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November 18, 2003

Via Electronic Filing

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

Re: Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation, *et al.*, Docket Nos. EL00-111-005, *et al.*

Dear Secretary Salas:

Please find attached the Answer of the California Independent System Operator Corporation to the Request for Rehearing of IDACORP Energy L.P., filed today in the captioned proceedings. Please contact the undersigned with any questions concerning the filing.

Respectfully submitted,

/s/ Bradley R. Miliauskas

J. Phillip Jordan
Bradley R. Miliauskas

Counsel for the California
Independent System Operator
Corporation

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California	)	**Docket Nos. EL00-111-005 and EL00-111-006**
	)	
v.	)	
	)	
California Independent System Operator Corporation	)	
	)	
Salt River Project Agricultural Improvement and Power District	)	**Docket Nos. EL01-84-001 and EL01-84-002**
	)	
v.	)	
	)	
California Independent System Operator Corporation	)	
	)	
California Independent System Operator Corporation	)	**Docket No. ER01-607-004**
	)	

ANSWER OF
THE CALIFORNIA INDEPNDENT SYSTEM OPERATOR CORPORATION TO THE REQUEST FOR REHEARING OF IDACORP ENERGY L.P.

I. INTRODUCTION AND SUMMARY

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2003), the California Independent System Operator Corporation ("ISO") hereby requests leave to file an answer to the request for rehearing ("Request for Rehearing") filed by IDACORP Energy L.P. ("IDACORP") in the captioned dockets on November 3, 2003.[1] IDACORP's Request for Rehearing concerns the Commission's

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

acceptance, in the Order issued in the captioned dockets on October 3, 2003, 105 FERC ¶ 61,021 ("October 3, 2003 Order"), of the report the ISO submitted on July 10, 2003 in this proceeding ("Compliance Filing").[2] Rehashing a number of arguments it made previously, raising a few variations on those arguments, and, in one case, couching an impermissible attack on an earlier Order in this proceeding as an attack on the Compliance Filing, IDACORP renews its request that the Commission reject the Compliance Filing. For the reasons explained below, the Commission should deny the relief requested in IDACORP's Request for Rehearing.

II. ANSWER

A. IDACORP Mostly Repeats Arguments that the Commission Has Already Rejected

In large part, IDACORP rehashes arguments that it made in the motion to intervene and protest it submitted in this proceeding on July 10, 2003 ("IDACORP Protest"), to which the ISO filed a response on July 25, 2003 ("ISO Response"). IDACORP's repetitious arguments concern the ISO's use of an allegedly erroneous methodology for calculating hour-by-hour charges authorized under Section 11.2.9 of the ISO Tariff, an alleged need to break out charges other than under Section 11.2.9, and treatment of charges under Section 11.2.9(d) that was allegedly inconsistent with the Tariff. *Compare* Request for Rehearing at 5-7, 9, 13-15 *with* IDACORP Protest at 4-

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The ISO seeks waiver of Rule 213(a)(2) (18 C.F.R. § 385.213(a)(2)) to permit it to make this answer to IDACORP's request for rehearing. Good cause for this waiver exists because this answer will assist the Commission in its understanding of the proceeding and its decision-making process. *See, e.g., Williams Energy Marketing & Trading Company v. Southern Company Services, Inc.*, 104 FERC ¶ 61,141, at P 10 (2003); *New England Power Pool and ISO New England, Inc.*, 103 FERC ¶ 61,304, at P 9 (2003); *Barton Village, Inc., et al. v. Citizens Utilities Company*, 100 FERC ¶ 61,244, at P 9 (2002).

[2] Throughout this answer, where the ISO refers to "this proceeding" or "the present proceeding," it means collectively the proceedings that were instituted in Docket Nos. EL00-111 and EL01-84, which have now progressed to include the dockets and subdockets shown in the caption for this answer.

11. The Commission has flatly rejected these arguments. October 3, 2003 Order at PP 21-24. IDACORP attempts to repackage some of them in the Request for Rehearing, for example by providing a table (at page 6) that contains hypothetical neutrality adjustment charge numbers that IDACORP generated for its filing, whereas there was no table in the IDACORP Protest. Despite the repackaging, IDACORP is simply repeating what it argued before.

