

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

BRADLEY R. MILIAUSKAS
DIRECT DIAL: (202) 295-8431
FAX: (202) 424-7643
BRMILIAUSKAS@SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL. (212) 973-0111
FAX (212) 891-9598

January 21, 2004

VIA ELECTRONIC FILING

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Williams Power Company, Inc.
Docket No. ER04-373-000**

Dear Secretary Salas:

Enclosed is the Motion to Intervene and Limited Protest of the California Independent System Operator Corporation, submitted in the above-captioned proceeding. Please contact the undersigned if you have any questions regarding this filing.

Respectfully submitted,

/s/ Bradley R. Miliauskas

J. Phillip Jordan
Bradley R. Miliauskas

Counsel for the California
Independent System Operator
Corporation

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

Williams Power Company, Inc.

)

Docket No. ER04-373-000

**MOTION TO INTERVENE AND LIMITED PROTEST OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.214, 385.214 (2003), and the Commission’s January 9, 2004 Notice of Filing, the California Independent System Operator Corporation (“ISO”)¹ hereby submits this Motion to Intervene and Limited Protest in the captioned proceeding.²

I. Description of the Proceeding

On December 31, 2003, Williams Power Company, Inc. (“WPC”) submitted a Schedule F Informational Filing under its Reliability Must-Run Service Agreements (“RMR Agreements”) with the ISO for the Alamitos and Huntington Beach generating facilities, Williams Power Rate Schedules FERC Nos. 17 and 19 respectively. WPC states that it submitted revised tariff pages reflecting the Schedule F Informational Filing. WPC seeks confidential treatment for certain documents submitted in conjunction with the Schedule F Informational Filing.

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff, as filed August 15, 1997, and subsequently revised.

² The California Public Utilities Commission (“CPUC”) has authorized the ISO to state that the CPUC fully supports the Limited Protest provided herein. The CPUC is separately intervening today in the present proceeding.

II. Description of the ISO and Communications

The ISO is a non-profit public benefit corporation organized under the laws of the State of California with a principal place of business at 151 Blue Ravine Road, Folsom, CA 95630. The ISO is the Control Area operator responsible for the reliable operation of a grid comprising the transmission systems of Southern California Edison Company ("SCE"), Pacific Gas and Electric Company, San Diego Gas & Electric Company, and the Cities of Vernon, Anaheim, Azusa, Banning, and Riverside, California, as well as for the coordination of the competitive ancillary services and real-time electricity markets in California.

The ISO requests that all communications and notices concerning this motion and these proceedings be provided to:³

Sidney L. Mannheim
Regulatory Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
916-351-4400 (tel)
916-608-7222 (fax)

Deborah A. Le Vine
Director of Contracts
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
916-351-4400 (tel)
916-608-7222 (fax)

J. Phillip Jordan
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
202-424-7500 (tel)
202-424-7897 (fax)

III. ISO's Interest and Motion to Intervene

WPC's Reliability Must-Run Units are located within SCE's transmission system and are needed to maintain the reliability of the SCE transmission system. As

³ Pursuant to 18 C.F.R. § 385.101(e), the ISO requests waiver of the Commission's limit on persons to be served, as set forth in 18 C.F.R. § 385.203(b)(3).

the Control Area operator responsible for maintaining reliability in the SCE transmission system and as the counter party to the RMR Agreements, the ISO has a unique interest in any Commission proceeding concerning the RMR Agreements. Accordingly, the ISO has a direct and substantial interest in the Schedule F Informational Filing submitted in this proceeding and requests that it be permitted to intervene with full rights of a party. Because no other party can adequately represent the ISO's interests in this proceeding, the ISO requests that it be permitted to intervene. The ISO's intervention is in the public interest and should be granted.

IV. Limited Protest

The ISO protests WPC's request for confidential treatment of certain documents submitted in conjunction with the Schedule F Informational Filing. The Commission's rules for requests for privileged treatment require that the party seeking such treatment provide "[a] written statement [containing] the justification for nondisclosure of the information." 18 C.F.R. § 388.112(b)(i). WPC has not provided any kind of justification for its request for confidential treatment, and therefore has not met the requirements under the Commission's rules for such requests.

