

January 28, 2000

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

**Re: California Electricity Oversight Board,
Docket No. EL99-75**

Dear Secretary Boergers:

Enclosed for filing please find an original and fourteen copies of the Bylaws of the California Independent System Operator Corporation ("ISO"), as Amended and Restated December 1999 (the "Amendment"). In accordance with the Commission's orders in *California Electricity Oversight Board*, 88 FERC ¶ 61,172 (1999) and 89 FERC ¶ 61,290 (1999), the Amendment constitutes a revision of the ISO's January 8, 1999, filing, which complied with the Commission's November 24, 1998, order in Docket Nos. EC96-19-047 and ER96-1663-049. The purpose of the Amendment is to conform the ISO's Bylaws to the requirements of California Senate Bill ("SB") 96, consistent with the Commission's Order in *California Electricity Oversight Board*. By this filing, the ISO also respectfully requests leave to withdraw the Amended and Restated Bylaws filed on January 8, 1999.

I. BACKGROUND

Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company first filed proposed Bylaws for the ISO with the Commission on April 29, 1996. The Commission conditionally approved the Bylaws, subject to modifications, on November 26, 1996, *Pacific Gas & Electric Co., et al.* 77 FERC ¶ 61,204 (1996). See also *Pacific Gas and Electric Co., et al.* 81 FERC ¶ 61,122 (1997); and *Pacific Gas and Electric Co., et al.* 82 FERC ¶ 61,223 (1998).

On August 31, 1998, the ISO requested that FERC delay enforcement of its prior orders requiring changes to the Bylaws (*i.e.*, the 1996 and 1997 Orders), which are now the subject of petitions for review pending before the U.S. Court of

Honorable David P. Boergers
January 28, 2000
Page 2

Appeals for the D.C. Circuit.¹ On November 24, 1998, the Commission refused the ISO's request. *California Power Exchange Corp., et al.*, 85 FERC ¶ 61,263 (1998).² The Commission directed the ISO to file Amended and Restated Bylaws changing certain ISO governance provisions within 45 days of the date of the order. Specifically, the Commission ordered that the ISO remove the following provisions from the Bylaws: 1) the California residency requirement; 2) references to the California Electricity Oversight Board ("CEOB") in the process of appointing Governing Board members; 3) the requirement that the CEOB approve certain changes to the ISO's Bylaws; and 4) the authority of the California Electricity Oversight Board in hearing appeals of ISO Governing Board decisions, except with respect to state-jurisdictional matters or to mediate disputes between or among ISO Board members on a voluntary basis. 85 FERC ¶ 61,623 (1998).

On January 5, 1999, in open session following public and stakeholder comment, the Governing Board adopted Amended and Restated Bylaws to comply with the Commission's orders. The ISO filed the Amended and Restated Bylaws with the Commission on January 8, 1999. Only one party, Enron Power Marketing, Inc., protested the filing; the protest has subsequently been withdrawn. The Commission, however, at the request of the ISO (as described below), has not as yet acted upon the amendments.

On July 7, 1999, the CEOB tendered for filing a Petition for Declaratory Order and Exemption of Filing Fee. The CEOB's petition for declaratory relief requested that the Commission declare that SB 96 resolves the disputed issues in these dockets and pending before the United States Court of Appeals for the District of Columbia Circuit in Case Nos. 98-1225, 98-1226 and 99-1133. The CEOB also requested that the Commission declare that the authorities and responsibilities to be exercised by the State of California through the CEOB, as set forth in SB 96, are consistent with federal law.³ On July 16, 1999, the ISO supplemented its January 8, 1999, and July 8, 1999, filings. The ISO noted that

¹ Docket Nos. 98-1225, and 98-1226.

² Review pending in the U.S Court of Appeals for the District of Columbia Circuit, Case No. 99-1133.

³ Under the ISO's currently effective Bylaws, the terms of the current Governing Board members will expire on the earlier of November 30, 1999, or 120 days after resolution of the petition for review. In light of the ISO's anticipation of enactment of SB 96 prior to that expiration date, the ISO was concerned that the expiration date would leave insufficient time to elect a new Board in compliance with the procedures included in SB 96. The Governing Board, therefore, on June 24, 1999, adopted a resolution amending the Bylaws to extend the initial term to March 31, 2000. This resolution was filed with the Commission on July 8, 1999. The Commission has not acted upon that filing.

it was currently in compliance with the Commission's orders concerning its Bylaws, but that if the Commission accepted the January 8, 1999, filing, the Bylaws as amended would conflict with California law. The ISO stated that if, instead, the Commission granted the CEOB's Petition for a Declaratory Order and, as expected, the legislature approved (and the Governor signed) SB 96, the ISO would be able to submit new amendments to the Bylaws that would comply with both Commission Orders and State law. The ISO therefore requested that the Commission withhold action on the ISO's January 8, 1999, filing until such time as the Commission acted on the CEOB's Petition for Declaratory Order and, if the Petition were granted, the ISO was able to implement SB 96.

On August 5, 1999, the Commission granted the request for a Declaratory Order in *California Electricity Oversight Board*, 88 FERC ¶ 61,172 (1999). The Commission concluded:

SB 96 prescribes a role for the CEOB that would be consistent with the jurisdictional guidance given by the Commission in its prior orders and that appropriately would be reevaluated at such time that another state joins the ISO.

