

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

California Independent System)	Docket No. ER01-3013-000
Operator Corporation)	
)	

**Answer of the California Independent System Operator Corporation to
Motions to Intervene, Protest, and Comments on the ISO's Tariff
Amendment 40**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 385.213, the California Independent System Operator Corporation ("ISO") submits its Answer to the motions to intervene, protests, and comments in the above-captioned docket.

I. BACKGROUND

For approximately the first two years of ISO operations, the ISO's market settlement procedures provided for one disbursement of payments for each month's ISO market transactions to Scheduling Coordinators ("SCs") on behalf of the Market Participants they represent.¹ This disbursement was made after the ISO issued, and received payment for, invoices based on the Final Settlement Statement for that month. Since the trade month of June 2000, however, with the implementation of the settlement-related provisions of Amendment No. 25 to the ISO Tariff, the ISO has bifurcated its payments to SCs. An initial payment is made based on the Preliminary Settlement Statement invoices and the receipts received by the ISO in response to them, and a final payment is made based on receipts received in response to the Final Settlement Statement

¹ Capitalized terms that are not otherwise defined have the same meaning as set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

invoice.² The invoice and payment dates are set forth in the ISO Payments Calendar, which is developed by the ISO each year.

On September 5, 2001, the ISO filed Amendment No. 40 to the ISO Tariff, proposing a revision to its Tariff to implement a temporary modification of the ISO's settlement practices necessitated by the crisis in the California Electricity markets and the fact that a number of SCs have engaged in practices that are contrary to their obligations under the ISO tariff.

As stated in the ISO's filing letter of September 5th, the "two invoice" approach, adopted as part of Tariff Amendment 25, was premised on a number of assumptions that have not proven to be true in recent months (especially beginning with the trade month of May 2001), including the assumption that all SCs will comply with their obligation to make full payments to the ISO on both the preliminary and final invoices and that adjustments between Preliminary and Final Settlement Statements will generally reflect minor "true-ups" rather than substantial shifts in payments due to or from individual SCs.

Such practices have included "netting" of payments owed by an SC for one month's market transactions against amounts due to that SC for another month's transactions. In addition, some SCs have failed to make full payments on preliminary invoices, or, because of their pending disputes, to remit payments for adjustments expected to be made on final invoices. The ISO has reminded the SCs of their obligations under the ISO Tariff as well as under the SC agreements, but to date, these

² As the Commission has noted in numerous orders, the ISO is a revenue-neutral, not-for-profit entity. *See, e.g., California Independent System Operator Corp.*, 94 FERC ¶ 61,266 at 61,927-28 (2000). Both the original and the modified ISO market settlement procedures provide for the ISO simply to be a conduit for payments made and received in the various markets overseen by the ISO.

activities have continued. In order to curb the activities, the ISO proposes in Amendment No. 40 to eliminate preliminary invoices.

In addition, more frequent "reruns" of the settlement system, necessitated by the unstable energy markets in California, may result in significant shifts in the payments owed to and due from SCs between preliminary and final invoices. The net result of all of these conditions is that money is often unavailable, even on a pro rata basis, to reimburse the SCs that paid their preliminary invoices in full and then were due payments back on the final invoice. Thus, the "two invoice" approach that began in 1999 with the Commission's approval of Tariff Amendment No. 25 has had the unfortunate consequence of rewarding those SCs who do not follow the established payment rules.

To this end, the ISO has proposed Amendment No. 40 to its Tariff to be in place until the markets and the payment practices stabilize.

II. INTERVENTIONS

On September 12, 2001 the Commission issued its Notice of Filing establishing September 21, 2001, as the date on which motions to intervene and protests were due in the proceeding. A number of parties filed motions to intervene without protest or substantive comment.³

Interventions stating at least some level of support for the Amendment were filed by the following entities: Enron Power Marketing, Inc., Northern California Power Agency, the California Electricity Oversight Board and the Metropolitan Water District of Southern California ("MWD"). Parties offering protests or "comments" on the filing

³ Interventions stating no substantive comment on Amendment 40 were filed by Los Angeles Department of Water and Power, Constellation Power Source, Salt River Project, Turlock Irrigation District, California Department of Water Resources, Sacramento Municipal Utility District, Southern California Edison, Transmission Agency of Northern California, Modesto Irrigation District and Cities known as "MSR".

included Dynegy Power Marketing, Inc., the Independent Energy Producers Association ("IEP"), Williams Energy Marketing and Trading Company, Reliant Energy Services Inc., Duke Energy North America and Mirant. The ISO does not oppose the any of the interventions. In the next section, however, the ISO provides its response⁴ to the issues raised by these six parties who have commented on the filing. As explained below, the challenges to Amendment No. 40 are without merit and the filing should be adopted without modification.