Moreover, the information for which WPC seeks confidential treatment from the Commission will be posted on the ISO's web site after WPC has provided it to the ISO in electronic format. WPC has thus far provided the information to the ISO in paper format only. The information fits the description of the information that is to be included in the "Informational Package" described in Schedule F of each of the RMR Agreements, in the second paragraph of Part B of Article I. That paragraph requires that the following information be included in the Information Package:

1. detailed workpapers showing the derivation of costs under the Formula for the relevant Cost Year along with supporting schedules showing the data used in applying the formula, presented in a format consistent with the presentation of information in the FERC Form No. 1;
2. a clear identification of the depreciation rates reflected in claimed costs for the Cost Year and the rate of return and every other stated item (i.e., any item which appears as a numerical value in the Formula and which only may be changed by a filing with the FERC;
3. a comparison of the major components of the resulting revenue requirements for the relevant Cost Year with the corresponding components of the revenue requirements that result from the application of the Formula using costs from the Owner's FERC Form No. 1 relating to the preceding calendar year;
4. such additional documentation as to specific items of costs required by the Formula.

The information for which Williams seeks confidential treatment from the Commission, like the types of information to be included in the Information Package, is for rate support. For example, Williams seeks confidential treatment for its Report of Annual Fixed Revenue Requirements for the Reliability Must-Run Units (Attachment A), O&M Expense (Attachment B), Depreciation Expense (Attachment C), Depreciation Rates (Attachment C1), Taxes Other Than Income Taxes (Attachment D), Gross Plant Investment (Attachment E), Miscellaneous Support (Attachment H), and Cost Allocation by Reliability Must-Run Unit (Attachment I).

The third paragraph of Schedule F of each of the RMR Agreements, in Part B of Article I, specifies that “[t]he Owner shall provide each Information Package to the ISO . . . in a suitable electronic format” and that “[t]he ISO shall post the Information Package on its web site” (emphasis added). The paragraph does not make any provision for the ISO to redact or treat as confidential any portion of the Information Package. Therefore, pursuant to that third paragraph, WPC is required to provide the

Information Package to the ISO, and the ISO is not only permitted but is *required* to post the Information Package in its entirety on the ISO's web site. As explained above, however, WPC has not yet provided the Information Package to the ISO in electronic format. Because the same type of rate-support information for which WPC has requested confidential treatment from the Commission will be made publicly available on the ISO's web site after it is provided to the ISO by WPC, it would be futile for the Commission to grant WPC's request for confidential treatment of portions of the Schedule F Informational Filing.

To be sure, the next (fourth) paragraph provides for the nondisclosure or confidentiality of information should the need arise during a *discovery* process concerning an Information Package that as submitted to the Commission. However, the Schedule F Informational Filing is not being provided pursuant to a discovery process. In addition, although the paragraph permits the Owner of a Reliability Must-Run Unit to "seek the confidentiality or nondisclosure of information provided to FERC or other state regulatory agencies," the ability to seek the confidentiality or nondisclosure of information is an entirely different matter from being able to justify such confidential treatment. As explained above, WPC has not provided any justification for the requested confidential treatment, and it would serve no purpose to grant WPC's request, given that the ISO is required to post that same information in its entirety on the ISO's web site.

WHEREFORE, the ISO respectfully requests that the Commission grant this Motion to Intervene, make the ISO a party in the above-caption proceeding with full rights of participation, and consider the ISO's Limited Protest in deciding whether any portion of the Schedule F Informational Filing should be treated as confidential.

Respectfully submitted

/s/ J. Phillip Jordan
J. Phillip Jordan
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

Counsel for
California Independent System
Operator Corporation

Dated: January 21, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 21st day of January, 2004.

/s/ Sidney L. Mannheim
Sidney L. Mannheim