

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

Reliant Energy Power Generation, Inc.,)	
Reliant Energy Services, Inc.,)	
Mirant Americas Energy Marketing, LP,)	Docket No. EL02-7-000
And Mirant California, LLC)	
Complainants)	
)	
v.)	
)	
The California Independent System)	
System Operator Corporation)	
Respondent)	

**Answer of the California Independent
System Operator Corporation to Complaint of Reliant Energy Power
Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy
Marketing, LP, And Mirant California, LLC**

Pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f) and 213 and the Commission’s Notice of Complaint issued on October 19, 2001, the California Independent System Operator Corporation (“ISO”)¹, as Respondent, submits this Answer in response to the Complaint filed in the above-referenced docket by Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy Marketing, LP, and Mirant California, LLC (“Complainants”).

I. INTRODUCTION AND SUMMARY

The Complaint alleges that the ISO has or is engaged in discriminatory and unduly preferential actions contrary to the ISO Tariff, the Federal Power Act (“FPA”) and the Commission’s own policies and orders, by granting advantages to the California Department of Water Resources (“CDWR”) and/or its marketing activities conducted pursuant to State law AB1X by its California Energy

¹ Capitalized terms not otherwise defined herein have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff or as set forth in any of the Protocols appended to, and a part of, the ISO Tariff.

Resources Scheduling division (“CERS”) that are not available to other participants in the ISO market.² The Complaint further alleges that the ISO’s actions are causing injury to the Complainants, and to other Market Participants in California, and are threatening the viability of the ISO market.

The Complaint should be dismissed in its entirety, for all of the following reasons. First, because Complainants have not shown a violation of the FPA, the ISO Tariff or the Commission’s orders. CERS’ role as the only creditworthy entity backing the ISO’s markets, both real time and forward capacity, distinguishes its information needs and manner of ISO interaction. Second, because the extraordinary and complex circumstances that give rise to the Complainants’ concerns are the subject of an ongoing Commission-initiated dispute resolution process and deference should be given to the Commission’s current process. Thirdly, in violation of Rules 203 and 206, §§385.203 and 206 of the Commission’s Rules of Practice and Procedure, the Complaint fails to note that both its general concerns and a majority of specific complaints are pending in Commission Docket No. ER01-889 and the Pacific Gas and Electric Company (“PG&E”) bankruptcy proceeding. Indeed, the Complaint itself largely is composed of filings and documents of record in Docket No.ER01-889 and so should be dismissed to avoid unnecessary duplication of effort by the Commission, the ISO and other parties. Fourth and finally, as explained below, the cross-jurisdictional nature of the issues underpinning the Complaint, specifically the Commission’s jurisdiction over the ISO and the State of California’s jurisdiction over CERS, means the Commission may be unable to afford the full relief and remedy that the Complainants seek. Indeed, absent concord between CERS, the ISO, the Commission and the State, the complex

² Hereinafter, for simplicity in the instant filing only, CDWR and CERS collectively are referred to as CERS.

issues addressed in the Complaint are unlikely to be simplified or changed. Unilateral action is likely to result only in shifting problems and issues into new forms and shapes without reaching a shared goal of clarity and simplification of the interrelationships at play. Accordingly, in deference to ongoing Commission dispute-resolution processes, matters pending in another Commission docket and in other venues, and the jurisdictional issues, the Complaint should be dismissed summarily in its entirety.

II. BACKGROUND

The matters referenced in the Complaint already are of record and no new facts are presented. Thus, for the sake of brevity, the ISO only notes that CERS' relationship to the ISO as a guarantor of the ISO's real time operations is a direct result of the Commission's orders in the creditworthiness proceeding, Docket No.ER01-889, in which the Commission requires the ISO to provide assurance of a creditworthy backer for all ISO transactions. With California's two largest investor-owned utilities ("IOUs") unable to satisfy ISO Tariff credit standards in part due to unjust and unreasonable wholesale electricity prices, no entity other than the State of California, acting through CERS, could fill that role. Thus, CERS' role as guarantor of transactions for ISO real time operations is a function of requirements in the ISO Tariff, as interpreted by the Commission. The ISO's explanation of its relationship with CERS is detailed in filings on May 11 and October 12, 2001 in Docket No.ER01-889.

III. ARGUMENT

A. CERS Role As Creditworthy Backer Distinguishes It From The Roles Of Complainants In ISO Markets

Complainants muddle and confuse the roles of CERS between when it procures the IOU shortage of supply, both capacity and Energy, with its role when it acts as a creditworthy backer or guarantor of third-party transactions by

the ISO in real time. The linchpin of the Complaint is that the ISO, in violation of the FPA, the ISO Tariff and Commission rules, improperly advantages CERS with access to information that is, to their prejudice and disadvantage, withheld from the Complainants. For these allegations, the Complaint's legal foundation, to have merit and to support the causes of action, Complainants must be similarly situated to CERS.³ Simply stated, CERS must be a competitor of Complainants in the ISO markets for the allegations to have weight, and, as it is not, Complainants fail to make their *prima facie* case.