The fact that the Commission accepted the Compliance Filing in its entirety, after having considered the arguments presented in the IDACORP Protest, shows that IDACORP's arguments were – and are – without merit. The Commission should be no more persuaded by them now than it was when it considered and rejected them for the first time in the October 3, 2003 Order.[3]

B. The ISO Never Asserted that the "True" Neutrality Adjustment Charges Authorized Under Section 11.2.9 of the ISO Tariff, Calculated on an Hour-to-Hour Basis in a Given Month, Were Enormously Volatile

The ISO provided the Compliance Filing to comply with directives contained in the Commission's March 12, 2003 Order in this proceeding, 102 FERC ¶ 61,274 ("March 12, 2003 Order"). *Inter alia*, the Compliance Filing separated "true" neutrality adjustment charges, i.e., those authorized and billed under Section 11.2.9 of the Tariff, from charges previously invoiced under Charge Type 1010 but authorized other than under Section 11.2.9. The ISO calculated the costs under Section 11.2.9 credited or debited to each Scheduling Coordinator on an hour-by-hour basis for each month by:

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[3] *See, e.g., Entergy Services, Inc.*, 103 FERC ¶ 61,271, at P 34 (2003) ("Joint Intervenors have raised no new facts or arguments for us to reconsider our ruling. Consequently, we deny rehearing of this issue"); *San Diego Gas & Electric Company, et al.*, 99 FERC ¶ 61,159, at 61,643 (2002) ("The Intervenors have raised no new arguments on rehearing that warrant a departure from our previous finding").

(1) determining the total amount of such costs for the entire market; (2) allocating the total amount to the Scheduling Coordinators pro rata based on their metered monthly Demands; and (3) dividing each Scheduling Coordinator's pro rata share by the number of hours in the month. The ISO explained that its Settlement system provides no other method for determining the hourly costs for each Scheduling Coordinator. Use of this only available method results in an identical amount of true neutrality adjustment charges being credited or debited to a given Scheduling Coordinator in every hour of a given month. The Compliance Filing showed that the amount of charges under Section 11.2.9 was negative for each Scheduling Coordinator, for each hour of each month. Transmittal Letter for Compliance Filing at 2-5; ISO Response at 4-7.

IDACORP now argues that in earlier filings in this proceeding, the ISO "stated unequivocally that even what it considers to be 'true' neutrality adjustment charges, *i.e.* those under section 11.2.9 of its tariff, were enormously volatile during the relevant period," and that this volatility must have resulted in true neutrality adjustment charges that were "positive and very significantly so" in some hours. Request for Rehearing at 7-8, 9-10. IDACORP is incorrect. At the time the ISO submitted the filings cited by IDACORP, the ISO had not yet separated out the true neutrality adjustment charges from the charges previously invoiced under Charge Type 1010 but authorized other than under Section 11.2.9.[4] The ISO separated out those charges only after being

[4] In the June 13, 2001 ISO request for rehearing that IDACORP cites, the ISO clearly indicated that it had not yet separated out the charges. The ISO explained that "if the Commission does not modify its directives on rehearing, the ISO must *and will* review its charges to Scheduling Coordinators during the relevant period *to determine whether charges levied under Section 11.2.9 (but not other charges allocated in the same manner)* exceed the cap applicable under Section 11.2.9.1 in any hour." Request for Rehearing, Motion for Clarification, and Petition for Reconsideration of the California Independent System Operator Corporation, Docket No. EL00-111-002 (filed June 13, 2001), at 13 (emphasis added) ("June 13, 2001 ISO Request for Rehearing"). The use of the future tense ("and will") in the quoted explanation indicates that the charges had not been separated out.

directed to do so by the March 12, 2003 Order. *See* March 12, 2003 Order at P 42. Therefore, the ISO could not possibly have been stating in its earlier filings that the true neutrality adjustment charges, considered separately, were enormously volatile.