III. ANSWERS TO COMMENTS AND PROTESTS

A. Amendment No. 40 Does Not Confuse or Eliminate Any of the Current Dispute Resolution Rights of Scheduling Coordinators

Two of the Commenters, IEP (at page 4) and Dynegy (at page 5), raise the concern that the filing limits or does away with their right to protest their billing from the ISO based on a invoice. This issue is also discussed by MWD as part of a pleading that otherwise supports the proposed tariff amendment. MWD at page 8. The concerns of all of these parties are unfounded. Tariff Amendment No. 40 does not propose to change the issuance of either the preliminary or the final settlement statement. It is the settlement statement upon which any dispute is based, not the invoice which merely governs payment. The only proposal contained in Amendment No. 40 is to return to a single invoice (i.e. to eliminate the preliminary invoice). The ISO does not propose to issue a

⁴ Some of the Intervenor commenters substantively on the ISO's filing do so in portions of their pleadings variously styled as "Requests for Clarification" or "Comments" without differentiation. There is no prohibition on the ISO's responding to the comments in these pleadings. The ISO is entitled to respond to these pleadings and requests notwithstanding the label applied to them. *Florida Power & Light Company*, 68 FERC ¶ 61,315 (1994). In the event that any portion of this answer is deemed an answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R § 385.213) to permit it to make this answer. Good cause for this waiver exists here given the nature of this proceeding and the usefulness of this answer in ensuring the development of a complete record. *See, e.g., Enron Corporation*, 78 FERC ¶ 61,181 at 61, 899 and n. 57 (1994).

single settlement statement. The ISO believes that this Answer clarifies its intent in this respect and that no modification of the language of the proposed amendment is necessary. By way of this Answer, the ISO makes it clear that there is no intent whatever to limit the dispute rights of SCs under the ISO Tariff or to eliminate the preliminary settlement statement.

B. It Is Not Appropriate To Include a “Sunset” Date for Tariff Amendment No. 40 as part of the Filing

The Independent Energy Producers and Dynegy suggest (IEP Comments at page 5 and Dynegy at page 4) that assuming that the Amendment No. 40 single invoicing approach is warranted, it should have a "sunset" date or specific period at which time its provisions would terminate. While this argument has a certain superficial appeal, it is simply impossible currently to determine when the California electricity markets will stabilize such that more "normal" payment procedures can be reinstated. In a sense, the six parties that have filed protests to this filing at least partially control with their own payment practices the ability of the ISO to return to the "two invoice" payment approach envisioned in Tariff Amendment No. 25. When the energy suppliers end the process of payment netting described in the September 5th filing letter and the ISO can implement its long-sought procedures with the California Department of Water Resources, the ISO will be able to return to the "two invoice" approach sought by the protesters. When these conditions are met, the ISO will re-institute the Amendment 25 methodology.

C. Issues Relating To CDWR's Performance as a Creditworthy Backer Are Beyond the Scope of the Amendment No. 40 Filing and Are Being Addressed in Other Proceedings

Nearly all the protesting parties, Duke (at page 3), Reliant (at page 4), Mirant (at page 4), and Dynegy (at p.3) suggest that Amendment No. 40 fails or refuses to address the fundamental concern that has led to invoice netting by the energy suppliers, that is, the escalating financial burdens on sellers as a direct result of the ISO's failure to provide credit support for all transactions with third party suppliers. The ISO recognizes the severity of this concern and is working diligently with Market Participants and CDWR to address this fundamental issue. Indeed, this subject was a primary focus of the meeting convened by Commission Staff on September 24 and 25, 2001 at the ISO.

These concerns, however, do not address the core of the need for Amendment No. 40, which is to ensure equitable treatment of all SCs in accordance with the current situation. The ISO must protect the interests of the SCs that are making full payment on preliminary invoices in accordance with the ISO Tariff, but because of the unavailability of funds from Market Participants and the actions of other SCs are not receiving even the appropriate pro rata distribution to which they are entitled. This is the problem that Amendment No. 40 attempts to resolve. Until the market stabilizes, the Amendment No. 40 modification should remain in place.

IV. CONCLUSION

For the reasons set forth above, the ISO requests that the Commission accept the ISO's Amendment No. 40 as filed.

Respectfully submitted,

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