

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

BRADLEY R. MILIAUSKAS
DIRECT DIAL: (202) 295-8431
FAX: (202) 424-7643
BRMILIAUSKAS@SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL. (212) 973-0111
FAX (212) 891-9598

April 30, 2004

Via Electronic Filing

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket Nos. ER03-218-005, ER03-219-005, and EC03-81-002**

Dear Secretary Salas:

Enclosed please find the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Southern California Edison Company's Protest, submitted today in the above-captioned proceedings.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas

Counsel for the California Independent
System Operator Corporation

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System)	Docket Nos. ER03-218-005,
Operator Corporation)	ER03-219-005, and
)	EC03-81-002

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO
SOUTHERN CALIFORNIA EDISON COMPANY'S PROTEST**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the California Independent System Operator Corporation ("ISO")¹ hereby requests leave to file an answer, and files its answer, to "Southern California Edison Company's Protest to the Compliance Filing of the Independent System Operator Corporation [sic]," submitted by Southern California Edison Company ("SCE") in the above-captioned proceeding on April 15, 2004.²

I. ANSWER

SCE was the only party that submitted a filing that proposes revisions to the ISO's March 25, 2004 compliance filing in this proceeding. As relevant here, the compliance filing contained modifications to Section 3.4.8 of the Transmission Control Agreement ("TCA") that were provided to meet the

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

² The ISO requests waiver of Rule 213(a)(2) (18 C.F.R. § 385.213(a)(2)) to permit it to make this answer to SCE's protest. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,2551, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

directives contained in the Commission's November 17, 2003 order in this proceeding.³ SCE argues that the ISO did not adhere to "the responsibility to work with all of the parties to the TCA" in drafting the compliance filing, and asserts that the changes to Section 3.4.8 of the TCA proposed by SCE should be adopted in place of the ISO's proposed changes to that section. Protest at 7-8.

A. While the ISO Satisfied the Requirements of the TCA and the November 17 Order in Drafting the Compliance Filing, the ISO Does Not Object to the Substance of SCE's Proposed Changes

While the ISO submits that SCE's complaint that the ISO failed to meet its responsibility to the other parties to the TCA in drafting the compliance filing is without merit, the ISO has no objection to the substance of SCE's proposed revisions. SCE's assertion that the ISO failed to work with the other TCA parties ignores the language of Section 26.11(3) of the TCA, which provides that one of the circumstances in which the TCA may be modified is "upon issuance of an order by FERC." This language does not require consultation with the other parties.⁴ The March 25, 2004 compliance filing was submitted "upon issuance of" the November 17 Order. Moreover, as explained below, the ISO did voluntarily discuss the draft compliance filing language with the other parties. Furthermore, the November 17 Order itself directed the ISO to submit the compliance filing; it did not require the ISO to work with the other parties on the compliance filing. See November 17 Order at P 18 and Ordering Paragraph (B).

³ *California Independent System Operator Corporation*, 105 FERC ¶ 61,207 (2003) ("November 17 Order").

⁴ In contrast, Section 26.11(1) provides that the TCA may be modified "upon mutual agreement of the Parties, subject to approval by FERC."

The ISO nevertheless did consult with the other parties in preparing the compliance filing. The ISO circulated to the parties draft changes to the TCA and solicited comments on the language. SCE was the only party that suggested changes to the draft language; SCE did not, however, submit any changes to the draft language to reflect the withdrawal of Entitlements. SCE makes no mention of these facts, and thus leaves the inaccurate impression that the ISO did not discuss the subject with SCE and the other parties at all. It is true that the ISO did not circulate to the parties the final version of the changes to Section 3.4.8 that were included in the compliance filing, but SCE's description of the efforts the ISO did undertake is incomplete.

B. The ISO Does Not Object to the Substance of the Proposed Changes to Section 3.4.8 of the TCA that SCE Provides in its Protest

As explained above, SCE's protest suggests new and different proposed changes to Section 3.4.8. SCE states that it has added emphasis "to show differences with the ISO's Compliance Filing proposal" (Protest at 7), but SCE appears to have inadvertently omitted the referenced emphasis. A comparison of SCE's proposed version of Section 3.4.8 with the ISO's reveals two differences between SCE's and the ISO's proposals: (1) SCE proposes the use of the phrase "any affected transmission lines, associated facilities, or Entitlements" where the ISO proposes to use "facilities, recognizing Entitlements, of a non-public utility"; (2) SCE proposes to use the phrase "in accordance with Section 3.4 of the TCA" where the ISO proposes to retain the pre-existing phrase "in accordance with this Section 3.4."

