept Revised EP 6, Concerning the Requirement to Provide Information Required by the ISO Tariff

1. Revised EP 6.2 is Reasonable

Revised EP 6.2 provides for Sanctions for Schedules that are not submitted by the deadlines specified in the Scheduling Protocol. IEP states that it does not oppose a penalty for late Schedules if the intent of submitting a Schedule late is to manipulate the market, but argues that it will be practically impossible to comply with revised EP 6.2. IEP requests that the Commission require the ISO to continue to monitor and report chronic violators of the rule against submitting late Schedules to the Commission until such time as the ISO's comprehensive market redesign has been successfully implemented and the balanced Schedule requirement is retired. According to IEP, if the Commission "finds that a market participant attempted to exercise undue influence," there is sufficient authority to levy a Sanction under other sections of the revised Enforcement Protocol. IEP at 20.

IEP is attempting to reargue a requirement from the original Amendment No. 55 filing that the Commission has already approved. The Commission stated that it accepted former EP 2.8(a), which provides in relevant part that all information that is required to be submitted to the ISO under the ISO Protocols must be submitted in a complete, accurate, and timely manner. *See* Compliance Order at P 96.[14]

Most Scheduling Coordinators usually comply with the timelines specified in the ISO Tariff for submitting valid Schedules. IEP does not object to imposing

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[14] This same provision is contained in revised EP 6.1(a).

penalties if the intent is to manipulate the market – however, making such a determination of intent is complicated, subjective, and unnecessarily burdensome. The ISO has proposed a simple rule and a simple consequence that should both encourage increased attention to scheduling deadlines, thereby reducing the frequency with which Schedules will be inadvertently submitted late, and discourage any strategic delays in submitting Schedules.[15] The ISO's proposed threshold for Sanction would allow up to 20 late Schedules per month before a Sanction is imposed, thereby acknowledging that a Scheduling Coordinator may occasionally experience a problem balancing an Inter-Scheduling Coordinator Trade. In summary, the ISO believes that some standard of discipline is appropriate for all Scheduling Coordinators, and that the proposed threshold is reasonable.

2. Revised EP 6.3 and 6.4 are Reasonable

IEP contends that revised EP 6.3(a) goes beyond the language in the Amendment No. 55 filing and the revisions required by the Commission, by applying a penalty not only for tardy responses to information requests but also for deficient responses. IEP argues that under revised EP 6.3 and 6.4, the ISO should not be permitted to determine, on a subjective basis, whether a Market Participant's response to a particular request is deficient. IEP also requests that the Commission direct the ISO to further revise EP 6 so that a Market Participant

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[15] The ISO notes that the Commission approved penalties for the California Power Exchange ("PX") addressing actions and omissions that (1) rendered the PX unable to close markets in accordance with the PX tariff; (2) miss the close time for preferred schedules and adjustment bids, and (3) cause the PX to miss the close time for Ancillary Services. *See California Power Exchange Corporation*, 88 FERC ¶ 61,112 (1999); Schedule 10 of the PX tariff, §§ 4.1.1.1, 4.1.1.2, 4.1.1.3.

is only penalized if it fails to timely submit a response to requests made under revised EP 6. IEP at 18-20.

The Commission should reject IEP's protest on these points. EP 2.8(a) in the original Amendment No. 55 filing, and corresponding EP 6.1(a) in the Compliance Filing, require Market Participants to submit in an accurate, complete, and timely manner all information required to be submitted to the ISO under the Tariff, ISO protocols, or jurisdictional contracts. The Amendment No. 55 filing and the Compliance Filing contain corresponding penalty provisions regarding the failure to provide timely information in response to a written request by the ISO for information reasonably necessary to conduct an investigation. *See* EP 2.8(c) in Amendment No. 55 and revised EP 6.3(b) in the Compliance Filing. The penalty provisions in the two sections are substantially similar, with the differences reflecting the ISO's attempt to comply with the Commission's directive that there be no discretion in determining the amount of any penalty to be imposed. *See* Compliance Filing at PP 29-30. In that regard, the differences between the two provisions with respect to penalty levels are as follows: (1) Amendment No. 55 provided for maximum penalty levels, while the Compliance Filing provides for fixed penalty levels; and (2) Amendment No. 55 provided for a penalty of up to $2,500 for a second violation, while the Compliance Filing provides for a fixed penalty of $2,000 for a second violation. In the Compliance Order, the Commission approved the corresponding penalty provisions in EP

