

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

California Independent System Operator) Corporation )	Docket Nos. ER01-889-009 <i>et al.</i>
California Independent System Operator) Corporation )	Docket Nos. ER01-3013-001 <i>et al.</i>
San Diego Gas & Electric Company, ) Complainant ) v. ) Sellers of Energy and Ancillary Services ) Into Markets Operated by the ) California Independent System ) Operator and the California Power ) Exchange, ) Respondents )	Docket No. EL00-95-036

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION TO THE MOTION OF  
RELIANT ENERGY POWER GENERATION, INC. AND RELIANT ENERGY  
SERVICES, INC. FOR IMMEDIATE COMMISSION ACTION**

Pursuant to Rules 206 and 213 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 and 385.213 (2001), the California Independent System Operator Corporation ("ISO")<sup>1</sup> respectfully hereby submits this answer to the "Motion of Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. for Immediate Commission Action" ("Motion"), filed on April 4, 2002, in the above-referenced dockets. The Motion requests the Commission to make an unprecedented and unsupported interpretation of the Commission's previously

approved ISO compliance filing in response to the Commission's November 7, 2001 order<sup>2</sup> concerning payments by the California Department of Water Resources ("CDWR") for transactions on behalf of the investor-owned utilities ("IOUs").

The Motion requests the Commission to interpret the ISO compliance filing in a way neither intended by the ISO nor supported by the ISO Tariff.

Specifically, the Motion asks the Commission to require the ISO to make a disbursement of funds on a partial month-basis – something not permitted under the ISO Tariff, and not contemplated, suggested nor filed by the ISO. Indeed, if a partial-month disbursement was conducted, it would cause cost-shifting without regard to cost-causation among ISO Market Participants. The end result is likely to be additional litigation before the Commission by newly negatively impacted ISO Market Participants.

The Motion would require the ISO to fingerprint funds received from a specific Scheduling Coordinator, here CDWR, and then match those funds to specific Charge Type transactions on specific Trade Days and thus pay only the debtors, here the movant. The ISO has never conducted Settlements in this manner, and, indeed, to do so, would require express Commission approval to deviate from the Settlement and Billing Protocol in the ISO Tariff.

For the reasons set forth below, as have been previously filed with the Commission in these same dockets, the Motion contradicts the written record,

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

<sup>2</sup> 97 FERC ¶ 61,151 (2001) ("November 7 Order").

proposes actions in violation of the ISO Tariff, benefits the movant at the expense of other ISO Market Participants and, therefore, should be dismissed.

## **I. BACKGROUND**

In its November 7 Order, the Commission directed the ISO to enforce its billing and settlement procedures and invoice CDWR for ISO market transactions made on behalf of the IOUs. In compliance, the ISO invoiced CDWR on November 20, 2001 and on November 21, 2001, submitted a compliance filing responsive to the November 7 Order. Subsequently, a “Request for Emergency Ruling Adopting and Enforcing ISO Compliance Filing” was submitted on February 19, 2002, by Dynegy Power Marketing, Inc. *et al.*, in the above-referenced dockets (“Dynegy Request”), seeking the same unsupportable interpretation of the ISO’s compliance filing and ISO Tariff procedures for Settlement as does the instant Motion. An answer in support of the Dynegy Request was filed by Williams Energy Marketing & Trading Company on February 25, 2002. A supplement to the Dynegy Request was filed on February 27, 2002, by Dynegy Power Marketing, Inc., EL Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC. This supplement attached a letter to Dynegy from the ISO, explaining the ISO’s compliance filing and the authorized procedures for Settlement and monthly disbursement of cash to pay creditors in the ISO markets.

The Commission adopted the ISO’s compliance filing on March 27, 2002,<sup>3</sup> making no reference to the Dynegy Request, the Williams answer or the Dynegy supplement to the Dynegy Request. Moreover, the Commission, in adopting in

part and rejecting in part the ISO's compliance filing of November 7, 2001, specifically did not reject the ISO's proposed disbursement of funds under the normal process set forth in the ISO Tariff. Thus, the Commission has already, in effect, determined that the ISO has acted properly and in accordance with its compliance filing and the ISO Tariff.

## **II. THE MOTION PRESUMES TO TELL THE COMMISSION WHAT THE ISO MEANT BUT DID NOT SAY IN THE ISO COMPLIANCE FILING**

The crux of the Motion and the several similar filings all presume that the filing parties should be able to require the Commission to interpret the ISO's compliance filing in a way the ISO neither intended, provided for nor implemented in the course of the ISO's routine disbursement of funds to ISO market creditors for the Trade Month of January, 2001. Beyond the untenable presumption in the Motion and other filings that the filing parties have any such rights to "second-guess" the ISO or the Commission, the end result would violate the ISO Tariff and result in prohibited cost-shifting among Market Participants.

