UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)**	**Docket No. ER01-991-000**

ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTIONS TO INTERVENE, COMMENTS, PROTESTS, AND OTHER FILINGS

I. INTRODUCTION AND SUMMARY

On January 18, 2001, the California Independent System Operator Corporation ("ISO")[1] filed Amendment No. 37 to the ISO Tariff. The ISO stated that Amendment No. 37 was intended to modify the bidding requirements for Reliability Must-Run ("RMR") Unit Owners whose Units are dispatched by the ISO prior to the close of the California Power Exchange Corporation ("PX") markets who chose to be paid under the terms of the RMR Contract rather than through the market. Such an Owner would be exempted from the requirement that the RMR Contract Energy[2] be bid into the PX Day-Ahead Market if it is prohibited from bidding into that market by law or regulation or because it is disqualified under the terms of the PX Tariff. The ISO requested waiver of the Commission's notice requirements and an effective date of January 18, 2001.

A number of parties have moved to intervene in the present proceeding. Some of the motions to intervene include protests of Amendment No. 37, as well

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[1] Capitalized terms not otherwise defined herein shall have the meaning as defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] RMR Contract Energy is RMR Energy for which the RMR Owner elects to receive

as requests for specific relief.[3] Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the ISO now submits its Answer to the motions to intervene, comments, protests, and other filings submitted in the above-referenced docket. The ISO does not oppose the intervention of the parties that have sought leave to intervene in this proceeding.

The ISO does, however, oppose the requests made by some parties for modification or rejection of Amendment No. 37.[4] These requests are unsupported. As explained below, the ISO instituted Amendment No. 37 as a "quick fix" interim measure to address the credit-worthiness problems of the investor-owned utilities in the State of California. The ISO recognizes that additional changes are needed to accommodate the demise of the PX markets as a vehicle for scheduling RMR Contract Energy and is working with stakeholders to develop additional revisions of the RMR procedures. The need for additional changes, however, does not justify rejection of the necessary revisions included in Amendment No. 37. Moreover, contrary to the assertions of

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payment under the terms of the RMR Contract.

[3] Motions to intervene, comments, protests, and/or other filings were submitted by the California Department of Water Resources; California Electricity Oversight Board; Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC; Dynegy Power Marketing, Inc., Cabrillo Power I LLC, and Cabrillo Power II LLC ("Dynegy Entities"); Mirant California, LLC ("Mirant"); Northern California Power Agency ("NCPA"); Sacramento Municipal Utility District; Southern California Edison Company; Turlock Irrigation District; and Williams Energy Marketing & Trading ("Williams EM&T"). A notice of intervention was filed by the Public Utilities Commission of the State of California.

[4] Some of the parties commenting on Amendment No. 37 request relief in pleadings styled as protests. There is no prohibition on the ISO responding to the assertions in these pleadings. The ISO is entitled to respond to these pleadings and requests notwithstanding the labels applied to them. *Florida Power & Light Co.*, 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 Corp.*, 78 FERC ¶ 61,179, at 61,733, 61,741 (1997); *El Paso Electric Co.*, 68 FERC ¶ 61,181, at 61,899 & n.57 (1994).

parties, the PX markets are not an essential component of Pre-Dispatch,[5] and thus the cessation of the PX markets provides no basis for eliminating Pre-Dispatch. Finally, as discussed below, the various other arguments of the parties provide no basis for rejecting Amendment No. 37.

II. ANSWER

A. Arguments Regarding the Need for More Extensive Changes to Pre-Dispatch Procedures Provide No Basis for Rejecting Amendment No. 37

Various parties point to the demise of the PX markets (the PX stopped operating its forward markets effective January 31, 2001) and to the central role the PX played in the Pre-Dispatch procedures. To differing degrees, parties argue that these circumstances compel a reexamination of the justification for Pre-Dispatch. These arguments are misplaced.

1. The ISO Recognizes the Need For, and Is Developing, Additional Revisions to Accommodate the Absence of the PX Markets.