2.8(c) (Compliance Order at P 96); thus, there is no basis to reject the penalties proposed in revised EP 6.3(b) in the Compliance Filing.[16]

To provide more clarity to Market Participants, the ISO added language in revised EP 6.3 to specify what constitutes a violation. Specifically, revised EP 6.3(b) provides that:

> For purposes of this subsection, a violation shall be each failure to provide a full response to a written request and the Sanction shall be determined from the date that the response was due until a full response to the request is received. A deficiency in response to more than one question or item in a single written request shall be treated as one "violation."

Contrary to IEP's suggestion, this new language does not "add" a new violation for deficient responses (as well as tardy responses), it merely clarifies what constitutes a tardy response. Stated differently, the ISO is not proposing separate penalties for tardy responses and deficient responses. EP 2.8 as previously approved by the Commission (and now reflected in revised EP 6.1) requires Market Participants to submit timely and complete information. Revised EP 6.3(b) simply reflects these requirements; it does not add a new obligation (or a new penalty). A Market Participant is required to provide a complete response within the requisite time. IEP appears to be suggesting that if a Market Participant responded in a timely manner to one out of one hundred questions in a data request, it should not be subject to any penalty. That is clearly an inappropriate result and contrary to the intent of Amendment No. 55. Revised EP

[16] To the extent IEP is complaining that the proposed $2,000 penalty for a second violation fails to comply with the Commission's directives, the ISO has no objection to changing the penalty amount back to the $2,500 specified in Amendment No. 55. However, the ISO concluded that a lower penalty level was appropriate for a second violation because the penalty will now be a fixed penalty as opposed to a maximum penalty as originally proposed.

6.3(b) clarifies that a violation occurs unless responses to all of the questions in a data request are provided in a timely manner. Revised EP 6.3 also clarifies that a Market Participant that fails to submit timely responses to a number of questions will only face a single violation, not multiple violations. These are reasonable Tariff provisions that are consistent with the substantive provisions that the Commission previously approved (*i.e.*, Tariff provisions requiring complete and timely responses) and within the intent of Amendment No. 55. The revised Tariff language will provide greater clarity to Market Participants and it also benefits them, by ensuring that they will not "rack up" multiple violations by failing to respond in a timely manner to multiple questions in a single data request.

IEP also suggests that, under the ISO's proposal, the ISO will act as "judge, jury, and executioner" with regard to determining whether a Market Participant's response is deficient and, hence, whether a penalty applies. IEP at 19. That is an incorrect characterization of the ISO's proposal. Consistent with the Compliance Order and revised EP 1.10, the Commission, not the ISO, will be responsible for enforcing the Enforcement Protocol and assessing penalties. Thus, the ISO will refer to the Commission any instance in which a Market Participant fails to respond to an ISO information request in connection with an investigation in a timely, complete, and accurate manner. The Commission will make the ultimate determination whether there is a violation under the Enforcement Protocol.

G. The ISO Agrees that a Specified Phrase in Revised EP 7.4, Concerning the Prohibition Against Creating Artificial Congestion, Should be Deleted

Powerex asserts that the Commission should require the ISO to modify revised EP 7.4(a) to delete the phrase "or knowingly undertakes a transaction to nullify the congestion relief the ISO expects when a Dispatch instruction is issued," on the ground that a Scheduling Coordinator cannot know what the ISO expects unless the ISO directly informs the Scheduling Coordinator prior to the transaction and that the phrase expands the purpose and intent of Market Behavior Rule 2 as originally contemplated by the Commission. Powerex at 8-10. The ISO believes that the general rules prohibiting market manipulation (*see* revised EP 7.1) and the submission of false information (*see* revised EP 7.3) would prohibit the behavior the ISO sought to describe with the language quoted above. Therefore, the ISO does not object to Powerex's request to delete that language.

