

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

California Independent System Operator Corporation))))	Docket No. ER98-3760-000
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California Independent System Operator Corporation))))	Docket Nos. ER98-19-000, and ER96-1663-000
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[Not Consolidated]

REPORT ON OUTSTANDING ISSUES

Pursuant to the Commission's September 11, 1998 Order in Docket No. ER98-3760-000, California Independent System Operator Corp., 84 FERC ¶ 61,217 (1998) ("September 11 Order"), the California Independent System Operator Corporation ("ISO") respectfully submits this Report on Outstanding Issues. The ISO is authorized to state that the participants listed in Appendix A either support or do not oppose the proposed disposition of issues as described in the report.

I. BACKGROUND

On October 30, 1997, the Commission issued an order conditionally authorizing limited operation of the ISO. Pacific Gas & Electric Company et al., 81 FERC ¶ 61,122 (1997). In an order issued on December 17, 1997, the Commission conditionally accepted certain of the ISO's proposed tariff changes and pro forma agreements. Pacific Gas & Electric Company et al., 81 FERC ¶ 61,320 (1997). The Commission also noted that the ISO would be making a compliance filing sixty days from the commencement of operations and stated that interested parties would be permitted to pursue at that time certain issues not previously resolved by the Commission.¹Id. at 62,476. The Commission also required the ISO to file its protocols under Section 205 of the Federal Power Act in that same compliance filing, specifying that “[a]t that time, we will afford the parties an opportunity to file comments.” Id. at 62,471. See also, California Independent System Operator Corporation, 82 FERC ¶ 61,327 at 61,294 (1998). The ISO made its “Compliance Filing” on June 1, 1998.

¹ The Commission stated:

At that time, the Commission will afford the parties an adequate opportunity to address the filings in view of actual ISO and PX operational experience. All issues raised by these filings, including, but not limited to ISO and PX issues regarding Tariff amendments not addressed in this order, will be the subject of a future order.

On July 15, 1998, the ISO submitted amendments to the ISO Tariff in Docket No. ER98-3760-000 to correct and clarify a variety of non-substantive matters (the "Clarification Filing"). As part of this Clarification Filing, the ISO submitted a procedural proposal for addressing issues previously raised in Docket Nos. EC96-19 and ER96-1663, but not resolved in prior Commission orders in those proceedings (the "WEPEX" proceedings). The ISO also included in the Clarification Filing a matrix of 230 issues that intervenors in the WEPEX proceedings had previously raised and which the ISO believed had not yet been resolved by the Commission. Under the ISO's proposal, these outstanding issues would be addressed in a comprehensive process through which all stakeholders, including the ISO and the intervenors in the WEPEX proceedings and this docket, would endeavor through negotiations to resolve as many of these issues as possible. The parties would identify the issues that could not be resolved through negotiation and propose procedures for the resolution of those remaining issues by the Commission.

In the September 11 Order, the Commission modified and, as modified, adopted many of the procedures described in the ISO's proposal. The Commission directed the ISO and the other participants in the WEPEX proceedings to develop a comprehensive list of the issues that remained active and in dispute, including issues pending on rehearing, using the issues matrix attached to the Clarification Filing as a starting point. California Independent System Operator Corporation, 84 FERC at 62,048. The Commission further directed its Trial Staff to participate in and facilitate negotiations involving the ISO and participants to resolve as many of these outstanding issues as possible through settlement. Id. Lastly, the Commission directed the ISO and participants to submit a report on the results of these negotiations within 120 days of the September 11 Order and indicated that this report should include a list of the outstanding issues that had been resolved through settlement and a list of those issues that remained for Commission resolution. Id.

The ISO and participants have been engaged in extensive efforts to address outstanding issues consistent with the procedures set forth in the September 11 Order. After consultation with the designated members of the Commission's Trial Staff, the ISO distributed matrices by letter dated October 2, 1998, to enable the participants to update and supplement the initial list of issues. In the following weeks, participants identified various additional issues for inclusion in the list of outstanding matters. Based on these submissions, the ISO developed a matrix of approximately 680 outstanding issues. This matrix included information on the participant(s) raising the issue, relevant Commission order citations, and participants' current positions on the issue. In addition, the ISO provided participants with a separate matrix organizing the issues by subject matter for use in the negotiation process. These matrices were distributed to all participants.