The ISO recognizes that the absence of the PX complicates Pre-Dispatch. Amendment No. 37, which was an emergency filing, addresses the credit-worthiness issue by excusing the requirement that Scheduling Coordinators for RMR Owners bid into the PX markets if the PX markets are unavailable to that RMR Owner's Scheduling Coordinator. Instead, applicable Scheduling Coordinators for RMR Owners who chose the payment through the RMR Contracts must merely ensure that the RMR Contract Energy is included in the

[5] The term "Pre-Dispatch" refers to the practice of issuing Dispatch Notices to RMR Owners prior to the close of the PX markets as approved by the Commission in its order concerning Amendment No. 26 to the ISO Tariff, *California Independent System Operator*

Day-Ahead Schedule. They can accomplish this through bilateral transactions, or, at present, through participation in another exchange, such as the Automated Power Exchange. Thus, NCPA is incorrect when it asserts that RMR Owners cannot choose RMR Contract payment and recommends "relaxing the pre-dispatch requirement so that RMR owners may be paid the contract price for RMR energy called by the [ISO] where they would ordinarily select the contract path."[6]

Nonetheless, the ISO recognizes that the "quick fix" instituted on an emergency basis through Amendment No. 37 does not represent the long-term solution. First, it is not always possible to arrange bilateral transactions on a day-ahead basis. Second, the prices in such transactions are not transparent. Transparent prices are necessary because the amounts received by an RMR Owner's Scheduling Coordinator for RMR Contract Energy must be credited against the RMR invoice. This requirement exists to ensure that RMR Owners are not paid twice – once by the ISO under the terms of the RMR Contract, and a second time by the market – for the same Energy from the RMR Unit. Lastly, the PX markets no longer exist and an alternative to use of the PX transparent prices must be developed.

Accordingly, the ISO has met with stakeholders to develop an alternative means for ensuring that RMR Contract Energy is scheduled. ISO management has proposed such a measure to the ISO Governing Board, which is considering that measure and alternative actions. The ISO anticipates filing an amendment

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Corporation, 90 FERC ¶ 61,345, at 62,138-39 (2000) ("Amendment No. 26 Order").

[6] NCPA at 3-4.

to address these issues in the near future.

The fact that additional revisions are being developed, however, is no reason for rejecting Amendment No. 37, which is necessary to allow the Pre-Dispatch process to continue in the interim.

2. The Absence of the PX Markets Does Not Compel Elimination or Radical Restructuring of Pre-Dispatch.

Contrary to the assertions of parties, the cessation of the PX markets provides no valid reason to eliminate or radically revise Pre-Dispatch. Williams argues for termination of the ISO's Pre-Dispatch authority based on the contention that the operation of the PX Day-Ahead Market was a primary and essential component of RMR Pre-Dispatch, and that the suspension of this market alone provides sufficient grounds for such termination.[7] Similarly, Mirant contends that the unavailability of the PX Day-Ahead Market renders meaningless the ISO Tariff provisions concerning Pre-Dispatch.[8]

Such arguments misconstrue the rationale for Pre-Dispatch and the role of the PX in Pre-Dispatch. The primary purpose of Pre-Dispatch is to ensure that RMR Energy is scheduled against Load instead of appearing unscheduled in the real time market. Although the ISO noted concerns about distortions in the PX markets as an additional reason for Pre-Dispatch path, the Commission, in its Amendment No. 26 Order, expressed serious doubt as to whether Pre-Dispatch would affect PX prices.[9] Rather, the principal role of the PX was as a vehicle by which the Load was to be scheduled against reliability Energy prior to real time.

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[7] Williams EM&T at 11-13.

[8] Mirant at 5-6.

[9] Amendment No. 26 Order, 90 FERC at 62,139.

The Load was in the PX because the investor-owned utilities were required by California law to bid their Load into the PX markets. RMR Contract Energy was required to bid into the PX Day-Ahead Market because that market represented the best opportunity to get that Energy scheduled. Requiring the must-run Contract Energy to be bid into the PX Day-Ahead Market as a price-taker was completely consistent with the treatment prescribed for other "must-take" or "must-run" resources in California. Accomplishing the fundamental purpose of Pre-Dispatch thus only required that reliability Energy be scheduled against Load in the forward markets, not necessarily in the PX Day-Ahead Market. The PX was a significant – but not essential – component of Pre-Dispatch.

C. Parties Provide No Other Colorable Rationale for Rejecting Amendment No. 37

None of the other reasons proffered for rejecting Amendment No. 37 has merit. Mirant asserts that Amendment No. 37 establishes "a system whereby different RMR generators [are] treated differently, solely due to their credit rating."[10] This is true, but does not constitute undue discrimination. First, RMR Owners who cannot bid into the PX markets are differently situated from those who can. Second, no RMR Owner is prejudiced by Amendment No. 37. RMR Owners who choose payment under the RMR Contract receive the same payment for RMR Contract Energy (i.e., the Energy specified by the RMR Contract) regardless of whether they bid into the PX markets or have a bilateral transaction. Finally, because the PX markets no longer exist, all RMR Owners are treated the same under Amendment No. 37 – they are excused from the

[10] Mirant at 4-5.

requirement that they bid RMR Contract Energy into the PX markets.

