

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

**California Independent System            )  
Operator Corporation                        )**           **Docket No. ER00-2019-002**

**ANSWER OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
TO COMMENTS, MOTIONS FOR CLARIFICATION,  
MOTIONS TO REJECT FILING IN PART, AND PROTESTS**

On August 3, 2000, the California Independent System Operator Corporation (“ISO”)<sup>1</sup> submitted a compliance filing in the above-referenced docket, which included a number of modifications to the revisions to the ISO Tariff proposed in Amendment No. 27 to the ISO Tariff. The ISO submitted this filing to comply with the Commission’s May 31, 2000 order in this proceeding.<sup>2</sup> The filing also included the most current versions of various tariff sheets, as described below. On August 7, 2000, the ISO filed a correction concerning the compliance filing.

In accordance with the Notice of Filing issued on August 8, 2000, a number of parties submitted comments, motions for clarification, motions to reject the filing in part, and protests concerning this compliance filing on or before August 24, 2000. Pursuant to Rule 213 of the Commission’s Rules of Practice

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

<sup>2</sup> *California Independent System Operator Corporation*, 91 FERC ¶ 61,205 (2000), *reh’g pending* (“Amendment No. 27 Order”).

and Procedure, 18 C.F.R. § 385.213, the ISO now files its Answer to these responses by parties.

As explained below, the requests for modifications to the ISO's compliance filing in this proceeding are unsupported. The Commission should accordingly accept the compliance filing without modification.

## **I. BACKGROUND**

On March 31, 2000, the ISO filed Amendment No. 27 to the ISO Tariff in the above-referenced docket. Amendment No. 27 presented a revised methodology for determining transmission Access Charges, through which the embedded costs of the transmission facilities comprising the ISO Controlled Grid would be recovered.

A number of parties submitted motions to intervene, comments, requests for hearing, and protests concerning Amendment No. 27. On May 8, 2000, the ISO submitted its Answer to Motions to Intervene, Motions to Reject, Comments, Requests for Hearing, and Protests.

On May 31, 2000, the Commission issued the Amendment No. 27 Order, in which it accepted Amendment No. 27 for filing, suspended for a nominal period, subject to refund, and setting it for hearing. The hearing is held in abeyance pending negotiations before the Chief Administrative Law Judge acting as settlement judge.<sup>3</sup> Among other things, in the Amendment No. 27 Order the Commission noted that the ISO proposed to establish a Revenue Review Panel ("RRP") to review the justness and reasonableness of the Transmission Revenue

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<sup>3</sup> *Id.* at 61,730.

Requirements (“TRRs”) for Governmental Entities (“GEs”) that become Participating TOs. Moreover, the ISO proposed that the decisions of the RRP be made final and not subject to further review.<sup>4</sup> The Commission found the finality and non-appealability of the RRP’s findings to be inconsistent with its statutory responsibilities. The Commission also expressed concern that regulatory lag could result from the RRP process for reviewing TRRs of non-jurisdictional Participating TOs.<sup>5</sup> The order stated that “the Commission must be able to determine that the pass through of costs by the ISO to its customers are just and reasonable”; that “the current public process rate review utilized by many GEs does not supplant the FPA requirement for Commission review of rates”; and that “the RRP process may be acceptable as a prerequisite to Commission review . . . .”<sup>6</sup>

On August 3, 2000, the ISO submitted a compliance filing in this proceeding which included modifications made in compliance with the Amendment No. 27 Order. Among other things, the ISO proposed to modify the ISO Tariff, Appendix F, Schedule 3, Section 9.2, which describes the RRP, to provide that the decisions of the RRP shall be subject to review and acceptance by the Commission.<sup>7</sup> Moreover, to address the Commission’s concerns about regulatory lag, and with the guidance that the RRP process may be a prerequisite to Commission review, the ISO proposed to modify that same tariff section to allow each non-jurisdictional Participating TO, at its sole option, to

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<sup>4</sup> *Id.* at 61,723.

<sup>5</sup> *Id.* at 61,724.

<sup>6</sup> *Id.*

<sup>7</sup> Compliance filing transmittal letter at 2.

choose whether or not to use the RRP process as a means of confirming the reasonableness of its TRR. The Participating TO may either file its TRR directly with the Commission; or it may submit the TRR to the ISO for review, in the case of disputes, first by the RRP and then by the Commission.<sup>8</sup> The ISO also submitted “clean” tariff sheets updated to reflect the sum of changes contained in various recent ISO Tariff amendments; to correct typographical errors and inadvertent omissions on those sheets; and to embody certain changes to tariff language which the ISO intended to provide in the recent ISO Tariff amendments, but which were not reflected in those amendments.<sup>9</sup>

A number of parties submitted responses concerning the compliance filing.<sup>10</sup> The ISO believes that the further modifications to the compliance filing proposed in these responses are unnecessary and inappropriate.

