

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

California Power Exchange Corporation) Docket No. ER05-167-000

**MOTION TO INTERVENE TWO DAYS OUT OF TIME
OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 214 (18 CFR 385.214) of the Federal Energy Regulatory Commission's ("the Commission") Rules of Practice and Procedure, the California Independent System Operator Corporation ("ISO"), by and through its undersigned counsel, hereby moves to intervene in this proceeding two days out of time. In support therefor, the ISO states as follows:

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

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II. BASIS FOR INTERVENTION

The ISO, a non-profit public benefit corporation organized under the laws of the State of California, is responsible for the reliable operation of a grid comprising the transmission systems of Pacific Gas and Electric Company (“PG&E”), San Diego Gas & Electric Company, Southern California Edison, and the Cities of Anaheim, Azusa, Banning, Riverside and Vernon, as well as for the coordination and monitoring of the competitive electricity market in California.

The ISO has never been a California Power Exchange (“PX”) participant. However, comments on the PX’s November 1 rate filing initiating this docket,¹ raise two issues that are of direct and substantial interest to the ISO, and merit the ISO’s participation in this proceeding. The first issue is the possibility that PX wind-up costs might be allocated to the ISO. The ISO previously addressed this issue in comments filed pursuant to the Commission’s August 6, 2004 *Order Requesting Comments and Requiring Contingency Actions*, 108 FERC ¶ 61,162 (2004) (“August 6 Order”). Therein, the ISO explained that because it has never been a customer of the PX, and the PX has never provided service to the ISO, there is no legal basis for PX wind-up costs to be assessed to the ISO.² The ISO also explained that the D.C. Circuit’s discussion of ISO account balances in its July 9 decision is properly understood to require only that assessments to PX participants should consider their respective balances in ISO markets, and that it

¹ Rate Filing for Rate Period 6 (January 1, 2005 through June 30, 2005), Docket No. ER05-167-000 (filed Nov. 1, 2004) (“November 1 Filing”).

² Comments of the California Independent System Operator Responding to the Commission’s Order Dated August 6, 2004, Docket Nos. ER02-2234-010, *et al.* (filed August 16, 2004).

could not reasonably be read to require the PX to assess the ISO directly for pass-through to the ISO markets.

In the allocation methodology proposed in its November 1 filing, the PX states that it does not intend to include the ISO in assessing wind-up costs.³ However, in a protest of the November 1 filing, PG&E argues that the PX errs in excluding transactions made through the ISO from the allocation of wind-up costs in direct violation of the D.C. Circuit's July 9 decision.⁴ Although the ISO does not interpret PG&E's comment to mean that the PX should directly assess wind-up costs to the ISO, the ISO nevertheless has a direct and substantial interest in the resolution of this issue, and there is no other party can adequately represent the ISO's interests regarding this matter.

The second issue is whether, in the event the PX is unable to fund its operations, the Commission should order the transfer to the ISO of the remaining PX functions regarding the calculation of refunds. The Commission first raised this issue in the August 6 Order. In its comments filed pursuant to that order, the ISO explained that such a move, even if legally possible and approved by the ISO Board of Governors, would complicate funding issues rather than resolve them. The PX did not raise this issue in its November 1 filing. However, it was raised in PG&E's protest, which contends that if settlement discussions do not result in a resolution of the PX's wind-up funding, the Commission should terminate further funding of the PX, and consider transferring the PX's remaining functions relating to refunds to an "appropriate alternative entity," the most

³ November 1 Filing, Transmittal Letter at 7.

obvious of which, according to PG&E, is the ISO.⁵ The possibility of turning over the remaining PX refund functions to the ISO uniquely implicates the ISO, and thus, the ISO has a direct and substantial interest in the resolution of this issue. Moreover, because of the ISO's unique position with respect to this issue, the ISO's interest cannot be adequately represented by any other party to this proceeding.

III. MOTION TO INTERVENE OUT OF TIME

The Commission should grant the ISO's motion to intervene two days out of time because, as explained above, the ISO has a direct and substantial interest in the outcome of the two issues discussed herein. Also, neither the possibility of turning over the PX's remaining refund functions to the ISO, nor the suggestion that the ISO might be allocated a portion of the PX's wind-up costs was raised in the PX's November 1 filing, and thus, the ISO was not aware until the filing of PG&E's protest that these matters would be issues in the current proceeding. Moreover, because of the complexity of these issues,⁶ the Commission and other parties will benefit from the ISO's participation in this docket. Finally, no party will be prejudiced by permitting the ISO to intervene at this early stage of the proceeding. For these reasons, the Commission should grant the ISO's motion to intervene two days out of time.

⁴ Pacific Gas & Electric Company's Protest to the California Power Exchange Corporation's Rate Filing, Docket No. ER05-167-000 (filed Nov. 15, 2004) at 15, n. 42.

⁵ PG&E at 17-18, n. 49.

⁶ See *Order Providing Additional Time to Conduct Settlement Discussions*, 108 FERC ¶ 61,999 (2004) at P 11 (noting the "thorny legal and regulatory issues" that would need to be addressed before transferring responsibility for refund activities from the PX to the ISO).

IV. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission permit it to intervene two days out of time, and that it be accorded full party status in this proceeding.

Respectfully Submitted,

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Dated: November 17, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served by first class mail, postage prepaid, upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA. this 17th day of November, 2004.

/s/ Daniel Shonkwiler

Daniel Shonkwiler