

August 31, 1998

The Honorable David P. Boergers,
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *Pacific Gas & Electric Co., et al.*, Docket No. EC96-19-029 and
ER96-1663-030, *et al.*

Dear Mr. Boergers:

Pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and various Commission orders, discussed below, the California Independent System Operator Corporation (ISO) respectfully submits additional information relating to its June 1, 1998 compliance filing required by the Commission's order of December 17, 1997.

The following materials are included:

1. Amended & Restated Bylaws, both clean and marked to show changes from the current Bylaws;
2. Summary of Proposed Bylaw Changes, as submitted to the Board of Governors of the ISO; and
3. Form of Notice suitable for publication in the *Federal Register*, including an electronic version.

Correspondence and other communications regarding this filing should be directed to:

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BACKGROUND

On June 1, 1998, the ISO made a compliance filing pursuant to the Commission's December 17, 1997 order in the referenced dockets. *Pacific Gas & Elec. Corp., et al.*, 81 FERC

¶ 61,320 (1997). In that compliance filing, the ISO did not include a copy of its Bylaws, which the Commission has ordered the ISO to amend. In its March 4, 1998 order, 82 FERC ¶ 61,223, the Commission denied the ISO's request for rehearing of the Commission's governance and Oversight Board determinations.¹ However, the Commission did indicate that, with certain changes there could be an appropriate role for the Oversight Board. The ISO has appealed the Commission's ruling to the D.C. Circuit.² The ISO also was attempting to negotiate changes to its governance rules that would establish the appropriate role for the Oversight Board. Because of the wide variety of interests necessary to arrive at a consensus settlement, the ISO needed additional time to work on the issues, and, therefore, did not submit amended Bylaws with the June 1, 1998 compliance filing but rather requested a 90-day extension of time in which to make a compliance filing with the hope it would then contain a resolution of those issues.

The ISO Board, in particular, its Governance Committee, has devoted substantial effort to seeking consensus on necessary changes to the ISO's governing structure. This has included producing and meeting to discuss at least three draft revisions to the election and appeal sections of the current bylaws. Notwithstanding these efforts, and efforts in combination with Commission staff, a settlement has not been reached.

The ISO hereby submits the enclosed changes to its Bylaws, some of which are effective immediately and others (to Articles III, IV and V) that require Oversight Board approval to be effective. We anticipate Oversight Board action on September 22, 1998. These changes do not meet the Commission's directives regarding the Oversight Board's appointment authority and appeal function, nor do they address the California residency requirement. Rather, they provide for the extension of Board terms pending resolution of the appeal of the Commission order, but no later than November 30, 1999. They also include a number of technical, corporate and "clean-up" matters, certain nonsubstantive changes, a provision providing for the Open Meeting Policy to contain the definition of "emergency." In addition, the ADR Committee, established in the ISO's original bylaws as an advisory committee, has been designated as a committee of the Board of Governors. A full summary of the changes is included in the enclosed document.

As noted, the ISO recognizes that these Amended and Restated Bylaws do not represent full compliance with the Commission's orders. The ISO continues to find itself caught between state and federal law. It has a directive from the California legislature mandating the current governance structure in the Bylaws, but it also has a directive of this Commission to amend the Bylaws to change the governance structure. Pending the appeal of the Commission's orders, the ISO may not make the changes required by the Commission without calling into question the legality of its governance under California corporate law. After considerable discussion of the

¹The Commission held that continued participation by the Oversight Board in ISO governance and operations would conflict with the Commission's statutory responsibilities, and the requirement that ISO Governing Board members be residents of California was rejected. 77 FERC ¶ 61,204, at 61,837 (1996), *reh'g*, 81 FERC ¶ 61,122, at 61,451, *reh'g*, 82 FERC at 61,868-71.

²Both the ISO and the Oversight Board filed Petitions for Review of the Commission's orders in this regard in D.C. Circuit Nos. 98-1225 and 98-1226.

effect this could have on ISO operations, the Board has decided not to approve changes that would have that potential effect.