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<sup>8</sup> *Id.* The ISO also submitted other modifications to comply with the directives in the Amendment No. 27 Order. *Id.* at 2-3. However, no party submitted a filing that addressed these modifications.

<sup>9</sup> *Id.* at 3-4. Additionally, the ISO committed to submit, in a future filing, tariff sheets that adhere to the format described in *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18221 (Apr. 7, 2000), FERC Stats. and Regs., Regs. Preambles ¶ 31,096 (Mar. 31, 2000). Compliance filing transmittal letter at 4 n.2.

<sup>10</sup> Comments, motions for clarification, motions to reject filing in part, and/or protests were filed by the Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency (“Cities/M-S-R”); Modesto Irrigation District (“Modesto”); Northern California Power Agency; Pacific Gas and Electric Company (“PG&E”); Sacramento Municipal Utility District; Southern California Edison Company (“SCE”); and Transmission Agency of Northern California (“TANC”).

**II. ANSWER TO COMMENTS, MOTIONS FOR CLARIFICATION, MOTIONS TO REJECT FILING IN PART, AND PROTESTS<sup>11</sup>**

**A. The ISO's Proposed Tariff Revision Making the Decisions of the RRP Subject to Commission Review and Acceptance Is Directly Responsive to the Amendment No. 27 Order**

Parties object to the ISO's proposal to modify the ISO Tariff, Appendix F, Schedule 3, Section 9.2, to provide that the decisions of the RRP shall be subject to review and acceptance by the Commission.<sup>12</sup> Contrary to the assertions of these parties, the ISO was simply complying with the Amendment No. 27 Order in proposing this modification to the ISO Tariff. In its order, the Commission instructed the parties to conduct settlement negotiations as to the appropriate regulatory review authority of the TRRs of GEs that may become Participating TOs. The Commission required these negotiations to take place "within the following guidance":

The ISO's proposal that the RRP's findings are final and non-appealable is inconsistent with our statutory responsibilities. . . . [T]he Commission must be able to determine that the pass through of costs by the ISO to its customers are just and reasonable. . . . We also find that the current public process rate review utilized by many GEs does not supplant the FPA requirement for Commission review of rates in these circumstances. . . . [W]e note that . . . the RRP process may be acceptable as a prerequisite to Commission review . . . .<sup>13</sup>

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<sup>11</sup> There is no prohibition on the ISO's responding to the comments, motions for clarification, motions to reject filing in part, and protests filed in response to the Amendment No. 27 compliance filing. The ISO is entitled to respond to these pleadings notwithstanding the label applied to them. *Florida Power & Light Company*, 67 FERC ¶ 61,315 (1994). In the event that any portion of this answer is deemed an answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R. § 385.213) to permit it to make this answer. Good cause for this waiver exists here given the usefulness of this answer in ensuring the development of a complete record. *See, e.g., Enron Corporation*, 78 FERC ¶ 61,179, at 61,733, 61,741 (1997); *El Paso Electric Company*, 68 FERC ¶ 61,181, at 61,899 & n.57 (1994).

<sup>12</sup> *Cities/M-S-R* at 9-12; *Modesto* at 9-11; *TANC* at 9-11.

<sup>13</sup> *Amendment No. 27 Order* at 61,724.

Thus, the Commission determined that it has a responsibility under the FPA to review the findings of the RRP and to determine the justness and reasonableness of costs passed through to the ISO's customers. In a response that exactly mirrors the Commission's directive that the RRP's findings cannot be made final and non-appealable, the ISO proposed a tariff revision that makes the RRP's findings subject to Commission review and acceptance. The ISO filed this revision with the understanding that the Commission's directive means that, whatever else the parties may be able to negotiate, they cannot forbid Commission review of the RRP's findings.

