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June 22, 2004

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 No. ER03-683-005**

Dear Secretary Salas:

Enclosed please find the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Protest, submitted today in the above-captioned proceeding.

Two extra copies of this filing are also enclosed. Please stamp these copies with the date and time filed and return them to the messenger. Thank you for your attention to this matter.

Respectfully submitted,


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 No. ER03-683-005
Operator Corporation)**

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO PROTEST**

On May 17, 2004, the California Independent System Operator Corporation (“ISO”)¹ submitted a filing in the above-captioned proceeding (“Compliance Filing”) to comply with the “Order on Compliance Filing” issued in the proceeding on April 16, 2004, 107 FERC ¶ 61,042 (“April 16, 2004 Order”). The proceeding concerns the implementation of Amendment No. 50 to the ISO Tariff (“Amendment No. 50”). The Commission issued a notice of filing concerning the Compliance Filing on May 19, 2004. In response to the notice of filing, Termoeléctrica de Mexicali S. de R.L. de C.V., filed a motion to intervene, and Coral Power, L.L.C., Energia Azteca X, S. de R.L. de C.V., and Energia de Baja California, S. de R.L. de C.V. (collectively, the “La Rosita Generators”) filed a protest (“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 ISO hereby requests leave to file an answer, and files its answer, to the protest submitted in the above-captioned

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

proceeding.² The ISO does not oppose the motion to intervene. However, for the reasons explained below, the Commission should deny the relief requested in the Protest.

I. ANSWER

A. The Commission Directed the ISO to Submit Modifications to Section 7.2.6.1.1 of the ISO Tariff in a Compliance Filing

In the April 16, 2004 Order, the Commission directed the ISO to incorporate into Section 7.2.6.1.1 of the ISO Tariff “a new test [that] would establish an additional criterion, in the context of decremental reference bid calculations, governing when an offer would be deemed to have been accepted in competitive periods.” April 16, 2004 Order at P 62. To comply with the Commission’s directive, the ISO proposed to modify Section 7.2.6.1.1 by adding language to establish an additional criterion governing when an offer would be deemed to have been accepted in competitive periods. This same criterion was set forth in a January 16, 2004 memorandum from Potomac Economics to the ISO’s Market Monitoring Unit. The memorandum was distributed to Market Participants in a market notice issued January 20, 2004 that was also included in the Compliance Filing. Transmittal Letter for Compliance Filing at 3 (referencing Compliance Filing at Attachment A). The ISO proposed to make the modifications to Section 7.2.6.1.1 (as well as all of the other changes contained

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. Good cause for 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).

in the Compliance Filing) effective May 30, 2003, which was the date that Amendment No. 50, as modified, became effective. See *California Independent System Operator Corporation*, 103 FERC ¶ 61,265, at ordering paragraph (A) (2003) (“May 30, 2003 Order”); Compliance Filing at Attachment B.

The La Rosita Generators argue that the Commission, in the April 16, 2004 Order, intended for the ISO to submit the modifications to Section 7.2.6.1.1 as part of a filing pursuant to Section 205 of the Federal Power Act, to be effective on a prospective basis only, rather than in a compliance filing to be effective May 30, 2003. Protest at 5-7. In making this argument, however, the La Rosita Generators ignore the fact that the Commission gave no indication that the ISO was to modify Section 7.2.6.1.1 anywhere other than in a compliance filing. The only directive provided by the Commission as to a required filing was that the ISO “make a compliance filing, as discussed in the body of this order, within thirty days of the date of this order.” April 16, 2004 Order at ordering paragraph (B). Therefore, the Commission directed the ISO to submit the modifications to Section 7.2.6.1.1 in a compliance filing, which the ISO did.

B. May 30, 2003 Is an Appropriate Effective Date for the Proposed Modifications to Section 7.2.6.1.1

The La Rosita Generators argue that even if it was appropriate for the ISO to propose modifications to Section 7.2.6.1.1 in a compliance filing, the ISO was not permitted to make those changes effective May 30, 2003. Protest at 7-12. The La Rosita Generators rely on a case from the District of Columbia Circuit Court of Appeals, *Electrical District No. 1 v. FERC*, 774 F.2d 490 (D.C. Cir. 1985). As the La Rosita Generators also note, however, the Commission has

distinguished the *Electrical District* case in finding that “related necessary changes” in a compliance filing can become effective on the date that the underlying rates went into effect. *New York Independent System Operator, Inc.*, 99 FERC ¶ 61,125, at 61,536 (2002).

In the April 16, 2004 Order, the Commission found that the procedures contained in the January 20, 2004 market notice (which are the same procedures contained in the proposed modifications to Section 7.2.6.1.1) are consistent with the May 30, 2003 Order; the Commission disagreed with “the assertions of the La Rosita Generators that the May 30 Order stated that reference levels must be market-based.” April 16, 2004 Order at P 59. Moreover, the Commission stated that “the changes proposed by Potomac Economics [i.e., the ones now contained in proposed Section 7.2.6.1.1] were *necessary* to correct a fundamental flaw in the proposed decremental reference bid methodology and we therefore reject the supplement protest of the La Rosita Generators.” April 16, 2004 Order at P 62 (emphasis added). Thus, the modifications in Section 7.2.6.1.1 are “related necessary changes” and so should be permitted to go into effect on May 30, 2003, the same date as the changes in Amendment No. 50.

