

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

California Independent System Operator Corporation)	Docket Nos. ER98-997-000 ER98-1309-000
)	

**RESPONSE OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO PRESIDING JUDGE'S JUNE 27, 2001 ORDER**

Pursuant to the Presiding Judge's Order of June 27, 2001 in the above-referenced docket, the California Independent System Operator Corporation ("ISO") submits its position on the relevance of the Commission's June 19, 2001, Order in *San Diego Gas & Electric Co., et al.*, 95 FERC ¶ 61,418 (2001) to Issues III.A and III.B.

Issue III.A: Is the Requirement of the PGA that QFs Abide by ISO Tariff Provisions Governing the ISO's Ability to Dispatch or Curtail Generation Just and Reasonable.

In its Briefs, the ISO argued that there was nothing in the dispatch provisions of the ISO Tariff or Protocols that would unduly harm a Qualifying Facilities ("QFs") ability to provide for its on-site industrial processes while retaining the option to sell Energy into the market because, except in emergency situations, the ISO is limited to dispatching those units according to bids into the ISO's markets. Initial Brief of the California Independent System Operator Corporation ("ISO Initial Br.") at 33-36. The ISO also explained that the Commission, in the April 26th Order in Docket Nos. EL00-95, *et al.*, *San Diego Gas & Electric Company, et al.*, 95 FERC ¶ 61,115 (2001), directed all

Generators in California to offer available capacity for sale in the ISO's spot markets, and that the ISO has submitted amendments in compliance with that order. ISO Initial Br. at 37. These provisions effectively allow the ISO to direct Generators that had not bid into the ISO markets to deliver Energy nonetheless. The ISO argued that, because the "must-offer" requirement only applies to available capacity, it would not interfere with a QF's operations. *Id.* The ISO further stated the Cogeneration Association of California ("CAC") had raised its concerns regarding the April 26th Order in filings with the Commission, and that the Commission would address those concerns in those dockets. *Id.* at 36-37.

In its Briefs in this proceeding, CAC argued that subjecting QFs to the dispatch provisions of the ISO Tariff would conflict with the Public Utility Regulatory Policies Act of 1958 ("PURPA") and would interfere with a QF's obligations to its thermal host. Opening Brief of the Cogeneration Association of California and ARCO CQC Kiln ("CAC Initial Br.") at 50-53; Reply Brief of the Cogeneration Association of California and ARCO CQC Kiln ("CAC Reply Br.") at 33-34. In its request for rehearing of the April 26th Order, CAC argued that must-offer requirement would conflict with PURPA and would interfere with a QF's obligations to its thermal host. *See Request for Rehearing of Cogeneration Association of California and Energy Producers and Users Coalition of Order Establishing Prospective Mitigation and Monitoring Plan*, attached to ISO Initial Br. as Appendix A ("Rehearing Request") at 4-7.

In the June 19th Order, the Commission explicitly rejected CAC's argument that the must-offer requirement was inconsistent with PURPA. 95 FERC

¶ 61,418, slip op. at 13. The Commission also concluded that a QF's responsibilities to its thermal host were not a reason to exclude it from the must-offer requirement.¹ *Id.* slip op. at 15-16. Thus, the Commission rejected CAC's arguments with regard to the only circumstances under which the ISO can direct a unit to operate other than in accordance with a bid submitted by that unit.

Inasmuch as the must-offer requirement impose greater responsibilities on QFs than the provisions of the ISO Tariff in effect prior to the April 26th Order, the Commission's conclusions, particularly concerning PURPA, are also relevant to the arguments regarding those sections.

Issue III.B: Is the Application to QFs through the PGA of the ISO Tariff Provisions Regarding Outages Scheduling Just and Reasonable?

The ISO argued, in its Initial Brief, that the application to QFs, through the *pro forma* PGA, of ISO Tariff provisions regarding outage coordination is just and reasonable because nothing in the ISO's Outage Coordination Protocol denies QFs substantial flexibility in scheduling Outages. ISO Initial Br. at 38-39. As recognized by both the ISO and CAC, the April 26th Order expanded the ISO's control over the outage schedules of all facilities. ISO Initial Br. at 39-40; CAC Initial Br. at 55.

In its Briefs, CAC argued that, because of a QF's obligations to its thermal host, the ISO should not be able to direct the outage of a QF except as is

¹ The Commission also "clarifie[d] that generators should not be exempt from the must-offer requirement absent a showing that running the unit violates a certificate, would result in criminal violations or penalties, or would result in QF units violating their contracts or losing their QF status." *Id.* slip op. at 15. The June 19th Order explains why the must-offer requirement will not jeopardize QF status. To the extent revisions to the ISO Tariff are necessary to ensure that

necessary to avoid an immediate or imminent system emergency. CAC Initial Br. at 55-56; CAC Reply Br. at 36-37. In its request for rehearing of the April 26th Order, CAC argued that outage coordination may unreasonably burden a QF facility, because its outages are affected by its thermal host. Rehearing Request at 12-13. Despite CAC's arguments, the Commission, in the June 19th Order, concluded, "The ISO has the authority to coordinate and control generation outage schedules for resources under PGAs." 95 FERC ¶ 61,418, slip op. at 11. Although the Commission certainly has the ability to address CAC's concerns when it rules on the ISO's proposed outage coordination procedures, the June 19th Order explicitly holds that Generators that are subject to a PGA will be subject to the coordination procedures of the ISO Tariff and Protocols.

Respectfully submitted,

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the ISO Tariff does not require QFs to violate contracts, the June 19th Order obligates the ISO to make such revisions.

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California Independent
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Dated: July 6, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the restricted service list compiled by the Presiding Judge in this proceeding.

Dated at Washington, D.C., this 6th day of July, 2001.

Michael Kunselman

July 6, 2001

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket Nos. ER98-997-000 and ER98-1309-000**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Response of the California Independent System Operator Corporation to Presiding Judge's June 27, 2001 Order. Two copies have been provided to the Presiding Judge. Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,

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Counsel for the California
Independent System Operator Corporation

Enclosures

cc: Service List
Honorable Jacob Leventhal

July 6, 2001

The Honorable Jacob Leventhal
Presiding Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 11F-15
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket Nos. ER98-997-000 and ER98-1309-000**

Dear Judge Leventhal:

Enclosed are two copies of the Response of the California Independent System Operator Corporation to Presiding Judge's June 27, 2001 Order filed today with the Commission in the above-captioned dockets.

Yours truly,

Michael Kunselman
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Enclosures

