

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

**California Independent System) Docket Nos. ER09-1048-002
Operator Corporation) ER06-615-059**

**MOTION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION FOR LEAVE TO FILE ANSWER AND ANSWER TO
COMMENTS BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES
STATE WATER PROJECT**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,¹ the California Independent System Operator Corporation (ISO) files this motion for leave to file an answer to the comments submitted by the California Department of Water Resources State Water Project (SWP) in the above-captioned dockets and files an answer to SWP's comments.²

On February 18, 2010, the ISO filed proposed amendments to its FERC Electric Tariff in compliance with a prior Commission Order³ that found that the ISO had several additional compliance obligations under the Commission's Order No. 719.⁴ One of the proposed Tariff revisions was to Section 37.2.1, which requires Market Participants to comply with the ISO's operating orders. Under the revision, a Market Participant's excuse that an operating order was infeasible would now be considered by the Commission, rather than the ISO.

¹ 18 C.F.R. § 385.212, 385.213 (2009).

² SWP's filing was styled as comments and not a protest. In the event that the Commission deems SWP's filing a protest, the ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to SWP's filing. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision making process, and help to ensure a complete and accurate record in this case.

³ *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,157 (2009).

⁴ *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 (2008).

On March 11, 2010, SWP filed comments on the ISO's February 18 filing. SWP's comments objected to the ISO's proposed revision to Section 37.2.1 and argued that the rule mandating compliance with ISO operating orders should be deemed unenforceable against SWP. SWP's comments provide neither a sound basis for rejecting the ISO's proposed Section 37.2.1, nor do they offer a meaningful explanation as to why SWP has no obligation to obey the ISO's operating orders.

I. SWP HAS FAILED TO IDENTIFY WHY THE ISO'S PROPOSED AMENDMENT TO SECTION 37.2.1 SHOULD BE REJECTED

Without identifying any specific objection to the substance of the revised Section 37.2.1,⁵ SWP complains generally about the ISO's proposed revision to Section 37.2.1 of the Tariff and takes exception to the idea that an excuse of infeasibility will not be decided by the ISO. SWP's complaint constitutes little more than a recitation of how enforcement of Section 37.2.1 will be carried out if the Commission approves the ISO's proposal. SWP's chief complaint seems to be that under the proposed Section 37.2.1, it will no longer be up to the ISO to determine whether a Market Participant's failure to follow an ISO operational order should be excused based on a claim that the ordered conduct was infeasible. Instead, where compliance with an operating order would be inconsistent with Good Utility Practice, non-compliance could be excused under Section 37.9.2.5 of the Tariff and would be considered by the Commission pursuant to Section 37.8.10 (where the excuse is raised by the Market

⁵ SWP accurately notes that the ISO did not carry out the revisions to Section 37 as part of a stakeholder process. However, the ISO typically has not stakeholdered Tariff amendments that are being proposed pursuant to a compliance obligation. This is particularly so where the compliance obligation is relatively narrow.

Participant) or Section 37.9.2.6 (where the infeasibility is brought to the Commission's attention by the ISO).

SWP does not explain why this approach is objectionable, particularly in light of the alternatives on compliance. The ISO believes that its proposed amendment to Section 37.2.1 is the most reasonable option in light of its compliance obligation. Section 37.2.1 has a long-standing place in the ISO's enforcement approach and the ISO has no interest in removing it from the Tariff. The ISO believes that having a general obligation for market participants to comply with the ISO's operational orders, coupled with a financial penalty for non-compliance, is a key component to its efficacy as a grid operator. On compliance, the ISO recognized that placing an infeasibility exception into the core of the rule injected a level of subjectivity into the enforcement of Section 37.2.1 that was inconsistent with its mandate to only levy sanctions against objectively identifiable behavior. The ISO is thus faced with two choices: (1) remove the infeasibility exception from Section 37.2.1; or (2) turn enforcement of Section 37.2.1 completely over to the Commission. Because 37.2.1 deals with operational exigencies, the ISO believes that it is preferable for it to have the initial responsibility for enforcing Section 37.2.1. Furthermore, were the ISO to follow the second option, then a market participant would have no recourse at the ISO whatsoever and instead would have its potential violation of Section 37.2.1 enforced by the Commission pursuant to a formal referral by the ISO's Department of Market Monitoring. The ISO does not believe this would be a preferable alternative from market participants' perspective.

II. SWP HAS NOT JUSTIFIED ITS CLAIMED EXEMPTION FROM THE OBLIGATION TO COMPLY WITH THE ISO'S OPERATING ORDERS

SWP additionally argues that the Commission should find that Section 37.2.1 is inapplicable to SWP. As authority, it cites the ISO's commitment in the period immediately preceding the start of its new market design not to subject SWP resources to exceptional dispatch once the new market began operations.⁶ The ISO has abided by this commitment in the first year of operations under the new market design and it plans to continue doing so. However, to cite this commitment to support the notion that SWP is wholly exempt from an obligation to obey ISO operational orders is a *non sequitur*. There are numerous operational orders the ISO can issue that are outside the scope of exceptional dispatch, including orders related to alleviating a System Emergency. These operational orders are necessary to maintain reliability of the ISO grid. SWP has offered nothing to justify the claim it should be exempt from responsibility to comply with such operational orders. To the extent SWP elects to participate in the ISO's markets or take service on the ISO grid, they should be subject to the rules applicable to Market Participants.

The ISO is ever mindful of SWP's unique responsibilities in operating the State Water Project. At the same time, the ISO faces the delicate task of maintaining grid reliability in the face of constantly changing system conditions. The ISO's capacity to carry out that task under all circumstances, including a

⁶ Motion for Leave to Supplement Answer, and Supplement to Answer, of the California Independent System Operator Corporation at 2, *Cal. Indep. Sys. Operator Corp.*, FERC Docket Nos. ER09-556-000, ER08-367-003, & ER06-615-039 (Feb. 26, 2009). See also *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,262, P 50 (2009).

System Emergency, is threatened without the ability to issue binding operating orders to all Market Participants.

III. CONCLUSION

Accordingly, the ISO requests that the Commission approve the proposed Tariff amendments filed on February 18, 2010 and that the Commission not exempt SWP from the generally applicable obligation to comply with the ISO's operating orders.

Respectfully submitted,

/s/ David S. Zlotlow

Nancy J. Saracino
Daniel J. Shonkwiler
David S. Zlotlow
California Independent System Operator
Corporation
151 Blue Ravine Road
Folsom, CA 95630

**ATTORNEYS FOR THE CALIFORNIA
INDEPENDENT SYSTEM
OPERATOR CORPORATION**

March 26, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, 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 Folsom, California this 26th day of March, 2010.

/s/ Jane Ostapovich
Jane Ostapovich