

**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]

EXPLANATORY STATEMENT

I. Introduction

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 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 an order issued September 11, 1998, California Independent System Operator Corporation, 84 FERC ¶ 61,217 (1998) (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 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 the report on unresolved issues 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.

On March 11, 1999, the ISO filed the Report on Outstanding Issues. Attachment C to the Report listed the issues as to which the ISO had agreed either to a modification of the ISO Tariff or on a commitment that resolves the concern. The ISO stated that the Tariff revisions and commitments were to be reflected in an Offer of Settlement filed with the Commission. The Offer of Settlement is the fulfilment of that commitment.

On March 22, 1999, the Commission issued a notice of filing. Responses to the Report on Outstanding Issues were to be filed by April 8, 1999. Motions to Intervene were filed by Southern Energy California, LLC; Southern Energy Potrero, LLC and Southern Energy Delta, LLC; Coral Power, LLC; and PSEG Resources. In addition, San Diego Gas & Electric Company ("SDG&E") and the Energy Producers and Users Coalition and the Cogeneration Association of California ("EPUC/CAC") filed motions to intervene out of time in Docket No. ER98-3760-000. Comments supporting the March 11, 1999 filing were filed by Modesto Irrigation District; the City of Vernon, California; the City of Redding, California; the City of Santa Clara, California; the Transmission Agency of Northern California; the M-S-R Public Power Agency; and SDG&E.

EPUC/CAC protested the disposition of seventeen issues as identified in the Attachments to the March 11, 1999 Report. On April 12, 1999 the ISO filed an Answer to EPUC/CAC's Comments. On April 28, 1999, the Commission issued an Order Accepting for Filing Report on Outstanding Issues and Establishing Further Procedures. California Independent System Operator Corporation, et al., 87 FERC ¶ 61,102. In this order, the Commission accepted for filing the March 11, 1999 Report, established procedures to incorporate the issues that had been resolved by the parties into a settlement, and established further procedures to address the remaining issues. The Commission required the ISO to file an updated Unresolved Issues report and a Joint Statement of Issues identifying the issues to be briefed to the Commission two weeks after the initial comments on the Offer of Settlement are filed.²Id., Slip op. at 10.

² If the initial comments to the settlement reveal any significant issues that need to be resolved by the Commission, these are to be removed from the list of resolved issues and included in either the Joint Statement of Issues for resolution by the Commission, or in one of the other categories in the updated Outstanding Issues Report. To the extent that the parties cannot agree to the categorization of an issue, it should be included in the Joint Statement of Issues for Resolution by the Commission.

II. Settlement Terms

The following description of the major provisions of the Offer of Settlement is not intended to amend, modify, or limit any of the provisions of the Offer of Settlement in any respect. In the event of a conflict between this Explanatory Statement and the Offer of Settlement, the Offer of Settlement will prevail.

Article I of the Offer of Settlement provides that the revised Tariff pages in Appendix A to the Offer of Settlement are intended to resolve the following Issues listed in Attachment C to the March 11, 1999 Report on Outstanding Issues: 6, 7, 11, 14, 17, 21, 22, 24 (in part), 26, 34, 35, 41, 43, 45, 46, 47, 57, 58, 67, 89 (in part), 95, 99, 106, 112, 128, 131, 134, 159, 163, 169, 174, 176, 217, 253, 277, 279, 280, 281, 282, 288, 293, 299, 300, 302, 303, 306, 307, 308, 310, 316, 323, 325, 330, 334, 342, 343, 346, 375, 378, 405, 411, 412, 420, 438, 440, 442, 452, 454, 455, 456, 462, 464, 465, 466, 468, 470, 508, 511, 512, 513, 515, 517, 521, 524, 525, 527, 528, 529, 532, 580, 587, 602, 620, 622, 657, and 667. The revised Tariff pages in Appendix A to the Offer of Settlement are also intended to resolve Issue Nos. 498 and 278 listed in Attachment D to the March 11, 1999 Report and Issue Nos. 56, 530, 656, and 658 listed in Attachment H to the March 11, 1999 Report.

Article I states that the ISO and the other parties that indicate in their comments (or by failing to submit comments) that they either support or do not oppose the settlement (the “Parties”) do not oppose the disposition of issues as identified in Attachments D, E, and F of the March 11, 1999 Report on Outstanding Issues with the following changes: Issue Nos. 97, 275, 477, 482, 497, 544, and 603 listed in Attachment H in the March 11, 1999 Report should be incorporated into Attachment D; Issue Nos. 115, 132, 161, 581, 590, 604, and 625 listed in Attachment G of the March 11, 1999 Report should be incorporated into Attachment D; and Issue No. 661 listed in Attachment G of the March 11, 1999 Report should be incorporated into Attachment E. Issue Nos. 40, 53, 96, 189, 252, 253, 283, 319, 326, 356, 379, 399, 505, 516, 519, 541, 586, 618, 635, 641, and 642 listed in Attachment C to the March 11, 1999 Report should be incorporated into Attachment G. Issue Nos. 80, 204, 208, 229, 248, 254, 266, 267, 296, 304, 347, 383, 403, 404, 409, 488, 489, and 535 listed in Attachment H to the March 11, 1999 Report and Issue Nos. 543, 631 and 670 listed in Attachment D to the March 11, 1999 Report should also be incorporated into Attachment G.

Article I provides that, as will be set forth in the Joint Statement of Issues to be filed in accordance with the Commission’s April 28, 1999 Order, there may be remaining unresolved issues with respect to certain language in the revised Tariff pages in Appendix A and that the Offer of Settlement is not meant to prejudice the future disposition of those issues. This Article also states that the ISO and the other Parties believe the changes reflected in Appendix A are fair and reasonable and in the public interest.