On November 5 and 6, 1998, the Commission Trial Staff, the ISO and other interested participants met in a settlement conference in Washington, D.C., to consider possible resolution of these unresolved issues. After substantial negotiations, a significant number of issues were resolved. In some cases, the participants agreed that an issue did not need to be pursued or could be combined with related issues for further consideration. In other cases, the ISO agreed to make changes to the ISO Tariff or Protocols to address the concern reflected in an issue. The participants agreed that a number of other matters could most effectively be pursued in one of the ongoing ISO stakeholder processes, including the efforts to redesign the ISO's Ancillary Services markets already being undertaken pursuant to the Commission's order in AES Redondo Beach, L.L.C., 85 FERC ¶ 61,123 (1998).

Further progress was made during a teleconference held on November 20, 1998. In the period between these conferences, the ISO, Commission Trial Staff, and various participants engaged in additional communications and negotiations to advance the resolution of the outstanding issues. Where those discussions produced a proposal to resolve one or more of the outstanding issues, it was presented to the other participants for their consideration. Another settlement conference was held at the ISO offices in Folsom, California on December 15 and 16, 1998. During these negotiations, the Commission Trial Staff, the ISO and the other participants agreed to resolutions of numerous additional issues.

Based on the progress that had been made in the settlement process to that time and the fact that the participants had committed to give further consideration to proposals made to address a number of the remaining issues, the participants attending the December settlement conference agreed unanimously to request the Commission to extend until March 11, 1999 the time for them to pursue settlement of outstanding issues in this proceeding and in the WEPEX dockets. The ISO filed a motion seeking the extension on January 4, 1999. A number of participants supported the motion. No participant filed an opposition. Additional settlement conferences were held on January 6 and 7, 1999 in Washington, D.C., and, following additional exchanges of positions, on February 10 and 11, 1999, in San Francisco, California. A draft of this report was circulated to the participants on February 22, 1999 and discussed in a telephone conference held on February 26, 1999, which also included discussions of open issues.

II. REPORT

A. Scope of the Settlement Process

The comprehensive matrix of issues that served as the basis for the settlement negotiations involved many, but not all, of the Commission's orders and proceedings involving the ISO. Specific orders and proceedings addressed in the Compliance Filing and in these negotiations consisted of:

- Pacific Gas and Electric Company, et al., 81 FERC ¶ 61,122 (1997)(the October 30 Order);
- Pacific Gas and Electric Company, et al., 81 FERC ¶ 61,320 (1997)(the December 17 Order);
- California Independent System Operator Corporation, 82 FERC ¶ 61,312 (1998) (Order accepting ISO Tariff Amendment No. 1 subject to modification and rejecting Amendment Nos. 2 and 3);
- California Independent System Operator Corporation, 82 FERC ¶ 61,327 (1998) (Order accepting ISO Tariff Amendment Nos. 4, 5, and 6 subject to modification);
- California Independent System Operator Corporation, 83 FERC ¶ 61,209 (1998) (Order accepting ISO Tariff Amendment No. 7);²
- June 1, 1998 Compliance Filing, Docket Nos. EC96-19-029; and
- July 17, 1998 Clarification Filing, Docket No. ER98-3760-000.³

² Not included in the negotiations were issues concerning the ISO's June 29, 1998 clarification filing concerning Amendment No. 7 in Docket Nos. EC96-19-031 and ER96-1663-032.

³ ISO proceedings not covered by these settlement negotiations include but are not limited to: (1) any rehearing requests or ongoing matters concerning Amendments 8 through 14 of the ISO Tariff; (2) the ISO's June 29, 1998 Clarification filing on Amendment 7; (3) the ISO's Grid Management Charge; (4) cases involving the ISO's Reliability Must Run Contracts; (5) the ISO's compliance filing on its governance structure and bylaws in Docket Nos. EC96-19-047 and ER96-1663-049; (6) matters concerning the rates, terms and conditions of the Participating Transmission Owner tariffs; (7) cases involving other ISO jurisdictional agreements including the Participating Generator Agreement, Meter Service Agreement, Responsible Participating Owner Agreement, Interconnected Control Area Operating Agreement, and Utility Distribution Company Agreement; and (8) The Transmission Control Agreement (Docket Nos. ER98-1971-000 and ER99-1770-000).

