

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

**California Independent System) Docket Nos. EC96-19-055 and
Operator Corporation) ER96-1663-058**

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTION FOR LEAVE TO INTERVENE OUT OF TIME,
LIMITED PROTEST AND COMMENTS OF THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA REGARDING ISO FIRST
REPLACEMENT VOLUME NOS. I AND II**

I. INTRODUCTION AND SUMMARY

On October 13, 2000, the California Independent System Operator Corporation (“ISO”)¹ filed First Replacement Volume Nos. I and II of its FERC Electric Tariff in the above-referenced dockets (“Order 614 Filing”), in compliance with the Commission’s Order No. 614.² On November 6, 2000, the Public Utilities Commission of the State of California (“CPUC”) filed a Motion for Leave to Intervene Out of Time, Limited Protest and Comments Regarding ISO First Replacement Volume Nos. I and II (“CPUC Motion”) raising concerns about the confidentiality provisions of Section 20.3 of the ISO Tariff. While the CPUC’s concerns are not properly raised in this proceeding (which is purely procedural in nature) and the CPUC’s motion should thus be denied, the ISO commits to addressing with stakeholders (including the CPUC and other state and federal

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² Designation of Electric Rate Schedule Sheets, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (Mar. 31, 2000).

agencies) and its Board whether revisions to Section 20.3 are appropriate. In addition, the ISO takes the opportunity to clarify its current interpretation and application of Section 20.3.

Replacement Volume Nos. I and II of the ISO FERC Electric Tariff were filed by the ISO in compliance with the Commission's Order No. 614. In Order No. 614, the Commission required that, if any revisions to an existing tariff or rate schedule were submitted subsequent to June 1, 2000, "the entire tariff or rate schedule must be re-filed according to the new system" described in Order No. 614.³ Because the ISO has submitted such revisions, it was obligated to make the Order 614 Filing.⁴ The ISO Tariff was unchanged by the Order 614 Filing, with minor exceptions, and except to the extent required by the designation and formatting requirements of Order No. 614.⁵

The CPUC Motion was the sole filing made in response to the Order 614 Filing. Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the ISO now files its Answer to the CPUC Motion.⁶

³ *Id.* at 31,502.

⁴ See Transmittal Letter for Order 614 Filing at 2-4.

⁵ See *id.* at 3-4.

⁶ To the extent necessary, the ISO requests waiver of Rule 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).

II. ANSWER⁷

In its motion, the CPUC protests Sections 20.3.1 through 20.3.4 of the ISO Tariff, and asserts that these provisions

should be rejected and modified to explicitly provide that the confidentiality and disclosure provisions in the tariff do not apply to requests for information from California state agencies with statutory responsibilities related to regulation or oversight of the electric industry, and that the ISO must respond to such requests in the same manner as it responds to data requests from FERC itself.

CPUC Motion at 2. The ISO's Order 614 Filing did not in any way propose to alter the substance of Section 20.3 from language previously adopted by the Commission. In fact, Order No. 614 filings are not meant to be substantive in nature. Rather, Order No. 614 was issued for the purposes of streamlining rate schedule sheet designation procedures for the Commission and the electric industry, conforming public utility tariff filing procedures with those for interstate natural gas and oil pipelines, accommodating the movement toward an integrated energy industry, and facilitating the development of common standards for the electronic filing of all electric, gas, and oil rate schedule sheets.⁸ Nowhere does the Commission indicate that Order 614 filings should provide a forum to contest tariff provisions which were unchanged in the submission of reformatted tariff sheets.

Thus, the ISO believes that the re-filing of the Tariff in accordance with Order No. 614 does not provide the appropriate forum to contest substantively

⁷ As the CPUC notes, the CPUC Motion was filed one day out of time. CPUC Motion at 5-6. The ISO does not believe that the Commission should exclude the CPUC from the above-referenced proceedings or should decline to consider the CPUC Motion. Rather, the ISO believes that the Commission should decline to grant the relief requested in the CPUC Motion for the reasons described below.

⁸ Order No. 614 at 31,500.

unchanged ISO Tariff provisions, such as Section 20.3, and the CPUC's motion should be denied. Otherwise, these routine procedural filings could become extended, unwieldy forums in which any Market Participant could protest any substantive provision of the ISO Tariff. Nonetheless, the ISO is willing to work with the CPUC and other entities to resolve issues concerning Section 20.3. The ISO hereby commits to addressing these issues before stakeholders (including the CPUC and other state and federal agencies) and its Board.⁹

Given the extensive discussion of discovery difficulties in the CPUC Motion, the ISO takes this opportunity to clarify its interpretation and application of Section 20.3 in the context of recent investigations. Section 20.3 does not (and could not) preclude the ISO from responding to legally sufficient subpoenas and discovery requests from state agencies.¹⁰ In fact, the ISO has produced confidential information subject to Section 20.3 in response to legally sufficient subpoenas to the Electricity Oversight Board and the CPUC.¹¹ Moreover, the ISO has produced a large volume of confidential information, including information subject to Section 20.3, to the California State Attorney General ("CA AG").

The ISO cannot pick and choose to which state agency it provides confidential information. Instead, the ISO has used its best efforts to respond promptly and reasonably to a large number of data requests and subpoenas that have been served on the ISO by no fewer than four different state agencies.

⁹ Moreover, any entity that wished to object to Section 20.3 could file a complaint about it under Section 206 of the Federal Power Act, 16 U.S.C. § 824e (1994).

¹⁰ Cf. CPUC Motion at 3-4.

¹¹ See *id.*

In responding to information requests, however, the ISO has, in accordance with Section 20.3, notified Market Participants of requests, worked with the state agencies and Market Participants to ensure that adequate confidentiality provisions are in place, and invested substantial resources to identify and compile the large volume of information that has been requested by the agencies.

Moreover, Section 20.3 does not preclude the ISO from producing confidential information until all Market Participants are satisfied with the confidentiality provisions in place.¹² Rather, the ISO has warned Market Participants repeatedly that it will comply with legally sufficient information requests unless Market Participants take active and prompt steps to avail themselves of legal avenues to improve confidentiality provisions they find inadequate. Indeed, the ISO has been criticized by Market Participants for failing to itself take aggressive stances on the appropriate confidentiality provisions, and for the tight deadlines it has given Market Participants to act prior to production.

Market Participants have filed formal pleadings to obtain more stringent confidentiality protections in the case of the CPUC's investigation of wholesale markets. Thus, pursuant to Section 20.3, the ISO's ability to produce confidential information to the CPUC has been limited pending a ruling on the pleadings. However, in accordance with the confidentiality arrangements reached with the CA AG, the CPUC has access to the voluminous information that has been produced to the CA AG (subject to the same confidentiality arrangements in place as to the CA AG) including bidding, scheduling, and metering data for the

period since start-up to the present. While at least one Market Participant expressed unhappiness about the level of protection afforded by the confidentiality arrangements with the CA AG, the ISO went forward with production because that Market Participant did not take active and prompt steps to obtain additional protections.

In sum, the ISO has attempted to respond promptly, responsibly, and in accordance with a proper reading of Section 20.3, to numerous requests for information from state agencies.

III. CONCLUSION

For the foregoing reasons, the Commission should decline to grant the relief requested in the CPUC Motion. However, the ISO hereby commits to addressing whether Section 20.3 should be amended, through the appropriate procedural mechanism.

Respectfully submitted,

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¹² Cf. *id.* at 4.