Article II of the Offer of Settlement contains certain additional commitments made by the ISO and supported or not opposed by the other Parties in order to resolve particular issues.

- In resolution of Issue No. 56, the ISO confirms that, in accordance with sections 2.5.1 and 2.5.20.2 of the ISO Tariff, when a Scheduling Coordinator self-provides Operating Reserves to meet its obligation, the ISO recognizes that the Scheduling Coordinator's demand is covered when the ISO determines the amount of Operating Reserves it must procure.
- In resolution of Issue No. 78 concerning Section 7.2.2 of the Scheduling Protocol of the ISO Tariff, the ISO agrees that the use of such rules to automate scheduling of Existing Contracts does not implicate the just and reasonable allocation of ISO costs to rightholders under Existing Contracts.
- In resolution of Issue No. 135, the ISO will initiate a competitive procurement process for Voltage Support services and Black Start capability as part of the Local Area Reliability Service (LARS 2000) initiative with a goal of implementing competitive procurement of these services by January 2000, or as soon as reasonably practicable thereafter. The ISO commits to make any necessary Tariff changes prior to this implementation date.
- In resolution of Issue No. 220 concerning the temporary sections of the ISO Tariff, the ISO provides its current estimate of the expected duration of the provisions.

- In resolution of Issue No. 243, the ISO will undertake a review of what actions can be undertaken to reduce the neutrality charge. The ISO will publish the results of its review and provide interested parties with the opportunity to comment on the report. The ISO anticipates that the report will be prepared by January 31, 2000.
- The Bonneville Power Administration (“BPA”) has questioned the authority of the ISO to impose penalties and sanctions on BPA. In resolution of Issue No. 276, the ISO and BPA have agreed that further consideration of the issue of the ISO’s authority to impose penalties and sanctions on BPA can be deferred until such time as the ISO makes a separate filing pursuant to Section 205 of the Federal Power Act seeking Commission authorization to impose specific penalties and sanctions.
- In resolution of Issue No. 361, the ISO commits in accordance with Section 2.3.2.6 of the ISO Tariff to consult with Market Participants in setting or relying upon new or revised load protective settings or Remedial Action Schemes not covered under Existing Contracts.
- In resolution of Issue No. 548 concerning Section 20.7 of the ISO Tariff, the ISO confirms that this provision relates to venue and does not confer jurisdiction where it does not otherwise exist.
- In resolution of Issue No. 594 concerning Section 7.2.6.3 of the ISO Tariff, the ISO confirms that this provision does not modify the terms and conditions of Reliability Must Run Contracts.

- In resolution of Issue No. 619 concerning the sanctions to be developed in accordance with Section 9.5.2 of the Dispatch Protocol of the ISO Tariff, the ISO confirms that such sanctions would only be imposed after they have been filed with and accepted by the Commission.
- In its December 1, 1997 rehearing request of the October 30, 1997 Order, the ISO noted: (1) that the ISO did not intend to mitigate constraints between Active and Inactive Zones as part of the Inter-Zonal congestion management process (if congestion appears at an interface with an Inactive Zone, the ISO would convert it into an Active Zone and classify the path as an Inter-Zonal Interface), and (2) that it could not provide certain specified information on Intra-zonal Congestion until the necessary software was in place to permit the ISO to perform Inter-Zonal Congestion and Intra-Zonal Congestion Management in the Day-Ahead Market and the Hour ahead market. In resolution of Issue Nos. 481, 673, and 674, the ISO has agreed: (a) to prepare and post on its home page a procedure identifying how the ISO would convert the Inactive Zone into an Active Zone; and (b) that when the necessary software is in place, it will provide Scheduling Coordinators with information to discern the reason for rescheduling due to Inter-Zonal or Intra-Zonal Congestion and to understand their financial liability under schedules and to formulate revised schedules and bids. Based on these commitments, the Parties either support or do not oppose these specific rehearing requests.

- In resolution of Issue No. 656, the ISO clarifies that it intends the priority accorded to RMR Generating Units only applies when these units are dispatched pursuant to their RMR contract and not during their normal market transactions.
- In resolution of Issue No. 24, the ISO commits that, when the ISO is able to publish on the ISO Home Page its estimate of the percentage the ISO will use to determine the quantity of Regulation it requires for each Hour-Ahead Market, the ISO will revise the ISO tariff to specify the times by which the ISO would normally publish this information.

Article III of the Offer of Settlement contains the general terms and conditions. It recognizes that the Offer of Settlement is a negotiated compromise and that Commission acceptance shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding, and shall not relieve any party of the burden, under Section 205 or 206 of the Federal Power Act, to establish the justness and reasonableness of any superseding amendment.

Article III specifies that the Offer of Settlement does not affect any party's rights under Existing Contracts and that the Offer of Settlement does not constitute a waiver of the right of any party to challenge whether any action or proceeding is subject to the jurisdiction of the Commission.

Article III expresses the strong desire that the Offer of Settlement be accepted by the Commission in its entirety. If, however, modifications are ordered, each party has thirty days to raise an objection to the modifications. If such an objection to the modification is made, the Offer of Settlement shall be withdrawn.

Article III also notes that the discussions among the parties were conducted in accordance with Rule 602(e) of the Commission's Rules of Practice and Procedure and provides that the Offer of Settlement shall become effective when an order of the Commission accepting the Settlement, without modification, or with modifications that are agreed to by all parties, becomes final and nonappealable under the terms of the Federal Power Act.

III. Conclusion

The Offer of Settlement presents an acceptable resolution of these issues and should be accepted by the Commission.

Respectfully submitted,

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