H. The ISO Agrees that an Example Provided in Revised EP 7.5, Concerning the Requirement not to Collude, Should be Deleted

Powerex argues that the example of what constitutes collusion in revised EP 7.5(a) ("e.g., to knowingly use ETC transmission service after the close of the Hour Ahead Market") is unclear and does not provide useful clarification or guidance with regard to the expected conduct. It asserts that the Commission should direct the ISO to modify the provision to remove the example or provide a clearer example. Powerex at 10-12. The ISO believes that the general standard against collusion contained in revised EP 7.5(a) would prohibit the behavior the

ISO sought to describe in the example quoted above. Therefore, the ISO does not object to Powerex's request to delete the example.

I. The Commission Should Accept Revised EP 9.3, Concerning Settlement, Subject to Certain Modifications Proposed by the ISO

1. Under Revised EP 9.3(a), the Responsible Scheduling Coordinator and the Responsible Market Participant Should Both Be Informed of a Violation, Whenever Feasible

APX states that the Commission directed the ISO to inform both the Scheduling Coordinator and the Market Participant behind the Scheduling Coordinator of any violation, but that revised EP 9.3(a) indicates that only the Scheduling Coordinator will be informed of a violation. APX at 5. The ISO agrees that both the Scheduling Coordinator and all Market Participants it represents that are liable for a violation should be informed of a violation; the ISO inadvertently did not provide for notification of the Market Participant(s) in revised EP 9.3(a). The ISO suggests modifying the second sentence of the section so that it reads as follows (with the new language shown in bold type): "Before invoicing a financial penalty through the Settlement process, the ISO will provide a description of the penalty to the responsible Scheduling Coordinator **and all Market Participants the Scheduling Coordinator represents that are liable for the penalty, when the ISO has sufficient objective information to identify and verify responsibility of such Market Participants**." The ISO can provide a description of the penalty to a responsible Market Participant, of course, only in circumstances where the ISO is able to determine which Market Participant is in fact responsible.

2. Revised EP 9.3(b) and 9.3(c) Appropriately Reflect the Distinction Between Ultimate Liability for a Penalty and Responsibility for Paying a Penalty Pursuant to the ISO's Settlement Process

APX asserts that revised EP 9.3(b) is inconsistent with the Commission's prior rulings that a Scheduling Coordinator may be jointly and severally liable in the event the actions of the Scheduling Coordinator and the Market Participant for whom the Scheduling Coordinator is submitting a schedule are indistinguishable. APX at 2, 4. APX also argues that revised EP 9.3(c) is inconsistent with the Commission's holding that "if the ISO determines that the market participant is solely responsible for the payment of a penalty, then even if the market participant uses its Scheduling Coordinator to pay the penalty, the market participant, not the Scheduling Coordinator, is ultimately responsible for the market participant's payment of the penalty." APX at 1-3 (quoting Rehearing Order at P 51).

APX fails to properly distinguish between *ultimate liability for a penalty*, which resides with the party or parties that engaged in the culpable conduct (whether it be the Scheduling Coordinator, the Market Participant the Scheduling Coordinator represents, or both), and *responsibility for paying a penalty pursuant to the ISO's Settlement process*, which resides with the Scheduling Coordinator alone. Under the Settlement process, all amounts owed and owing (including penalty amounts) are shown on Preliminary and Final Settlement Statements, and the responsibility for payment of those Settlement Statements lies with the Scheduling Coordinators on behalf of the Market Participants they represent. *See generally* ISO Tariff, § 11; *see also* ISO Tariff, § 11.6.2 ("Each Scheduling

Coordinator shall pay any net debit and shall be entitled to receive any net credit shown in an invoice on the Payment Date."). This is true even where the Market Participants are ultimately liable for the amounts owed. APX appears to recognize that this is how the Settlement process works. It asserts that "because [revised EP] 9.3(c) applies where the market participant alone acted in violation of the tariff warranting a fine, APX should not be required to pay the penalty and incur additional liabilities, *even as part of the normal settlement process*, when the responsible market participant fails to do so." APX at 4 (emphasis added). In neither the Compliance Order nor the Rehearing Order did the Commission require the ISO to completely change the normal operation of its Settlement process.