It is the position of the ISO as supported by or not opposed by the participants listed in Appendix A that the Commission need not take any further action at this time with respect to the protests or rehearing requests as originally filed in any of these matters based upon the Commission's acceptance of the proposed procedures for these issues as described in Section III below. As discussed in the following section, these issues are either: (1) not being pursued by the party at this time or (2) will be brought to the Commission for further consideration as either part of an Offer of Settlement or pursuant to a mutually-agreed briefing schedule.

B. Disposition of Issues

Attachment B to this report is the initial list of the 677 issues initially identified by the participants. It identifies the party raising the issue, a citation to the pleading in which the issue was raised, and a short description of any prior Commission determinations with respect to the Issue. As shown in Attachment B, Issues Nos. 634 to 677 are the issues that pertain to rehearing requests on the Commission's October 30, 1997 Order or on Amendments 1 through 7 of the ISO Tariff.

Attachment C, D, E, F, G, and H to this report show the disposition of the issues resulting from the settlement negotiations. The following is a brief description of each of the Attachments.

- Attachment C lists the issues as to which the ISO has agreed either to a modification of the ISO Tariff or on a commitment that resolves the concern. These Tariff revisions and commitments are to be reflected in an Offer of Settlement, incorporating the agreements reflected in Attachment C, that will be filed with the Commission. A proposed schedule for preparation of the settlement is provided in the next section.

- Attachment D identifies issues that were either: (1) consolidated with other issues (“merged”) or (2) are no longer being pursued by the party raising the issue. Accordingly, these issues do not require further action by the Commission in these proceedings. While a number of factors (such as operational experience, subsequent tariff amendments, or further information by the ISO) may have led a party not to pursue these issues at this time, the participants have agreed that withdrawal of an issue should be without prejudice if subsequent events lead the party to raise the same or a similar concern at a later date.

- Attachment E lists those issues as to which the ISO and the other participants have agreed to defer action pending consideration of the issue in ongoing ISO stakeholder forums. The Commission need not take any additional action with respect to these issues at this time. In agreeing to list an issue in Attachment E, however, participants are not waiving any right to pursue the issue at the Commission subsequently if dissatisfied with the outcome of the stakeholder process.

- Attachment F identifies certain issues that the participants have characterized as “premature” or are the subject of other proceedings. These are issues that were not raised in the original WEPEX dockets (including Amendments 1 through 7, the ISO’s June 1, 1998 “Compliance” filing, and the ISO’s July 15, 1998 “Clarification” filing) but relate to subsequent filings, stakeholder processes, or operational concerns. These issues are either currently being pursued in other ongoing cases or will be addressed at such time as a future filing is made at the Commission. Accordingly, being listed on Attachment F is without prejudice to the parties’ ability to pursue the concern in another case or when the appropriate ISO filing is made or by means of a petition under section 206 of the Federal Power Act.

- Attachment G identifies those issues as to which the ISO and the other participants in the settlement negotiations have been unable to reach a consensus and which require resolution by the Commission. The description of the issues is “non-binding” and may be recast in the Joint Statement of Issues described below along with a proposed schedule and set of briefing procedures. The ISO and the participants believe these issues are ripe for a Commission determination at this time. Procedures designed to assist the Commission’s consideration of these matters are proposed below.

- Attachment H consists of issues that have not yet been placed into one of the previous categories. These are issues that the ISO and the participants are continuing to pursue through further negotiations. If these issues cannot be resolved on a mutually agreeable basis, they may be added to the list of issues requiring resolution by the Commission. If any such issues are added to those listed in Attachment G, they will be identified in the proposed Joint Statement of Issues in May 1999 in accordance with the procedural schedule described below.

III. PROPOSED ADDITIONAL PROCEDURES

A. Preparation of the Offer of Settlement

The ISO and the participants believe that, utilizing their “best efforts,” it will be possible for the ISO staff and potentially other participants to seek approval by the ISO Governing Board of an Offer of Settlement, incorporating the commitments reflected in Attachment C, at the May 1999 meeting and to file the Offer of Settlement by June 1, 1999.⁴ If the Offer of Settlement cannot be filed by June 1, 1999, the ISO would file a status report at that time.