Moreover, to the extent that parties are not responding to the ISO's compliance filing, but are instead submitting what are in effect requests for rehearing of the Commission's determination concerning its review of the RRP's findings, their requests should be rejected as untimely.<sup>14</sup>

**B. Parties Want the ISO to Render Decisions On Issues Which the Commission Has Reserved For Settlement Negotiations, Or Which Are Otherwise Not Properly Before the Commission**

Parties request that the ISO render decisions on the ISO's obligation to make TRR filings on behalf of GEs that become Participating TOs, and to specify the type of Commission review that applies to filings involving the TRRs of GEs that become Participating TOs.<sup>15</sup> These are the types of issues which the Commission determined should be discussed in settlement negotiations. In the

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<sup>14</sup> A request for rehearing must be filed within 30 days after issuance of the order which the request concerns. 18 C.F.R. § 385.713(b). In addition, the filing of a request for rehearing does not stay the Amendment No. 27 Order, *see* 18 C.F.R. § 385.713(e), or the need to comply with the directives contained therein. The ISO notes that parties previously filed timely requests for rehearing of the Amendment No. 27 Order.

<sup>15</sup> PG&E at 5-7; SCE at 5-7.

Amendment No. 27 Order, the Commission noted, among other things, that PG&E had argued that the ISO should be “required to file with the Commission all rates and charges under Section 205 of the FPA and this obligation extends to rates for transmission service using the transmission facilities of GEs”; and that the ISO had asserted that requiring GEs that become Participating TOs to submit their TRRs to the Commission under Section 205 of the FPA was not “the only permissible means for confirming the reasonableness of those revenue requirements.”<sup>16</sup> The Commission concluded as follows:

We believe that the appropriate regulatory review authority of the transmission revenue requirement of non-public utility entities who may become Participating TOs is a complex and evolving question. We do not wish to be overly prescriptive at this time but rather remain flexible to resolutions within the bounds of the FPA. Consistent with our previous discussion in this order, we instruct the parties, with the assistance of a designated settlement judge, to negotiate within [the guidance described in Section II.A, above].<sup>17</sup>

Accordingly, the ISO is willing to discuss – in the context of settlement negotiations – issues concerning the appropriate regulatory review authority of the TRRs of GEs that become Participating TOs. However, the ISO would be improperly circumventing such negotiation process if it were instead to submit proposed tariff revisions in an attempt to resolve these issues.

The same reasoning explains why the ISO should not at this time propose to modify its tariff “to include stated time constraints . . . so as to ensure a timely regulatory outcome.”<sup>18</sup> The Commission required such time constraints to be agreed upon by the negotiating parties, but no agreement has yet been

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<sup>16</sup> Amendment No. 27 Order at 61,723-24.

<sup>17</sup> *Id.* at 61,724.

<sup>18</sup> *Id.*; PG&E at 7.

reached.<sup>19</sup> In the compliance filing, the ISO did propose to address the problem of regulatory lag by giving each non-jurisdictional Participating TO the option of either filing its TRR with the Commission, or of submitting its TRR to the ISO, which will make it subject to RRP review and then to Commission review.<sup>20</sup> This proposal is consistent with the Commission's directives in the Amendment No. 27 Order, because under either option the TRR of the non-jurisdictional Participating TO will be subject to Commission review.<sup>21</sup>

PG&E also asks the Commission to require the ISO to revise "Section 7.1.1 of the ISO Tariff, for which no revisions are proposed in the ISO's compliance filing . . . ." <sup>22</sup> PG&E's request by its terms does not concern the compliance filing. Therefore, the request should be considered as being beyond the scope of the current proceeding.

In addition, to the extent that parties are not responding to the ISO's compliance filing, but are instead submitting what are in effect requests for

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<sup>19</sup> Amendment No. 27 Order at 61,724.

<sup>20</sup> Compliance filing transmittal letter at 2.

<sup>21</sup> See Amendment No. 27 Order at 61,724. SCE claims that the ISO should specify the "rules and requirements established by the Commission" under which the non-jurisdictional Participating TO will file if it chooses to submit its TRR directly to the Commission. SCE at 5. The applicable rules and requirements should properly be determined in settlement negotiations, because they relate to the "appropriate regulatory review authority" of the TRRs of non-jurisdictional Participating TOs. See Amendment No. 27 Order at 61,724, and discussion in this section, above.

PG&E asserts that "the use of a Revenue Review Panel preceding an ISO rate filing" appears inconsistent with Section 13.1.1.2 of the ISO Tariff, which provides that the ISO ADR Procedures do not apply to "[d]isputes as to whether rates and charges set forth in this ISO Tariff are just and reasonable under the FPA." PG&E at 7 n.13. There is no inconsistency, because the operation of the RRP is not governed by the ISO ADR Procedures. For example, the RRP is not subject to the rules of procedure described in the ISO ADR Procedures (see, e.g., ISO Tariff, Section 13.3.8). Instead, the ISO will establish rules of procedure for proceedings before the RRP, which will be modified as necessary from time to time and posted on the ISO Home Page. See ISO Tariff, Appendix F, Schedule 3, Section 9.2.