Revised EP 9.3(b) and 9.3(c) reflect the distinction between payment responsibility under the Settlement process and ultimate liability for a penalty. Revised EP 9.3(b) states that, except as provided in revised EP 9.3(c), a Scheduling Coordinator is "obligated to pay all penalty amounts reflected on the Preliminary and Final Settlement Statements to the ISO pursuant to the ISO's Settlement process, as set forth in Section 11 of the ISO Tariff." EP 9.3(c), in turn, provides that "[w]here a party or parties other than the Scheduling Coordinator is responsible for the conduct giving rise to a penalty . . . such other party or parties ultimately shall be liable for the penalty." Thus, to the extent a Market Participant is responsible for the conduct that gives rise to a penalty, the Market Participant, not the Scheduling Coordinator, is ultimately liable. In addition, revised EP 9.3(c) provides that the Scheduling Coordinator "shall use

reasonable efforts to obtain payment of the penalty from the responsible party(ies) and to remit such payment to the ISO in the ordinary course of the settlement process." *See* revised EP 9.3(c).

Revised EP 9.3(c) also states that each Scheduling Coordinator is obligated to pay the full amount of an invoice, inclusive of an assessed penalty, in cases where the Scheduling Coordinator is unable to obtain payment from the responsible parties and therefore disputes the Preliminary Settlement Statement, unless the Commission specifically authorizes the Scheduling Coordinator to net its payment by the amount of the penalty in question. In order to address any concerns about the ISO's compliance with the portion of the Rehearing Order quoted above, the ISO would be willing to modify revised EP 9.3(c) to state that, if the ISO finds that a Market Participant separate from the Scheduling Coordinator is solely responsible for a violation, the Scheduling Coordinator that is unable to obtain payment may net its payment by the amount of the penalty in question. Any shortfall in payment of an Invoice up to the amount of such a penalty will cause the ISO to "short" the penalty trust fund described in revised EP 9.4, not the market.

APX also takes issue with the provision in revised EP 9.3(c) that states the ISO may refuse to offer further service to any responsible party that fails to pay a penalty, unless excused under the terms of the ISO Tariff or the Enforcement Protocol. APX asserts that this provision "would present the innocent SC with the unfair choice of either going out of business because the CAISO has refused to accept any of its schedules or paying the participant's

penalty." APX at 3. In cases where the Scheduling Coordinator is innocent (*i.e.*, where one or more of the Market Participants it represents were the only parties that were responsible for the conduct that gave rise to the penalty) and fails to make payment on behalf of the culpable Market Participants as required by the Settlement process, the ISO may refuse to offer further service only with regard to the culpable Market Participants, which may be only a portion of all the Market Participants the Scheduling Coordinator represents. In that situation, the innocent Scheduling Coordinator would not be faced with the possibility of "going out of business."

Powerex asserts that the Commission should direct the ISO "to place some limit on holding the SC responsible for payments of penalties imposed on *any* other party [under revised EP 9.3(c)] and limit that responsibility only to the party for whom the SC is directly scheduling." Powerex at 12 (emphasis in original). The ISO clarifies that the "other responsible party" under revised EP 9.3(c) can only be a party for whom the responsible Scheduling Coordinator is directly scheduling or bidding.