C. The La Rosita Generators’ Other Arguments Concerning the Proposed Modifications to Section 7.2.6.1.1 Should Be Rejected

The La Rosita Generators assert that the Commission should direct the ISO to refund with interest all charges that the ISO has assessed that exceed the decremental rates on file under the ISO Tariff. Protest at 12-16. For the reasons explained in Sections I.A and I.B, above, the modifications to Section 7.2.6.1.1

should be accepted and made effective May 30, 2003. If the modifications are made effective on that date, there will be no charges in excess of the decremental rates on file under the ISO Tariff and therefore the ISO need not provide any refunds.

The La Rosita Generators also rehash the arguments contained in the supplemental protest they submitted in the above-captioned proceeding on February 2, 2004 in opposition to the changes proposed by Potomac Economics, which are now contained in Section 7.2.6.1.1. Protest at 16-18. As the La Rosita Generators note, in the April 16, 2004 Order, the Commission determined that the changes are necessary to correct a fundamental flaw in the proposed decremental reference bid methodology and rejected the arguments contained in the February 2, 2004 filing. The La Rosita Generators have no right to, and should not be given, a “second bite at the apple.” For the reasons stated in the April 16, 2004 Order, their rehashed arguments should be rejected.

D. The Typographical Error on the Clean Tariff Sheet in the Compliance Filing that Contains Section 7.2.6(2) Should Be Corrected

The La Rosita Generators note that, unrelated to their Protest, they spotted one typographical error in the Compliance Filing: the clean Tariff sheet in the Compliance Filing containing Section 7.2.6(2) inadvertently included the word “increase” in that section where the word “decrease” should have been used; the black-line for the Compliance Filing reflected the correct usage. Protest at 5 n.5; Compliance Filing at Attachments A and B. The ISO agrees that this inadvertent error on the clean Tariff sheet should be corrected. The ISO

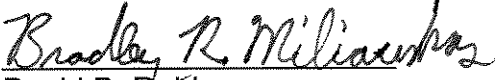
therefore provides, as Attachment A to the present filing, the corrected clean
Tariff sheet.

II. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that
the Commission deny the relief requested in the Protest.

Respectfully submitted,

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Date: June 22, 2004

ATTACHMENT A

7.2.5.2.7 If inadequate Adjustment Bids have been submitted to schedule Inter-Zonal Interface capacity on an economic basis and to the extent that scheduling decisions cannot be made on the basis of economic value, the ISO will allocate the available Inter-Zonal Interface capacity to Scheduling Coordinators in proportion to their respective proposed use of that capacity as indicated in their Schedules and shall curtail scheduled Generation and Demand to the extent necessary to ensure that each Scheduling Coordinator's Schedule remains balanced.

7.2.5.2.8 The ISO will publish information prior to the Day-Ahead Market, between the iterations of the Day-Ahead Market, and prior to the Hour-Ahead Market, to assist the Scheduling Coordinators to construct their Adjustment Bids so as to actively participate in the management of Congestion and the valuation of Inter-Zonal Interfaces. This information may include the ISO's most-current information regarding: potentially Congested paths, projected transmission uses, projected hourly Loop Flows across Inter-Zonal Interfaces, scheduled line Outages, forecasts of expected system-wide Load, the ISO's Ancillary Services requirements, Generation Meter Multipliers, and power flow outputs.

7.2.5.2.8 The ISO will also publish information, once it is available, regarding tentative prices for the use of Inter-Zonal Interfaces, and Generation shift factors for the use of Inter-Zonal Interfaces, which indicate the relative effectiveness of Generation shifts in alleviating Congestion.

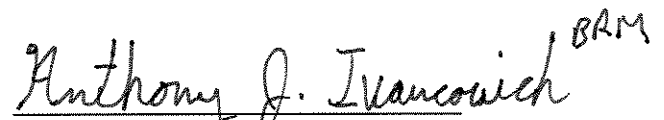
7.2.6 Intra-Zonal Congestion Management.

Any Generating Unit dispatched to manage Intra-Zonal Congestion shall: (1) if dispatched to increase its output, be paid the greater of its bid price (or mitigated bid if applicable) or the relevant Market Clearing Price; (2) if dispatched to decrease its output, be charged the lesser of its decremental reference price of the relevant Market Clearing Price. The ISO shall not re-dispatch MSS resources to manage Intra-Zonal congestion as set forth in this section 7.2.6, as provided for in the MSS Agreement.

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 22nd day of June, 2004.


Anthony J. Ivanovich