Additionally, despite complaints to the contrary,[11] Amendment No. 37 does not violate the requirements of the Pro Forma Must Run Service Agreement regarding the ISO's implementation of Pre-Dispatch. Amendment No. 37 does not propose to alter the timing of Pre-Dispatch, the availability of payment options, payment under any of those options, or any other fundamental aspect of Pre-Dispatch. Amendment No. 37 merely accommodates new circumstances such that the scheme incorporated in and approved by the Commission in Amendment No. 26, as modified with stakeholder input in Amendment No. 35,[12] remains undisturbed.

Williams EM&T's assertion that the ISO has failed to justify the continued operation of Pre-Dispatch, as directed by the Commission, is at best premature.[13] The ISO is examining the issue of permanent reform of the RMR Contracts in the Congestion Management Reform process. Because the Congestion Management Reform plan has not been finalized, the ISO has requested an extension of time to file this plan.[14] Consistent with the Commission's orders, the

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[11] *See* Dynegy Entities at 3-5.

[12] The ISO submitted Amendment No. 35 on December 29, 2000 in Docket No. ER01-836-000.

[13] Williams EM&T at 13-16.

[14] Williams EM&T notes that the Amendment No. 26 Order directed the ISO to file for continuation of its RMR procedures or new procedures on the earlier of the date it was to file its new Congestion Management Reform plan or January 15, 2001, the date that Regional Transmission Organization ("RTO") filings were due under Order No. 2000. *See* Williams EM&T at 15; Amendment No. 26 Order, 90 FERC at 62,139.

Williams EM&T fails to recognize that the Commission's November 1, 2000 and December 15, 2000 orders concerning the California markets, issued in Docket Nos. EL00-95-000, *et al.*, fundamentally altered many of the market's structures. The ISO must take those fundamental changes into account in rendering an accurate evaluation of Pre-Dispatch. The result of the changes has not only been unavoidable delay in filing the Congestion Management Reform plan, but also the ISO's inability to address Pre-Dispatch in the RTO filing. In light of this circumstance, and the duration of existing RMR Contracts, the ISO, in its filing letter

ISO expects to address Pre-Dispatch in that filing. Moreover, the ISO notes that Amendment No. 37 was not intended to be the ISO's filing "for continuation of its RMR procedures,"[15] but rather, as noted above, a device for specifically addressing the unavailability of the PX markets for some – and then all – RMR Owners.

Finally, Mirant asserts that the ISO has not provided sufficient background in the Amendment No. 37 filing concerning the present crisis in the California electricity markets.[16] This is simply untrue. The ISO noted in the transmittal letter for Amendment No. 37 that, "[a]s the Commission is well aware, events in the California electricity markets have caused credit-rating agencies to downgrade the ratings of one RMR Owner, Pacific Gas and Electric Company ('PG&E')."[17] More generally, the ISO stated that "the grave circumstances at issue leave the ISO with no alternative. Immediate implementation of the proposed amendment cannot be avoided if the ISO's ability to ensure reliability of service through the use of RMR Units is to be ensured."[18] There can be no doubt that the ISO filed Amendment No. 37 secure in the knowledge that the Commission and all of the Market Participants were (and are) well aware of the current problems in the California markets.

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accompanying Amendment No. 35, acknowledged the Amendment No. 26 Order and requested that the ISO be permitted to address Pre-Dispatch in the Congestion Management Reform filing.

As the ISO explained in its RTO filing submitted on January 16, 2001, the "filing of an RTO proposal with the Commission might be counterproductive, and would certainly be premature." Submission of the California Independent System Operator Corporation Describing Progress Toward Formation of Regional Transmission Organization, Docket No. RT01-85-000, at 5.

[15] *Cf.* Williams EM&T at 16.

[16] Mirant at 3-4.

[17] Transmittal Letter for Amendment No. 37 Filing at 2.

[18] *Id.* at 4.

III. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission accept Amendment No. 37 without further procedures.

Respectfully submitted,

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