Specifically and critically, California State law AB1X contemplates CDWR undertaking such financial obligations on January 17, 2001, and not before. In its November 21 compliance filing, the ISO indicated that a slightly modified settlement process was required because the ISO Settlements and Billing Protocol Section 6.10.4 provides that the "ISO shall apply payments received in respect of amounts owing to ISO creditors to repay the relevant debts in the order of the creation of such debts." However, in specific compliance with California State Law AB1X, the ISO proposed to apply CDWR payments first "to

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<sup>3</sup> 98 FERC ¶ 61,335 (2002) ("March 27 Order").

the month remitted,” then forward through February through July and finally, to January,<sup>4</sup> as opposed to the process prescribed by the ISO Tariff, which would have the ISO take funds received in any calendar month and after paying debtors in that month apply any excess funds to the very oldest unpaid debts.<sup>5</sup>

In its November 21, 2001 compliance filing, the ISO provided an example wherein the CDWR June 2001 payment is applied to the CDWR June 2001 invoice to thusly clear that CDWR account. In recognition of the State legislation limiting use of State funds to clearing the past due accounts of the IOUs to those incurred after January 17, 2001, the ISO only invoiced from that start date for CDWR as the IOUs’ Scheduling Coordinator. However, as always, pursuant to the ISO Tariff, the crediting of funds received from CDWR to satisfy CDWR (or IOU) accounts is separate and distinct from the ISO disbursement of funds received in any given Trade Month.

Critically, in proposing a modified settlement process for CDWR, the ISO did not seek exemption from the underlying Trade Month foundation for disbursements, pro rata where required, to ISO Creditors. The ISO follows its Tariff in disbursement to satisfy ISO Creditors, by allocating sums received, pro rata if required, to the oldest unpaid debts, but in the case of CDWR, starting with February, advancing through July, and then to January, 2001. Nowhere has the ISO ever contemplated a split within a Trade Month for disbursement of funds to ISO Creditors. The ISO would require Commission approval for such a

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<sup>4</sup> ISO Compliance Filing at 13

<sup>5</sup> In this case, the oldest unpaid debts are in the Trade Month of November, 2000.

departure from the Tariff requirements, and neither has the ISO sought such approval nor has the Commission ordered it.

Moreover, ISO Tariff Section 11.13 requires the ISO to calculate the amounts available for distribution to ISO Creditors on Payment Dates, while Tariff Section 11.16.1 and ISO Tariff Settlements and Billing Protocol Section 6.7.4 collectively provide that if there are insufficient funds for the ISO to pay all ISO Creditors in full, the ISO is to reduce payments to all ISO Creditors proportionately to the net amounts payable to them. Thus, the ISO makes payments based upon Trade Months, and reduces pro rata such payments in the event of insufficient funds to fully pay all accounts owed within a Trade Month. This is precisely what the ISO did for the January, 2001 market. Interestingly, the Motion does not raise a claim about the two other months, *i.e.*, July and August 2001, wherein the ISO used the exact same disbursement procedures and debtors were paid *pro rata* because there were insufficient funds to completely clear those two monthly markets.

### **III. THE MOTION PRESUMES TO FORCE AN ALTERNATIVE INTERPRETATION TO WHAT THE ISO SPECIFICALLY PROPOSED**

The Motion, and the several similar filings, err in their respective attempts to force an interpretation on the ISO's language setting forth the out of sequence settling of CDWR accounts by beginning with February, 2001, advancing through July, 2001 and lastly settling the Trade Month of January, 2001. The ISO explained this out of sequence process, as opposed to settling the month of January, 2001 first, was needed to give ISO staff time to separate the IOUs' transactions between the first part of the month and the latter, to

properly invoice CDWR for the Trade Days of January 17 through January 31. This process has nothing to do with the separate disbursement of all funds received, including those of CDWR's, to all creditors in the Trade Month of January. The ISO reminds the Commission of the fact overlooked in the Motion: the ISO pays creditors out of a pool of all receivables on a monthly basis and nowhere is the ISO permitted to specifically link payment to creditors to specific funds received by a specific debtor. This contradicts the heart of the ISO Tariff Settlement and Billing Protocol.

Thus the Motion must be rejected because it seeks a result neither proposed by the ISO, permitted under the ISO Tariff, nor contemplated in the March 27 Order approving the disbursement process proposed in the ISO's November 21 compliance filing.

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#### **IV. CONCLUSION**

WHEREFORE, for the reasons stated above and as set forth in the ISO letter to Dynegy regarding the Dynegy Request and supplement thereto, appended hereto and filed by Dynegy in the above-referenced dockets, the ISO respectfully requests that the Commission reject the Motion.

Respectfully submitted,

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Dated: April 19, 2002

Appendix