IEP argues that Scheduling Coordinators should not be required to report to the ISO, pursuant to revised EP 9.3(c), the identities of the Market Participants those Scheduling Coordinators represent. IEP states that "[t]his is confidential market sensitive information and the ISO has not demonstrated a need for this data." IEP at 21. The ISO does have a need for these data. The Commission directed that a Scheduling Coordinator would not be held responsible for an ISO Tariff violation or manipulative conduct attributable solely to one of its Market

Participants. If it is not possible to distinguish whether the Scheduling Coordinator or its Market Participants caused any harm in violation of the Enforcement Protocol and there is no reasonable basis for determining the contribution of each to the resulting harm, the Scheduling Coordinator and its Market Participants will be jointly and severally liable for the harm. Rehearing Order at P 21. In order to make the determinations necessary to comply with these directives, the ISO must know the identities of the Market Participants a Scheduling Coordinator represents. Otherwise, the ISO will be unable to distinguish between the Scheduling Coordinator and its Market Participants for purposes of attempting to apportion responsibility for a violation. Moreover, if the ISO is to bill the Scheduling Coordinator for a violation attributable solely to a Market Participant, the ISO needs to know which Scheduling Coordinator represents which Market Participant. Additionally, the ISO must know the identity and the Grid Management Charge responsibility of each Market Participant represented by a Scheduling Coordinator for the purpose of disbursing penalty proceeds pursuant to revised EP 9.4.

J. The ISO Has Already Addressed Parties' Concerns with Regard to Revised EP 9.4, Concerning the Disposition of Proceeds

APX asserts that the revised Enforcement Protocol does not clearly provide that a Scheduling Coordinator that acts for multiple Market Participants, only some of whom have violated the ISO Tariff, will still receive a share of the penalty payments at the end of the year but may not pass on any amount to the Market Participants that acted improperly. APX at 4-5. Revised EP 9.4 is clear

on this point. It states that the Market Participants eligible to receive penalty proceeds are those "that were not assessed a financial penalty pursuant to this EP during the calendar year." Under revised EP 9.4, the formula for payment of penalty amounts due each Scheduling Coordinator is tied to the eligibility of the Market Participants the Scheduling Coordinator represented during the calendar year. The section also states that "[e]ach Scheduling Coordinator is responsible for distributing payments to the eligible Market Participants it represented in proportion to GMC [the Grid Management Charge] collected from each eligible Market Participant."

IEP states that "a very minor penalty could preclude [a] Market Participant from receiving future disposition of proceeds, even if their initial infraction was a minor one with little if any financial consequence to the market." IEP asserts that the Commission should require the ISO to further revise the language of revised EP 9.4 "to reflect a more fair and accountable system." IEP at 6. The ISO made a similar observation in the transmittal letter for the Compliance Filing with regard to minor penalty amounts:

> The ISO notes that a consequence of the methodology directed by the Commission for allocating penalty amounts is that Market Participants may incur a significant financial "hit" as a result of being penalized for the first time in a calendar year. The amount of that first penalty assessed to the Market Participant may be less significant than the fact that the Market Participant will thereby be ineligible to receive penalty proceeds at the end of the calendar year.

Transmittal Letter for Compliance Filing at 26. The ISO also explained that it filed a request for clarification of the Compliance Order as to whether a minor first offense for which no financial penalty was levied served to disqualify the

offending party from being allocated penalty proceeds, but that the Rehearing Order did not appear to squarely address the issue. *Id.* at 26 n.25. Revised EP 9.4 provides that the opportunity to participate in redistribution of penalty proceeds is revoked only if there is a financial penalty. Therefore, a violation that results only in a Sanction letter does not cause such revocation.

K. The Commission Should Accept the Use of a Rolling 12-Month Period for Determining the Frequency of Violations of the Enforcement Protocol

IEP notes that revised EP 2, EP 4, and EP 6 all contain provisions allowing for graduated Sanctions depending on the frequency of violations of the Enforcement Protocol within a rolling 12-month period. IEP states that it supports graduated Sanctions over a period to take into consideration the frequency of a given violation, but proposes that frequency be determined on a calendar-year basis. Further, IEP proposes that the first five violations in any calendar year be subject to penalties at the lower end of the adopted penalty range "in recognition of real-world operations." IEP at 5-6.