Id., slip op. at 8. The Commission directed the ISO to file a revised compliance filing reflecting the governance changes discussed by the Commission in the Order within 60 days after the enactment of SB 96.⁴

In open session following public and stakeholder comment, the ISO Governing Board approved Bylaw amendments consistent with the Commission's Order and SB 96 on August 26, 1999. On September 27, 1999, SB 96 was enacted into law.

The amendments approved by the Governing Board included not only the amendments required by SB 96, but additional procedures to ensure parallel election treatment for Governors representing classes whose Governors are were not subject to CEOB confirmation. Under the ISO's Bylaws, changes to the election procedure for each class are effective against that class only if two-thirds of the registered entities in the class approve the changes. As of the meeting of the ISO Governing Board on November 18, 1999, five classes had failed to approve the proposed amendments. All other classes had approved the

⁴On October 27, 1999 the Commission denied rehearing requests of the Coalition of New Market Participants and the Western Power Trading Forum. These parties have subsequently sought judicial review of the Commission's Order in the United States Court of Appeals for the District of Columbia Circuit, Case No. 99-1532.

amendments. Accordingly, the Governing Board directed ISO management to develop revised election procedure amendments that would be acceptable to the objecting classes, while still complying with the Commission's Order and SB 96.

Because additional time was necessary to implement the Governing Board's directive, on November 24, 1999, the ISO requested an extension until January 31, 1999, of the deadline for filing the Bylaw amendments. The Commission granted the request on December 20, 1999. 89 FERC ¶ 61,290 (1999).

On December 22, the ISO Governing Board approved the revised Bylaw amendments developed by ISO management. These amendments have been approved by two-thirds of each of the classes.

II. THE AMENDMENTS

SB 96 requires the following revisions to ISO governance procedures:

- the CEOB would control qualifications and nominating procedures for and confirm Governors in only the following Board classes - agricultural end-users, commercial end-users, industrial end-users, residential end-users, end-users at-large, non-market participants and public interest groups (the "Consumer Classes");
- only Governors from the Consumer Classes would be subjected to a requirement that they be electricity consumers in the area served by the ISO; and
- Governors could only appeal ISO Governing Board decisions to the CEOB if they involved eight (8) specified issues within the exclusive jurisdiction of the State –
 - confirmation of the Governing Board members representing the Consumer Classes;
 - matters pertaining to retail electric service or retail sales of electric energy;
 - ensuring that the purposes and functions of the ISO are consistent with the purposes and functions of California nonprofit public benefit corporations;

- state functions assigned to the ISO under state law;
- open meeting standards and meeting notice requirements;
- appointment of advisory representatives serving state interests;
- public access to corporate records; and
- the amendment of bylaws regarding the above matters.

The proposed Amended and Restated Bylaws implement these requirements.

In addition to CEOB confirmation of Consumer Class Governor nominees, the proposed Bylaws, as amended in December 1999, also provide that the Governing Board may disapprove Governor nominees from the non-Consumer Classes, but only by a two-thirds vote. This treatment of non-Consumer Class Governor nominees differs from that originally adopted in January 1999, which provided for "direct" election of Governors, with no confirmation process whatsoever. In adopting the August 1999 and December 1999 amendments, and rejecting the original "direct" election procedures, the ISO was attempting to avoid the establishment of totally different approaches to election of Governors from each "side" of the Board (i.e., Consumer and non-Consumer Classes). In addition, the ISO was concerned that permitting "direct" elections could have resulted in stakeholders being granted "membership" status in the corporation under California state corporation laws. Such status, similar to that of a shareholder of a for-profit corporation, might give stakeholder groups (independent of Board members) greater authority than was contemplated when the ISO was created, such as authority to vote on major corporate actions. Providing the Governing Board with a limited ability to reject Governors from the non-Consumer Classes – in conjunction with the CEOB's confirmation authority for Consumer Class Governors – ensures similar treatment of all classes and eliminates the potential for distortion of the ISO's governance procedures.

In addition to the changes discussed above, the proposed Bylaw amendments implement a number of revisions that are not related to the implementation of SB 96. Substantially all of these revisions were included in the Amended and Restated Bylaws submitted to the Commission on January 8, 1999. A section-by-section analysis of the changes from the ISO's most-recently effective Bylaws (effective in August 1998) is provided as Attachment C. A chart comparing the revised Bylaws with the January 1999 proposal and the August 1998 Bylaws is provided as Attachment D.

III. SUPPORTING DOCUMENTS

The following documents are attached in support of this filing:

- Attachment A: The Amended and Restated Bylaws of California Independent System Operator Corporation, as approved August 26, 1999 and December 22, 1999;
- Attachment B: A "blacklined" version of the Amended and Restated Bylaws of California Independent System Operator Corporation, showing the changes from the August 1998 Bylaws;
- Attachment C: A section-by-analysis of the proposed revisions;
- Attachment D: A chart comparing the proposed revisions with the January 1999 proposal and the August 1998 Bylaws;
- Attachment E: Form of Notice suitable for publication in the Federal Register.

Honorable David P. Boergers
January 28, 2000
Page 7

Also enclosed is a 3½ inch diskette containing the notice of filing in WordPerfect format. In addition, an extra copy of the filing is enclosed. We would appreciate your stamping the extra copy with the time and date and returning to the messenger.

Respectfully submitted,

Roger E. Smith, Senior Regulatory
Counsel
Richard L. Jacobs, Senior Corporate
Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
(916) 351-4400

Edward Berlin
Kenneth G. Jaffe
Michael E. Ward
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007
(202) 424-7500

Counsel for the California Independent
System Operator Corporation