As the Commission is well aware, CERS, by virtue of State legislation, procures the net shortage of supply that California's financially-stressed IOUs require to meet their Load. State law, California Public Utilities Commission decisions and the associated servicing agreements between CERS and the three California IOUs establish that the IOUs act as agents for CERS. CERS is not acting directly as the Scheduling Coordinator ("SC") for the IOU net shortage of supply. Accordingly, CERS schedules to the IOU SCs, as inter-SC trades in the ISO Day-Ahead and Hour-Ahead markets, deliveries of the supply CERS procures to serve the net shortage of the IOUs. The information CERS uses for such activities is that normally used by other SCs, specifically, Demand data from the IOUs and publicly available information from the ISO OASIS web pages.

CERS, at the same time in its other role as touches the ISO, also serves as the sole creditworthy backer of the ISO's real time operations and as such CERS provides financial backing and assists in procuring and providing, at no cost mark-up, power as needed by the ISO to meet real time system

³ "[U]ndue discrimination can only occur when two similarly situated customers are treated differently, and there is no justification for the differing treatment." PacificCorp Electric Operations and Arizona Public Service Company, 54 FERC ¶61,296 at 61,855 (1991), citing *Cities of Newark et al., v. FERC*, 763 F.2d 533 (3d Cir. 1988); *Cities of Alexandria v. FPC*, 55 F.2d 1020, 1027-28 (D.C.Cir. 1977); *St. Michaels Utilities Comm'n v. FPC*, 377 F.2d 912, 915 (4th Cir. 1967).

requirements. To discharge this second function, CERS has required that the ISO provide it with certain non-public information to determine that quantities and prices are reasonable, as determined by CERS standards. Complainants, not being creditworthy backers or guarantors of the ISO's real time operations, are not similarly situated to CERS in this role through which it receives information from the ISO, and thus the Complaint must fail for lack of foundation.

B. The ISO Provides Appropriate Information to CERS To Enable It To Function As A Creditworthy Backer Of Transactions In The ISO Forward Capacity and Real Time Markets

The core of the Complaint is a concern that information provided by the ISO to CERS gives rise to an undue prejudice or disadvantage to Complainants. The Complaint asserts that certain information and preferences allegedly accorded to CERS specifically violates Section 205 of the FPA by providing to the CERS an advantage over Complainants and other Market Participants. As the ISO noted in the Commission's Docket No.ER01-889, on both May 11 and October 12, 2001, CERS, as a condition of its willingness to back certain transactions in the forward market and real time, has advised that it must have access to certain non-public information to help it discharge its duties in this regard.

The ISO, also as explained in prior filings, having no choice but to comply with the requirements specified by its only creditworthy backer, does provide to CERS certain non-public information that CERS has demanded as a condition for CERS to discharge its duties as creditworthy backer. Complainants are not creditworthy backers of the ISO's real time operations and as such are not unduly disadvantaged by the ISO's provisions of such information to CERS. Their Complaint must be dismissed for lack of standing.

C. The ISO Has Informed The Commission Of CERS Requirements For Information And Requested Waivers From Commission Rules If Needed

Consistent with such filings, as discussed above, the ISO affirms its belief that it has at all times, and is now, taking actions consistent with its Tariff and all other applicable rules and regulations. No new information is presented in the Complaint to support a conclusion otherwise.⁴ Complainants, already Intervenor in Docket No.ER01-889, possess full opportunity to seek any such relief as they wish in that docket.

D. The Commission Has Initiated Dispute Resolution Activities To Resolve These Complex Issues and Such Activities Should Be Allowed To Continue

The Commission has been extremely active in monitoring the continuing problems with the California electricity market. Acting on its own initiative, Commission convened a technical conference at the ISO on September 24 and 25, 2001, to address current significant operational issues, specifically including consideration of CERS' functions as guarantor of the ISO's Markets and real time operations. At that meeting, the ISO volunteered to make public the specific ISO Settlement Charge Types for Energy products and services CERS was financially backing along with details about what information the ISO was providing to CERS. As noted above, the ISO filed this information with the Commission on October 12, 2001 in Docket No. ER01-889. Critically, rather than supporting the Commission in its ongoing effort, the Complainants seek to subvert the process.

The Commission, being well-informed of the complex situation in

⁴ The ISO, in the event the Commission may find otherwise, renews herein its twice repeated request for a waiver or other appropriate relief from any applicable Tariff provisions, rule or order that the Commission may find relevant, including, without limitation, a direction to the ISO to disseminate publicly any otherwise confidential information the ISO provides to CERS.