<sup>22</sup> PG&E at 7-8.

rehearing of the Commission's determinations concerning the issues described above, their requests should be rejected as untimely.<sup>23</sup>

**C. The ISO's Compliance Filing Was Properly Filed Only In the Amendment No. 27 Docket**

The tariff sheets which the ISO submitted in the compliance filing included sheets updated to reflect the sum of changes contained in various recent ISO Tariff amendments; to correct typographical errors and inadvertent omissions on those sheets; and to embody certain changes to tariff language which the ISO intended to provide in the recent ISO Tariff amendments, but which were not reflected in those amendments.<sup>24</sup> The ISO did not propose to include any new provisions in these sheets. Nor did the ISO propose any new exclusions of language from these sheets, with the exception of a change to Section 1.2.2 of the Schedules and Bids Protocol, i.e., a change related solely to the Amendment No. 27 docket.<sup>25</sup> In short, the provisions which the ISO has already submitted in previous, non-Amendment No. 27 filings were not changed by the tariff sheets described above; the ISO was simply providing the most current versions of these tariff sheets.

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<sup>23</sup> See *supra* note 14.

<sup>24</sup> Compliance filing transmittal letter at 3-4. Parties find it "most amazing[]" that the ISO's compliance filing includes tariff sheets that concern proceedings for which Commission orders are pending. Cities/M-S-R at 5; Modesto at 7; TANC at 7. There is no cause for astonishment. The ISO was simply following the Commission's earlier directive that filed tariff sheets "should reflect the *proposed accumulated* changes to date." *California Independent System Operator Corporation*, 90 FERC ¶ 61,316, at 62,048 n.9 (2000) (emphasis added).

<sup>25</sup> Compliance filing transmittal letter at 4. In addition, the ISO clarified that language which was deleted in Amendment No. 25, but which was inadvertently included and/or revised in subsequent filings, should properly be deleted as provided in Amendment No. 25. *Id.* The Commission approved the deletion of this language in *California Independent System Operator Corporation*, 90 FERC ¶ 61,316 (2000), and thus the clarification in the compliance filing did not constitute a proposed change to the ISO Tariff.

Because the ISO proposed no changes to the ISO Tariff in the compliance filing other than those related to Amendment No. 27, it would have been incorrect to submit the compliance filing in dockets in addition to the Amendment No. 27 docket. Moreover, because the arguments and proposed changes in the compliance filing related only to the Amendment No. 27 Order, the compliance filing fully conformed to the Commission's requirements concerning the permissible scope of compliance filings.<sup>26</sup> Further, parties' arguments as to due process and Rule 2010 are negated by the fact that the only changes proposed in the compliance filing were in the Amendment No. 27 docket.<sup>27</sup> The ISO has fulfilled its due process and Rule 2010 responsibilities as to this docket, but as to other dockets, there were simply no changes submitted on which to comment.<sup>28</sup> Finally, the ISO was making no new proposals as to non-Amendment No. 27 dockets, and thus has not violated the filing requirements contained in Part 35 of the Commission's regulations.<sup>29</sup>

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<sup>26</sup> See, e.g., *El Paso Electric Company*, 89 FERC ¶ 61,181 (1999); *Sierra Pacific Power Company*, 80 FERC ¶ 61,376, at 62,271 (1997); *Delmarva Power & Light Company*, 63 FERC ¶ 61,321, at 63,160 (1993).

<sup>27</sup> *Cities/M-S-R* at 6-7; *Modesto* at 7; *TANC* at 7.

<sup>28</sup> *Cf. Southern California Edison Company*, 10 FERC ¶ 61,260, at 61,505 (1980) (rejecting due process claim in the absence of "a showing of material change in law or of fact").

<sup>29</sup> *Cities/M-S-R* at 7-8; *Modesto* at 8; *TANC* at 8. For example, the non-Amendment No. 27 tariff sheets which the ISO included in the compliance filing were not intended to supersede, supplement, or otherwise change the provisions of the ISO Tariff, and thus black-lined versions of those sheets were not required to be filed. See 18 C.F.R. § 35.10(c).

### III. CONCLUSION

For the foregoing reasons, the Commission should accept the ISO's compliance filing in this proceeding without modification.

Respectfully submitted,

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