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July 26, 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 No. ER04-938-___**

Dear Secretary Salas:

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

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**

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| **California Independent System Operator Corporation** | ) ) | **Docket No. ER04-938-___** |

# MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO COMMENTS AND PROTESTS

On June 18, 2004, the California Independent System Operator Corporation ("ISO")[1] filed Amendment No. 61 to the ISO Tariff ("Amendment No. 61") in the above-captioned proceeding. The purpose of Amendment No. 61 is to clarify how the decremental reference price is calculated, how resources are shut off according to that price to manage Intra-Zonal Congestion, and how resources dispatched according to that price are settled.

A number of parties submitted motions to intervene, comments, and protests concerning Amendment No. 61.[2] Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213,

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[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 following parties submitted motions to intervene, comments, and/or protests: the California Department of Water Resources State Water Project ("SWP"); California Electricity Oversight Board; City of Santa Clara, California, doing business as Silicon Valley Power; Cogeneration Association of California and Energy Producers and Users Coalition; 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, "Coral"); Pacific Gas and Electric Company; Southern California Edison Company; Termoeléctrica de Mexicali de R.L. de C.V. ("TDM"); and West Coast Power LLC, El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, and Williams Power Company, Inc. (collectively, "WCP/Williams"). The Public Utilities Commission of the State of California submitted a notice of intervention.

the ISO hereby requests leave to file an answer, and files its answer, to the comments and protests submitted in the above-captioned proceeding.[3]

The ISO does not oppose any of the motions to intervene. As explained below, however, the protests are without merit and the Commission should accept the ISO's proposed Amendment No. 61.

## I. ANSWER

### A. The Relevant Reference Price was not Indicated in the ISO Tariff Prior to Amendment No. 61, nor are any Refunds Justified

Coral states that the "clarification" (Coral's quotation marks) provided in Amendment No. 61 "is not objectionable," but Coral goes on to contend that the amendment does not change the ISO's existing obligation to charge reference level prices when it decrements a generating unit below its minimum operating level ("Pmin"). Coral at 9-12. Coral is incorrect in asserting that the ISO should have been paying reference prices prior to Amendment No. 61. The relevant price – the reference price between 0 and Pmin – was not explicitly indicated in the ISO Tariff prior to the filing of Amendment No. 61. The only reference price contained in the ISO Tariff was the price at minimum load, and that price was discussed only in the context of determining which unit to shut down, not how to settle that unit.

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[3] To the extent this answer responds to the protests, 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 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).

Coral also asserts that, to correct the ISO's purported tariff violations, the Commission should direct the ISO to refund with interest all decremental rates that the ISO has assessed since January 2004 that exceed the reference level prices on file under its Tariff, and should file a refund report within 60 days. Coral at 12-16, 18. The premise of Coral's argument is incorrect: the ISO has not violated its Tariff; therefore, no refunds are required or justified. Moreover, even assuming *arguendo* that the ISO had been in violation of its tariff, Coral's proper recourse would have been to file a complaint under Section 206 of the Federal Power Act. *Entergy Services Inc.*, 52 FERC ¶ 61,317, 62,270 (1990) ("The Commission's Rules of Practice and Procedure expressly provide for the filing of complaints, and the Commission has determined that such complaints must be filed separately from motions to intervene and protests").

### B. The Commission Should Adopt the Effective Date Proposed in Amendment No. 61

Coral asserts that the proposed Amendment No. 61 effective date (August 18, 2004) should be rejected and instead there is good cause to put the amendment into effect on June 18, 2004. Coral at 16-17. The rationale Coral provides for the earlier effective date is that it will resolve the ISO's alleged violation of its tariff. As explained above in Section I.A, the ISO has not violated its tariff, and therefore no good cause exists for the earlier effective date.[4]

[4] This is not to say that the ISO would be unable to put Amendment No. 61 into effect on June 18, 2004. The ISO estimates that Preliminary Settlement Statements for the June 18, 2004 trade day will go out by August 12, 2004, and invoices for that day will go out by August 24, 2004. Assuming these dates are accurate, the ISO theoretically could implement Amendment No. 61 on June 18.

### C. There is no Reason to Exempt SWP from Dispatch by the ISO

SWP argues that the Commission should order the ISO to exempt SWP from unilateral dispatch "for purposes of improving the economics of the ISO's intra-zonal congestion management." SWP states that Metered Subsystems ("MSS") are exempted from such dispatch. SWP at 1-4. This argument is without merit. The ISO treats SWP's hydroelectric resources and MSS resources the same way: If there is an emergency, the ISO can and will dispatch the hydroelectric and MSS resources. Thus, the ISO's re-dispatch is not unduly discriminatory. Moreover, it is reasonable to re-dispatch in response to emergency conditions. Such conditions need to be remedies as quickly as possible. There is no reason why hydroelectric or MSS resources should not be subject to re-dispatch in order to prevent or alleviate an emergency.

### D. Potomac Economics Sets the Reference Price, and Therefore any Concerns Relating to the Merit Order Calculation Should be Raised with it

TDM argues that the Commission should clarify that the merit order calculation in Amendment No. 61 will reflect a generator's total shut-down cost and not simply a reference price on a dollar per megawatt-hour basis. TDM at 2-3. Potomac Economics ("Potomac") is the independent entity that will set the reference price. Therefore, TDM should raise any concerns it has on this issue with Potomac.

