

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

San Diego Gas & Electric Company)	Docket No. EL00-95-000
v.)	
Sellers of Energy and Ancillary)	
Services Into Markets Operated)	
by the California Independent)	
System Operator and the)	
California Power Exchange)	
)	
Investigation of Practices of the)	Docket No. EL00-98-000
California Independent)	
System Operator and the)	
California Power Exchange)	
)	
Public Meeting in San Diego, California)	Docket No. EL00-107-000
)	
California Power Exchange)	Docket No. ER00-3461-000
Corporation)	
)	
California Independent System)	Docket No. ER00-3461-000
Operator Corporation)	
)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTION OF SOUTHERN CALIFORNIA
EDISON COMPANY FOR ISSUANCE OF SUBPOENA FOR THE
PRODUCTION OF DOCUMENTARY EVIDENCE TO THE
MARKET SURVEILLANCE COMMITTEE**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), the California Independent System Operator Corporation ("ISO")¹ hereby submits its Answer to the Motion of Southern California Edison Company ("SCE") for Issuance of Subpoena for the

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

Production of Documentary Evidence to the Market Surveillance Committee (“MSC”) of the ISO.

I. BACKGROUND

On December 7, 2000, SCE filed a motion in the above-captioned dockets requesting that the Commission issue a subpoena to the MSC for the production of documentary evidence. SCE’s motion is based on certain statements contained in the MSC’s *Analysis of “Order Proposing Remedies For California Wholesale Electric Markets (Issued November 1, 2000)* (hereafter “MSC Analysis”) filed by the ISO in the above-captioned dockets on December 4, 2000. Specifically, SCE’s motion rests on the following two statements on pages 25 and 26 of the MSC Analysis:

The MSC stands ready to provide to the Commission with what we suspect are instances of the exercise of significant market power by specific market participants. We encourage not only the Commission, but other law enforcement agencies as well, to use their authority to request from these market participants the necessary information to confirm whether these suspicions about the exercise of significant market power are in fact correct.

and

The MSC could provide a number of instances of what it suspects are suspicious bidding and scheduling behavior during the Summer and Autumn of 2000 In addition, we are also willing to provide assistance to the Commission in the very difficult task of determining market participant behavior worthy of refunds and how to allocate liability for refunds to specific market participants for behavior the Commission deems worthy of refunds.

Based on these statements, SCE’s motion asserts that certain documentary information demonstrating the “exercise of significant market power by specific market participants” during the Summer and Autumn of 2000 is

uniquely available to the MSC and requests that FERC issue a subpoena which would require that such information be provided to SCE's counsel.

II. ANSWER

The MSC has provided the ISO with a letter responding to SCE's motion which the MSC has requested that the ISO file with the Commission. That letter is provided as Attachment A to this Answer. In this letter, the MSC indicates that, while the MSC continues to stand ready to provide the Commission with data and analyses concerning the behavior of certain market participants, the MSC believes that there are compelling reasons not to provide such data and analyses to an individual market participant such as SCE. The MSC also explains that the data which was the basis for the above-quoted statements from the MSC Analysis is confidential bid data provided to the MSC by the ISO. The MSC acknowledges that such data is subject to confidentiality protections under the ISO Tariff, and that such data must be provided in accordance with the process set forth in the Tariff.

The ISO itself does not believe that SCE's motion should be granted. Although SCE claims that the information requested in subpoena is necessary to "develop a complete record on the issues" in this proceeding, SCE's subpoena would require that the requested information be provided only to SCE and not to FERC or any other party. SCE's motion is, in essence, a discovery request, and an inappropriate one. The Commission has not provided any general discovery

rights in this proceeding.² The Commission's November 1 Order, 93 FERC ¶ 61,121, made it quite clear that the record in this proceeding is to be based only on the Commission's own investigations and the written comments submitted by the parties to this proceeding, and further provided that the need for expeditious resolution of the pressing issues in this proceeding did not permit time for even reply comments. 93 FERC ¶ 61,121, slip op. at 48.

In addition, SCE's motion does not address the fact that the documents requested are subject to protection from disclosure to market participants by the ISO Tariff. The MSC obtains much of the data that serves as the basis of its analyses from the ISO, including confidential bid data that the ISO is not permitted to disclose without following certain procedures under Section 20.3 of the ISO Tariff. Although SCE's motion requests that the subpoena be directed to the MSC and not to the ISO itself, it would be inappropriate for a market participant or other entity to have the ability to circumvent the requirements of the ISO Tariff by simply directing their request for confidential data to the MSC and not the ISO.³ Accordingly, any disclosure of confidential bid data by the MSC would be subject to the protections in the ISO Tariff Section 20.3. The MSC agrees with the ISO's position on this issue, as indicated in its letter provided as Attachment A to this Answer.

² The ISO notes that the Commission has not yet acted on the California Public Utility Commission's ("CPUC") Motion to Compel in this proceeding. The CPUC motion is distinguishable from the SCE motion, as it relates to a regulatory entity's own ongoing investigation of related issues.

³ The ISO proposed, as part of Amendment No. 25, that it be authorized to publicly release data sets which are analyzed in an MSC report with as little as a one month delay. The Commission rejected that proposal based on concerns raised by numerous market participants about the confidentiality of such data. *California Independent System Operator Corp.*, 90 FERC ¶ 61,316 (2000)

The foregoing discussion is not in any way contrary to the ISO's commitment to work with FERC staff to provide them with information needed in this proceeding or any other investigations into the California electric markets. The ISO is happy to work with FERC staff and the MSC to provide any of the information volunteered in the MSC Analysis. As the Commission is aware, the ISO has already provided FERC staff with significant information to assist in the Commission's investigations. To the extent any information requested is covered by the confidentiality provisions of Section 20.3 of the ISO Tariff, however, the ISO is obligated to follow the procedures and requirements set forth in those provisions of the Tariff.⁴ The ISO does not believe this will be problematic, as the ISO has already provided FERC staff with information covered by those provisions, and compliance with the appropriate procedures has not prevented the ISO from providing needed information to the Commission.

⁴ In a November 21, 2000 filing submitted in Docket Nos. EC96-19 *et al.*, the ISO committed to work with interested regulatory entities and other parties to consider possible modifications to the confidentiality provisions of the ISO Tariff. Although pressing matters in California have required most of the ISO's (and the Commission's) attention in recent weeks, the ISO remains committed to addressing these issues.

III. CONCLUSION

WHEREFORE, for the reasons discussed above, the Commission should deny SCE's motion.

Respectfully submitted,

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Dated: December 22, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Washington, DC, on this 22nd day of December, 2000.

Sean A. Atkins