B. Briefing of Contested Issues

⁴ The ISO and the Participants listed in Appendix A have agreed on or do not oppose a schedule with a number of informal dates in order to develop the Offer of Settlement in a timely manner. The ISO is to circulate a first draft by April 5, 1999. Initial comments are to be provided by the participants and Commission Trial Staff by April 19, 1999. The ISO will attempt to circulate a revised draft by May 3, 1999, and additional comments are due May 10, 1999. The ISO and other participants will attempt to reconcile any remaining issues in a conference call on May 14, 1999. A revised version would then be presented at the ISO Governing Board meeting on May 26-27, 1999.

With respect to the issues requiring resolution by the Commission, the ISO and the participants identified in Appendix A have agreed on or do not object to the following schedule:

- May 4, 1999 - ISO files joint Statement of Issues, following negotiation among the ISO and the participants
- May 28, 1999 - Proponents' Initial Brief (and briefs of parties supporting the Proponents' position)⁵
- July 9, 1999 - Answering Briefs
- July 30, 1999- Proponents' Reply Briefs

The parties have agreed that they may restate the issues in the Joint Statement of Issues from the particular "non-binding" wording reflected in Appendix G.⁶ The Joint Statement of Issues will serve several purposes. First, it will identify the proponents, those who are advocating a change in the status quo, for each issue. Second, it will serve as the organizational format for the briefs. Third, it will separately identify issues which involve matters on rehearing.⁷

While Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d), generally prohibits answers to requests for rehearing, the ISO respectfully request that, pursuant to Rule 713(d)(2), the Commission

⁵ Proponents are free to propose additional procedures such as a request for a hearing on a particular issues. Of course, those submitting reply briefs may oppose such additional procedures.

⁶ The Statement of Issues would also include any issues from Attachment H that remain unresolved. It is also possible that if problems are encountered with respect to the settlement of an issue from Appendix C that it would be added to the Statement of Issues.

⁷ These matters would then be ripe for judicial review following the Commission determination with respect to the rehearing request.

permit briefing of these issues. The parties listed in Appendix A support or do not oppose this request.

The ISO and the other participants recognize that the issues on rehearing and even many of the issues that were raised in initial protests have been raised in prior pleadings with the Commission. This procedural schedule is meant to provide an opportunity to update the discussion of the issues as well as to reorganize the information for the Commission's benefit, eliminating the need to review the prior submissions. The ISO and its market participants have had almost a full year of operational experience. The ISO Tariff and most significantly the ISO Ancillary Services markets have undergone significant changes and been the subject of several Tariff amendments. The ISO and the other participants believe that it is important that the Commission have the benefit of an updated perspective on these significant issues and that the most efficient way to proceed is in accordance with the proposed schedule.

IV. CONCLUSION

Wherefore, for the reasons stated above, the ISO respectfully request that the Commission accept this report and adopt the proposed additional procedures. The parties listed in Appendix A either support or do not oppose this request.

Respectfully submitted,

N. Beth Emery, General Counsel and
Executive Vice President
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
(916) 351-2207

Kenneth G. Jaffe
David B. Rubin
Sean A. Atkins
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Washington, D.C. 20007
(202) 424-7500

Counsel for the California Independent System Operator Corporation

Dated: March 11, 1999

ATTACHMENT A

Counsel for the following intervenors in Docket No. ER98-3760-000 and/or one or more of the sub-dockets of Docket Nos. EC96-19 and ER96-1663 have authorized the ISO to state that the participant supports or does not oppose this Report on Outstanding Issues

Bonneville Power Administration
California Department of Water Resources
California Power Exchange
California Public Utilities Commission
City of Anaheim, California
City of Azusa, California
City of Banning, California
City of Colton, California
City of Riverside, California
City and County of San Francisco
Coral Energy, LP
Electric Clearinghouse, Inc.
Enron Power Marketing, Inc.
The Metropolitan Water District of Southern California
New Energy Ventures, Inc.
Pacific Gas and Electric Company
PG&E Energy Services
Reliant Energy Power Generation, Inc.
Sacramento Municipal Utility District
Southern California Edison Company
Turlock Irrigation District
The Utility Reform Network
Utility Consumers' Action Network
Western Area Power Administration

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 above-captioned dockets.

Dated at Washington, DC, this 11th day of March, 1999.

David B. Rubin
Sean A. Atkins
Counsel for the California Independent
System Operator Corporation