The ISO submitted the compliance filing to meet the requirements of the November 17 Order.⁵ The ISO does not believe that the proposed phrase “recognizing Entitlements” in Section 3.4.8 is problematic as SCE asserts. Another section of the TCA, Section 4.1.1, already contains a requirement that the ISO “recognize” particular rights and obligations – those of “owners of jointly-owned facilities which are placed under the ISO’s Operational Control by one or more but not all of the joint owners.”

Nevertheless, the ISO would not oppose the implementation of the first of SCE’s proposed changes to Section 3.4.8, if they are deemed acceptable by the Commission. The ISO notes that the November 17 Order appears to be written as directing the ISO to modify Section 3.4.8 so that it applies only upon the withdrawal of a non-public utility, rather than the withdrawal of a public utility. In this regard, SCE appears to agree with the ISO’s understanding.⁶ SCE’s proposed changes, however, actually would require the ISO to follow the procedures described in SCE’s proposed Section 3.4.8 upon the withdrawal of either a public or a non-public utility, because they would apply “[f]ollowing the relinquishment by the ISO of the Operational Control of any affected transmission

⁵ SCE acknowledges “the ISO’s efforts to strictly conform to the Commission’s guidance,” although SCE disagrees with the specific language the ISO has proposed to conform with that guidance. Protest at 4.

⁶ SCE asserts that the Commission directed the ISO as follows:

To address the concern raised by the California Department of Water Resources that ISO customers not pay for transmission facilities or Entitlements that a non-public utility has withdrawn from the ISO’s Operational Control under Section 3.4 of the TCA, the Commission ordered the ISO “to revise Section 3.4 of the TCA so that it states that the CAISO will make a section 205 filing in the event of a withdrawal of a non-public utility from the ISO and modify the TCA and Tariff accordingly.”

Protest at 4 (citing November 17 Order at P 18).

lines, associated facilities, or Entitlements. . . .” Protest at 6 (emphasis added). The ISO would support that revision to Section 3.4.8 as providing a consistent set of procedures for the ISO to follow regardless of whether it is a non-public utility or a public utility with Tax-Exempt Debt (e.g., Local Furnishing Bonds for a public utility) that must withdraw facilities or Entitlements from ISO Operational Control for tax reasons. The ISO considers the procedure specified by the Commission for a withdrawal of a non-public utility to be equally applicable to a withdrawal by a public utility and is not aware of significant policy reasons to distinguish between the two in this regard.

However, if the Commission determines that SCE’s proposed changes are not acceptable, because the Commission finds that Section 3.4.8 should contain procedures for the withdrawal of a public utility that are different from the procedures for the withdrawal of a non-public utility, the ISO would propose that it accept the changes to Section 3.4.8 contained in the compliance filing, and that the following sentence (which for the most part is the same as the currently effective language of Section 3.4.8) be added to the end of the section:

Following the relinquishment by the ISO of Operational Control of facilities, recognizing Entitlements, of a public utility in accordance with this Section 3.4, the ISO promptly shall prepare the necessary changes to this Agreement, submit the changes to the Participating TOs for execution and take whatever regulatory action, if any, that is required to properly reflect the Withdrawal for Tax Reasons.

These changes would preserve the distinction between the withdrawal of public utilities and the withdrawal of non-public utilities.

The ISO does not see any reason to adopt the second of SCE's proposed changes. Those changes would modify pre-existing language in the TCA that the Commission did not require to be revised.

II. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission grant the ISO's motion for leave to file this answer and accept the ISO's compliance filing, and states that it would not oppose the approval of the modifications to Section 3.4.8 of the TCA proposed by SCE as described above.

Respectfully submitted,

Charles F. Robinson
General Counsel
John Anders
Corporate Counsel
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7049
Fax: (916) 608-7296

/s/ David B. Rubin
David B. Rubin
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Date: April 30, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California, on this 30th day of April, 2004.

/s/ John Anders
John Anders