

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

Unnamed Entity,)	
Complainant,)	
)	
v.)	Docket No. EL12-70-000
)	
California Independent System)	
Operator Corporation,)	
Respondent)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTION TO WITHDRAW COMPLAINT**

The California Independent System Operator Corporation (“ISO”) hereby submits an answer (“Answer”) to the Motion to Withdraw Section 206 Complaint (“Motion”) filed in this proceeding by Unnamed Entity on June 20, 2012.¹ The ISO does not oppose the withdrawal of Unnamed Entity’s complaint filed on May 21, 2012. The ISO notes, however, that Unnamed Entity conditioned its withdrawal as “subject to potential amendment and re-filing at a later date.” If the Commission grants the motion, it should make clear that any re-filed complaint concerning the penalties that were the subject of the Complaint would be untimely and subject to dismissal on that basis.²

¹ The ISO submits this filing pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213. Although Unnamed Entity styled its filing as a motion, it cited as authority Rule 216, 18 C.F.R. § 385.216, which provides for the withdrawal of pleading by a notice of withdrawal. Regardless of the characterization of the filing, an answer is permissible under Rule 216, which authorizes an answer to any pleading not specifically prohibited in that rule.

² Although Unnamed Entity’s refers to a “potential amendment” of the Complaint, there would be nothing to amend if the Motion is granted.

Indeed, the Complaint that Unnamed Entity seeks to withdraw is itself untimely. Section 37.8.10 of the ISO Tariff³ provides market participants the right to appeal a sanction to the Commission. The market participant must make the appeal in accordance with the guidelines for raising disputes set forth in section 11.29.8.⁴ In addition, the Commission has stated that the proper mechanism by which to appeal a sanction is a complaint under section 206 of the Federal Power Act.⁵

Unnamed Entity's penalty was included on the T+12B recalculation settlement statement for the February 13, 2012 trading day. That T+12B recalculation settlement statement was published on March 1, 2012. Under the terms of section 11.29.8, a scheduling coordinator has 14 business days to dispute a T+12B recalculation settlement statement. Accordingly, Unnamed Entity had until March 21, 2012 (*i.e.*, 14 business days from March 1), to file its appeal.

As Unnamed Entity acknowledges, rather than file a complaint under section 206 by that date, as required by the Commission, it filed a pleading on March 21 that it styled as an "Appeal pursuant to Part 1b.18 of the Commission's rules in the docket of the Non-Public Investigation" of Unnamed Entity's activities.⁶ On April 20, 2012, the Commission rejected Unnamed Entity's appeal as not filed "in accordance with applicable law, Commission regulations or Commission orders."⁷ The Complaint in this

³ All section references are to the ISO Tariff.

⁴ The applicable scheduling coordinator must also dispute the recalculation settlement statement on which the penalty appears.

⁵ *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,050, P 37 n.32 (2011).

⁶ Complaint at 9.

⁷ Non-Public Order of April 20, 2012 in Docket No. IN11-8-000, included in Complaint as Exh. J.

docket followed, but not until May 21, 2012 – fully two months after the applicable deadline.

Unnamed Entity's submission of an unauthorized pleading on March 21 did not extend the deadline. There is no provision in section 37.8.10 for tolling the deadline due to a market participant's failure to file its appeal in accordance with applicable law, Commission regulations or Commission orders. Moreover, although the Commission rejected Unnamed Entity's improperly filed appeal "without prejudice," the Commission did not rule that a later-filed complaint would be timely or grant a waiver of section 37.8.10.⁸ Accordingly, because Unnamed Entity did not file the Complaint prior to the March 21, 2012 deadline, the Complaint was untimely and would have to be dismissed on that basis if the Commission were to deny Unnamed Entity's motion to withdraw it. Unknown Entity cannot unilaterally grant itself an extension of the deadline applicable under the ISO Tariff by purporting to reserve a nonexistent right to re-file its Complaint. The ISO requests the Commission to so rule if it grants the Motion.

⁸ Unnamed Entity did not request such a waiver.

Respectfully submitted,

Nancy J. Saracino
General Counsel
Anthony J. Ivancovich
Assistant General Counsel
David Zlotlow
Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 608-7296

/s/ Michael E. Ward
Kenneth G. Jaffe
Sean A. Atkins
Michael E. Ward
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 239-3300
Fax: (202) 239-3333

Counsel for the
California Independent System
Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 3rd day of July, 2012.

/s/ Daniel Klein
Daniel Klein