As explained above, the ISO's Settlement system provides no method for determining the hourly costs credited or debited for each Scheduling Coordinator that differs from the method employed in the Compliance Filing. Use of this only available method results in an identical amount of true neutrality adjustment charges being credited or debited to a Scheduling Coordinator in every hour of a given month, not in enormous volatility from hour to hour. Therefore, the enormous volatility the ISO mentioned in its earlier requests for rehearing was solely the volatility that resulted from the charges previously invoiced under Charge Type 1010 but authorized other than under Section 11.2.9. Indeed, the "Charge Type 1010 Worksheet" included on the CD-ROM provided in the Compliance Filing indicates that the charges previously invoiced

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In support of its position, IDACORP also quotes the ISO's statement that "the Section 11.2.9 neutrality mechanisms resulted in credits in a significant number of hours of as much as $15.17/MWh." Request for Rehearing at 8, 10 (quoting June 13, 2001 ISO Request for Rehearing at 14). However, IDACORP ignores the ISO's explanation that the $15.17/MWh figure was calculated before the charges authorized by sections other than 11.2.9 had been separated out:

> The line item [entitled "neutrality adjustment charge/refund" on ISO invoices] reflects *both charges and payments listed in Section 11.2.9 and certain charges authorized by other sections of the ISO Tariff* because the charges levied under Section 11.2.9 and the charges authorized by other sections are allocated to Scheduling Coordinators on the same basis, i.e., metered Demand. . . . Because the line item . . . contains both charges and payments, it sometimes totals a positive number, i.e., an amount due from the Scheduling Coordinator, and other times totals a negative number, i.e., an amount due from a Scheduling Coordinator. For a given hour of market operations, the total, either positive or negative, can be quite a significant number. For example, during the relevant period, the positive number (charge) for a given day was as high as $8.17/MWh, and the negative number (refund) *was as high as $-15.17/MWh.*

Attachment B to June 13, 2001 ISO Request for Rehearing at PP 3-4 (emphasis added). Therefore, the ISO never represented the $15.17/MWh figure as an amount of costs credited as true neutrality adjustments under Section 11.2.9.

under Charge Type 1010 but authorized other than under Section 11.2.9 could be quite volatile.

C. IDACORP Is Barred Procedurally From Making an Argument Concerning Retroactive Ratemaking, and Its Argument Is Wrong Substantively

IDACORP asserts that the Commission's acceptance of the Compliance Filing violates the rule against retroactive ratemaking. Request for Rehearing at 10-12. Specifically, IDACORP argues that "by removing OOM [out-of-market] charges from neutrality adjustment charges and moving them to some other, unspecified Charge Type without the requisite notice to customers at the time those charges were incurred, the CAISO has engaged in retroactive ratemaking." *Id.* at 11. Procedurally, IDACORP is not permitted to make this argument on rehearing, and substantively, IDACORP is wrong.

1. IDACORP's Argument Is Out of Time

As IDACORP recognized in its Protest (at 5), the ISO separated out OOM charges and other types of charges from the true neutrality adjustment charges because the Commission directed the ISO to do so in the March 12, 2003 Order. Thus, the appropriate point for IDACORP to raise the retroactive ratemaking issue would have been in a request for rehearing of that Order. While IDACORP was not a party when requests for rehearing of that Order were due, that does not allow IDACORP to raise the retroactive ratemaking issue now. The Commission, in granting the motion to intervene that IDACORP filed on July 10 along with its Protest, cautioned IDACORP that it "must accept the record as it had developed as of [July 10], and its participation is limited to the issues raised in the [Compliance Filing], and any future pleadings in this

proceeding." October 3, 2003 Order at P 48. Whether the removal of the OOM charges and other types of charges from the true neutrality adjustment charges constitutes retroactive ratemaking is *not* an issue raised by the Compliance Filing; it is an issue raised by the March 12, 2003 Order.