These issues have been thoroughly briefed in previous filings. In summary, the ISO's Bylaws were drafted according to the directives in AB 1890 and codified, in part, in the California Public Utilities Code, Section 334, *et seq.* The Bylaws currently require that all appointments to the Governing Board be made by the Oversight Board. Bylaws, Article III, Section 4(a). In addition, any changes to the appointment section of the Bylaws require Oversight Board approval. Bylaws, Article IX, Section 3(b).

The Oversight Board itself is governed by Section 334, *et seq.*, of the California Public Utilities Code. In particular, Sections 335(c) and 339 state that the Oversight Board is to serve as an appeal board for major decisions of the ISO Governing Board. Cal. Public Utilities Code, §§ 335(c) and 339, (West 1998). Sections 335(b) and 337 establish the Oversight Board as the appointing body for ISO Governing Board members. Cal. Public Utilities Code, §§ 335(b) and 337, (West 1998). Because the Oversight Board's powers and duties are codified as law in the State of California, the Oversight Board cannot make (or approve) the changes requested by the Commission (*e.g.*, remove the Oversight Board appointment authority) without acting in violation of the California Public Utilities Code. As discussed above, the California Constitution requires the Oversight Board to follow state law until an appeals court upholds the federal preemption. Thus, by law the Oversight Board must reject the Commission-ordered amendments unless there is the necessary Court of Appeals resolution.

In summary, after a lengthy and deliberate process, the ISO Board has concluded that it would not be in the best interests of the corporation to make the changes ordered by the Commission until the Court of Appeals has ruled. This decision was driven both by California statutes and the state constitution, and the fact that the ISO's organizational documents themselves require Oversight Board approval of any change. Specifically, under its Bylaws, the ISO has neither the authority to appoint Governing Board members nor the authority to change the provisions of its Bylaws dealing with appointment of the Governing Board without Oversight Board approval. In addition, Section VII of the ISO's Articles of Incorporation state that "[a]ny bylaws of this corporation shall be adopted, and amended as necessary, so as to conform to requirements of the Statute [AB 1890] and to written decisions of the Oversight Board made pursuant to the Statute." In other words, the Commission's order requiring the ISO to change the governance structure would require the ISO to act beyond its corporate powers as set forth in the Bylaws.

For the foregoing reasons, the ISO respectfully requests that the Commission take no enforcement action on this matter pending resolution of the appeal by court order or settlement.

To avoid an entire Governing Board being selected under the procedures the Commission has directed the ISO to change, the ISO has again extended the terms of the current board members (to a date tied to the appeal, but not beyond November 30, 1999). That said, the ISO remains willing to facilitate a settlement or some other resolution to this issue in whatever manner necessary. We previously requested that the Commission schedule a public conference in which the Commission and parties could discuss possible compromises. We respectfully restate that request. At a minimum, such a conference would allow discussion of what might be an "appropriate role" for the Oversight Board as noted in the Commission's March order.

David P. Boergers, Secretary

August 31, 1998

Page 4

If there are any questions concerning the foregoing, please contact the undersigned or the ISO General Counsel, Beth Emery, at 916-351-2334.

Respectfully submitted,

By:

Stephen Angle
Linda L. Walsh
Howrey & Simon
Attorneys for the
**California Independent System Operator
Corporation**

Enclosures

cc: All Parties to Docket Nos. EC 96-19-000 and ER96-1663-000, *et al.*

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

Pacific Gas & Electric Company)	Docket Nos. EC96-19-008 and
San Diego Gas & Electric Company and)	EC96-1663-009
Southern California Edison Company)	

**Notice of Compliance Filing of the
California Independent System Operator Corporation**

Take notice that on August 31, 1998, the California Independent System Operator Corporation (ISO) tendered for filing additional information relating to its June 1, 1998 compliance filing required by the December 17, 1997 order in the captioned proceeding. 81 FERC ¶ 61,320 (1997).

Copies of the filing were served upon the all parties in the captioned proceedings.

Any person desiring to protest said application should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with §§ 385.212 and 385.207 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before _____, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the captioned proceeding.

Dated at Washington, DC, this 31st day of August, 1998.