California, actively is seeking simplification of the several unique arrangements that, of necessity in this precarious and unprecedented time, have been put into place through Commission orders and State actions. Among the complex issues, beside the obvious problems with financially-stressed IOUs, is the interplay of jurisdiction between the ISO as a federal jurisdictional entity and CERS, as a State entity.⁵

The complexities facing the various players in the midst of the current California energy crisis can best be resolved by communication and conciliation, leaving regulatory fiat as a last resort should other efforts fail. Complainants miss the mark entirely by bringing allegations against the ISO alone and seeking relief from the Commission for circumstances that of necessity invoke State jurisdiction and interests. Even taking the allegations in the Complaint as true, it is likely that the Commission may not be able to provide the requested relief without precipitating additional problems and unrest in California electricity industry and markets.⁶

F. Complainants, Among Other Market Participants, Contribute To The Problems Of Which They Complain

While the ISO does not believe that a detailed rebuttal and denial to the several allegations in the Complaint is useful given the above discussion of the lack of foundation and standing, the ISO does offer a greater explanation of the specific circumstances surrounding the ISO's current procedures for Dispatching Energy from the BEEP stack.⁷ In sum, Complainants would have the ISO rely upon the BEEP stack when Complainants, among other Market Participants,

⁵ As the Commission knows, the Complaint is incorrect in its description of the ISO as a State entity.

⁶ The ISO does not presume to foretell a doomsday scenario wherein CERS might, for example, refuse to serve as guarantor if its requests for non-public information are no longer honored, but certainly prudence would dictate careful consideration of likely as well as unintended consequences of the Commission, or the State, acting unilaterally in the present crisis situation in California.

have contributed to the present concerns for unreliability of the BEEP stack that in turn forces the ISO to make extraordinary use of out-of-sequence (“OOS”) and out-of-market (“OOM”) bids. Being part of the problem Complainants come before the Commission with unclean hands and the Complaint is disingenuous at best.

Specifically, the Complaint alleges that the ISO is acting improperly in “buying energy from CDWR/CERS outside of, and in preference to, CAISO’s merit order BEEP stack [] and contravening the dispatch and bid provisions of its Tariff by classifying such purchases as out-of-market (“OOM”), but allowing compensation outside of the OOM provisions of its Tariff.” Complaint at 2. While correctly referencing ISO Tariff Section 2.5.22.6 and Section 8 of the Dispatch Protocol as setting forth a general process for Real Time Dispatch, the Complaint omits the ISO Tariff provision providing the requisite authority and flexibility for the ISO to make OOS and OOM calls when needed to ensure grid reliability.

Under Section 2.3.5.1.5 of the ISO Tariff as modified by Amendment 30 and approved by the Commission in its December 15, 2000 Order,⁸

If the ISO concludes that it may be unable to comply with Applicable Reliability Criteria, the ISO shall, acting in accordance with Good Utility Practice, take such steps as it considers necessary to ensure compliance, including the negotiation of contracts through processes other than competitive solicitations.

Indeed, the Complaint, at 9, makes the case against itself through reference to the fact that the ISO Tariff “provides that OOM calls shall be issued only for energy that is not otherwise available through the BEEP stack and only under specified circumstances, such as when energy available through the BEEP

⁷ The “BEEP” stack is the ascending price array of Balancing Energy Ex Post Price Bids from which the ISO dispatches energy in its Real Time Imbalance Energy Market.

⁸ *San Diego Gas & Electric, et al.*, 93 FERC ¶61,294.

stack is insufficient to meet Load.” Emphasis added. Incidences of Market Participants’ failure to respond to Dispatch Instructions issued for bids in the BEEP stack mean the ISO cannot operate the grid under the assumption that bids in the BEEP stack automatically mean such Energy is available and will be delivered when dispatched. Currently, the ISO must manage the grid in the face of Market Participants who currently submit bids, or for whom proxy bids are generated in accordance with Commission orders,⁹ but then sometimes fail to respond to Dispatch Instructions. The ISO, under a mandate to maintain grid reliability, must issue OOS and OOM calls to compensate for the unreliability of the BEEP.

The ISO finds some irony in the allegations of the Complaint in that the harm of which the Complainants allege is within their own, and other Market Participants’, control to change by virtue of mere compliance with the ISO Tariff regarding response to Dispatch Instructions and the Commission’s orders for Complainants, among other suppliers, to bid all of their available capacity into the ISO’s Real Time Markets.¹⁰ Were the BEEP stack reliable, the ISO would have reduced need to make OOM calls. Given that CERS is the guarantor of such calls, and directly engages in bilateral transactions with Sellers of Imbalance Energy, if the need for CERS as guarantor is removed, CERS would not have to act. Once CERS is out of its role as guarantor, there would be no need to provide any information to it. Simply stated, at least a part of the present complex problems and necessary solutions must be laid at Complainants’ doorstep.

⁹ 95 FERC ¶61,115, 95 FERC ¶61,418.

¹⁰ The Commission’s must-offer obligation, 95 FERC ¶61,418 (Order dated June 19, 2001).

IV. CONCLUSION

For the reasons described above, the Commission should dismiss the Complaint in its entirety.

Respectfully submitted by,

Charles F. Robinson
Margaret A. Rostker
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, California 95630