The retroactive ratemaking issue *was* raised explicitly and at length, however, by the California Department of Water Resources ("DWR") in *its* request for rehearing of the March 12, 2003 Order. *See* Request for Rehearing of the California Department of Water Resources State Water Project, filed in this proceeding on April 11, 2003, at 6-12. In the October 3, 2003 Order, the Commission rejected that argument. October 3, 2003 Order at PP 25, 29. Now IDACORP is in substance seeking rehearing of DWR's rejected rehearing request. IDACORP is prohibited from seeking rehearing for a second time on the same issue on which the Commission, in its response to DWR, has already denied rehearing.[5]

Moreover, even assuming *arguendo* that the IDACORP Protest would have been an appropriate place to raise the retroactive ratemaking issue, IDACORP failed to raise it even there. IDACORP certainly cannot introduce the issue on rehearing when it could have done so earlier.[6]

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[5] *See, e.g.*, *California Independent System Operator Corporation, et al.*, 101 FERC ¶ 61,219, at P 11 (2002); *San Diego Gas & Electric Company, et al.*, 99 FERC ¶ 61,160, at 61,649-50 (2002). The ISO notes that DWR itself did not seek rehearing of the October 3, 2003 Order on the retroactive ratemaking issue (or any other issue), perhaps in recognition of the fact that it is impermissible to seek rehearing of an unsuccessful rehearing request.

[6] *See, e.g.*, *New England Power Pool*, 101 FERC ¶ 61,344, at P 85 (2002) ("[T]he Commission denies NSTAR's rehearing request in this matter. . . . NSTAR was afforded ample time to raise the issue in its initial comments yet failed to do so."); *Constellation Power Source, Inc. v. California Power Exchange Corporation*, 100 FERC ¶ 61,380, at P 18 (2002).

2. Substantive Reasons that IDACORP Is Incorrect

The Commission has already fully addressed the issue raised by IDACORP. The dispositive point, as the Commission recognized in the October 3, 2003 Order, is that the March 12, 2003 Order enforced the ISO Tariff as filed and did not adjust it, by requiring the ISO to apply the limitation contained in Section 11.2.9.1 of the Tariff *only* to charges authorized under Section 11.2.9 and finding that OOM charges were authorized elsewhere in the Tariff. October 3, 2003 Order at P 29. The ISO's removal of the OOM charges from the neutrality adjustment charge billings, as required by the March 12, 2003 Order, was not retroactive ratemaking. *Id.* Further, the OOM charges were assessed to the same parties, and in the same amounts, both before and after the March 12, 2003 Order. Transmittal Letter for Compliance Filing at 6-7; ISO Response at 9.

D. During the Relevant Time Period, the ISO Has Not Charged for Any Amounts Under Section 11.2.9(d) of the Tariff

As noted earlier, IDACORP rehashes its argument that the ISO should break out the amounts charged other than under Section 11.2.9. As also noted, the Commission rejected this argument. *See supra* Section II.A. In trying to make it again, IDACORP has made a frankly incomprehensible argument at pages 14 to 16 of its Request for Rehearing. IDACORP appears to be asserting that the Compliance Filing erroneously failed to include charges for regulating Energy – which IDACORP mistakenly and repeatedly calls "Regulated Energy" – under Section 11.2.9(d). IDACORP is incorrect. As the ISO has explained, Section 11.2.9(d) was inserted into the Tariff *solely* to charge for a special component of the payment for regulating Energy – an "adder" to suppliers' Regulation bids – as part of the ISO's interim Regulation Energy Payment Adjustment

("REPA"). REPA was discontinued prior to the time period relevant to the present proceeding. No adder has been charged since REPA was discontinued, and therefore there have been no charges assessed under authority of Section 11.2.9(d) since then. ISO Response at 13-14. It is also the fact that regulating Energy is a type of Uninstructed Imbalance Energy. Regulating Energy is charged, like other types of Uninstructed Imbalance Energy, under Section 11.2.4 of the Tariff, not Section 11.2.9. *Id.*

III. CONCLUSION

For the reasons described above, the Commission should deny the relief that IDACORP requests.

Respectfully submitted,

/s/ J. Phillip Jordan

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Counsel for the California Independent System Operator Corporation

Date: November 18, 2003

CERTIFICATE OF SERVICE

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

Dated at Folsom, CA, on this 18th day of November, 2003.

/s/ Gene L. Waas
Gene L. Waas