The ISO believes a rolling 12-month period is superior to a calendar year basis for designing a graduated penalty. Basing penalties on the frequency of violations on a calendar year basis would arbitrarily give each Market Participant a clean slate each January 1. This could lead to discriminatory results based on the time of year that a Market Participant incurred violations. For example, if an Operator failed to schedule one Outage in May, and another three months later (in August), the second violation would incur the maximum Sanction, since it occurred within the same calendar year. If another Operator failed to schedule

outages in November and the following February, the second violation would not incur the maximum penalty even though it is similarly timed with respect to the first. There is no reason to create the possibility of discriminatory results by adopting a calendar year basis for determining graduated penalties. Additionally, the ISO believes that the frequencies of violations on which graduated penalties are proposed in the Compliance Filing are reasonable.

L. Section 2.2.9 of the ISO Tariff Is Effective Upon Notice as Directed in the Compliance Order

Powerex asserts that it is unsure what effective date the ISO proposes for Section 2.2.9 of the ISO Tariff. Powerex at 2-4. As the ISO explained in the Compliance Filing, the Commission approved the section effective as of the date of implementation of changes the ISO committed to make to its scheduling system. Transmittal Letter for Compliance Filing at 28 (citing Compliance Order at P 121). The ISO proposes that effective date for Section 2.2.9: the clean ISO Tariff sheet containing Section 2.2.9 in Attachment A to the Compliance Filing contains the correct effective date – "Upon Notice." *See* Attachment A to Compliance Filing, at Third Revised Sheet No. 20. The reason for Powerex's confusion seems to be that, in the Compliance Filing, the ISO stated that the section would become effective "upon notice by the ISO as described below in Section IV." Transmittal Letter for Compliance Filing at 28. The words "as described below in Section IV" were mistakenly included and should be disregarded. The ISO regrets any confusion they may have caused.

M. The ISO Would Not Object to any Further Clarification that may Be Necessary Concerning Effective Dates

Powerex asserts that the Commission should clarify the effective date of each of the provisions in Amendment No. 55 when it issues an order on the Compliance Filing. Powerex at 4. As explained in the Compliance Filing, the ISO requests that the new provisions contained in the Compliance Filing be made effective as of the date the Commission approves such provisions. Transmittal Letter for Compliance Filing at 34.[17] The ISO believes this is the appropriate effective date in light of the Commission's sole authority to administer and charge penalties under the Enforcement Protocol. *See* Transmittal Letter for Compliance Filing at 34. The ISO would not object to any further necessary clarification by the Commission concerning the effective date.

N. The Date by Which the Commission Required the ISO to Post an Updated, Conformed ISO Tariff on its Website has not yet Arrived

Powerex asserts that the Commission "should again direct the CAISO to place a conformed tariff on its website containing all effective tariff provisions," and notes the directive in the Compliance Order to "'post an updated, conformed tariff on its website within 30 days following the acceptance of its subsequent compliance filing in this proceeding.'" Powerex at 4-5 (quoting Compliance Order at P 167). The Commission has not yet accepted the Compliance Filing, and therefore the 30-day period following the acceptance of the Compliance Filing has not yet started to run. Therefore, the Commission should reject Powerex's

[17] Note that Section 2.2.9 of the ISO Tariff, discussed in Section I.L, above, is not a new provision in the Compliance Filing. Therefore, the ISO does not request that the section be made effective as of the date the Commission approves the new provisions.

request that the Commission issue a renewed directive to post an updated, conformed ISO Tariff. The ISO also notes that on June 24, 2004, it posted on its website the conformed ISO Tariff as of June 1, 2004. The ISO commits to further update the Tariff on a regular basis as needed in response to Commission orders approving revisions to the tariff.

II. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept the Compliance Filing, as modified in the course of the discussion above.

Respectfully submitted,

/s/ J. Phillip Jordan

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Date: June 28, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California, on this 28th day of June, 2004.

/s/ Anthony J. Ivancovich
Anthony J. Ivancovich