### E. The ISO is Willing to Clarify that the Language of Amendment No. 61 Does not Apply When the ISO Must Shut Down a Must-Offer or Reliability Must-Run Unit to Relieve Intra-Zonal Congestion

WCP/Williams assert that when, to relieve Intra-Zonal Congestion, the ISO must shut down a must-offer unit or Reliability Must-Run ("RMR") Unit, the ISO should clarify that the Amendment No. 61 language does not apply. WCP/Williams at 7-8. The ISO agrees that Amendment No. 61 does not apply when the ISO must shut down a must-offer unit or RMR Unit.

Further, WCP/Williams request that the ISO clarify that a unit that is operating under the must-offer obligation that must be shut off to manage Intra-Zonal Congestion be shut off by granting the unit's waiver and that such unit not be charged the decremental reference price between 0 MW and the unit's minimum operating level. WCP/Williams at 8. The ISO agrees. Such a unit should be shut off by granting its must-offer waiver, and such unit should not be charged the decremental reference price.

### F. The Situation where a Must-Offer Unit is Contributing to Intra-Zonal Congestion is Unlikely and not Amenable to a Simple Rule Governing which Unit to Shut Off

WCP/Williams request clarification that if the ISO has an option to either shut down a market unit or a unit operating under the must-offer obligation to manage Congestion, the ISO will shut down the unit operating under the must-offer obligation. WCP/Williams at 8. This situation could be complex and not lend itself to such a simple choice. First, it is unlikely that the ISO would commit a unit under the must-offer obligation that would contribute to Intra-Zonal Congestion in such a way that the only feasible means to manage that

Congestion is to shut that same unit off or require another to be shut unit off. It is theoretically possible, however, that a unit could be committed under the must-offer obligation to relieve one reliability problem that, in turn, could exacerbate another reliability problem. Under such a situation, it is probably impossible to craft a simple rule that would always require the ISO turn off one unit (i.e., the must-offer unit) rather than another market unit, because the premise assumes that the must-offer unit has to be operating or the ISO would not have committed it. The ISO agrees that, in general, it would not commit a unit under the must-offer obligation that would contribute to, rather than relieve, Congestion, and therefore would generally leave the market unit operating and shut the must-offer unit off.

### G. WCP/Williams Should Raise with Potomac any Concerns Relating to the use of the Decremental Reference Price to Determine which Resources Should be Shut Down

WCP/Williams argue that the ISO should clarify its proposal to use the decremental reference price to determine which resources should be shut down to manage Intra-Zonal Congestion. WCP/Williams at 8. The ISO will not set the reference price; Potomac, which is independent from the ISO, will set the reference price. Therefore, WCP/Williams should raise any concerns it has with Potomac.

### H. No Clarification is Required Concerning the Calculation of Start-Up Costs when a Market Unit is Shut Down to Relieve Intra-Zonal Congestion and then Restarted by the ISO

WCP/Williams assert that the ISO should clarify the calculation of start-up costs when a market unit is shut down to relieve Intra-Zonal Congestion and then

restarted by the ISO. WCP/Williams at 9. Their assertion should be disregarded. First, this issue goes beyond the narrow scope of the ISO's proposed Amendment No. 61. Second, implicit in WCP/Williams' scenario is the premise that the unit contributes to Congestion in such a way that it is forced to shut down on the first day, yet would not contribute to Congestion the second day. Under these circumstances, it is reasonable that the ISO should pay the costs of keeping the unit operating (i.e., keeping the unit "warm"), further assuming that: (1) it was necessary to do so to meet the next day's schedules, which could be met without re-creating the Congestion that caused the unit to be shut down in the first place, and (2) keeping the unit warm was less expensive than shutting it down and re-starting it.

### I. The ISO Should not be Required to Assume the Risk that a Market Unit that has Been Shut Down to Relieve Intra-Zonal Congestion Will be Unable to Start Up to Meet its Next Day's Schedules

WCP/Williams argue that the ISO should clarify the treatment of the Day-Ahead Energy Schedule and Ancillary Service Schedule when a market unit is shut down to relieve Intra-Zonal Congestion. Specifically, WCP/Williams wants the ISO to assume the risk that the unit will be unable to start up to meet its next day's schedules. WCP/Williams at 9-10. Like the argument by WCP/Williams described above in Section I.H, the issue goes beyond the scope of Amendment No. 61 as proposed by the ISO. Moreover, WCP/Williams fail to explain how, if the unit is shut down to manage Congestion one day, the unit could actually be operating the next day without re-creating the same Congestion, assuming similar conditions. The ISO has already agreed to pay start-up costs for a unit

shut down to manage Intra-Zonal Congestion. The ISO should not be required to insulate a Market Participant – especially, given the underlying premise, a Market Participant operating a unit that creates a Congestion problem so severe that the only way to manage it is to shut the unit off – from all possible risk, including the risk that the unit cannot start-up again after it was shut down because it was infeasible to operate it anyway.

## II. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept Amendment No. 61 as filed and in light of the clarifications provided above.

Respectfully submitted,

*/s/ David B. Rubin*

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Date: July 26, 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 26th day of July, 2004.

*/s/ Anthony J. Ivancovich*
Anthony J. Ivancovich