

January 4, 2005

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. ER03-1102-____**

Dear Secretary Salas:

Enclosed please find the Answer of the California Independent System Operator Corporation to Comments, submitted in the captioned docket.

Feel free to contact the undersigned with any questions. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas

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Counsel for the California
Independent System Operator
Corporation

waiver revocation becoming effective, is only applicable to the extent that the ISO has given the must-offer Generating Unit sufficient advance notice of the revocation to enable it to start up and reach minimum load within the start-up times specified in the ISO's files, e.g., Schedule 1 of the unit's Participating Generator Agreement. Duke argues that Generating Units on must-offer waivers typically have long start-up times that are in excess of the 30 minutes stated in EP 2.4(a). Duke at 2-3.

The ISO agrees that the section should be clarified to account for Generating Units with start-up times longer than 30 minutes. The ISO proposes that EP 2.4(a) be modified to read as follows (with the new proposed language shown in bolded and underlined type):

A Market Participant shall start a Generating Unit and have that Generating Unit operating at minimum load within 30 minutes of the time at which a must-offer waiver revocation becomes effective, or report the derate, outage or other event outside the control of the Market Participant that prevents the Generating Unit from being started by such time. **Notwithstanding the foregoing, no violation shall occur unless the Market Participant has been provided advance notice of the waiver revocation consistent with the relevant start-up time set forth in the ISO Master File.** A Market Participant that fails to perform in accordance with the expected conduct described in this EP 2.4(a) shall be subject to Sanction.

B. The Commission Should Deny NCPA's Request for Clarification

NCPA argues that the ISO's proposed modifications to the EP do not make clear that all market rules under the ISO Tariff will be enforced by the Commission until the Commission has accepted a filing by the ISO demonstrating the independence of the ISO Governing Board. NCPA also

asserts that the Commission cannot delegate authority to a market monitor.

NCPA requests the Commission to “clarify the status of the relationship between itself, the CAISO and the market monitor in a manner which is consistent with law.” NCPA at 1-2.

NCPA’s request for clarification should be denied. The ISO acknowledged, at pages 2-3 of the transmittal letter for its May 20, 2004 compliance filing in the captioned proceeding, the Commission’s direction that the ISO’s market monitoring staff will not have the authority to administer the EP or to charge penalties under the EP until the Commission (1) accepts a filing by the ISO demonstrating the independence of the ISO Governing Board and (2) accepts a concurrent ISO filing to allow the market monitoring staff to administer certain provisions of the EP and enforce penalties for objectively identifiable violations of the EP. Accordingly, EP 1.10 provides that, pursuant to specified Commission orders issued in the captioned proceeding, the rules of conduct under the EP will be enforced by the Commission and no sanctions may be assessed by the market monitoring staff without prior Commission approval, until a subsequent filing by the ISO and further order by the Commission. In the Compliance Filing, the ISO proposed a modification to EP 1.10 to reflect the fact that the issuance of the Amendment No. 55 Order did not affect the Commission’s continued enforcement of the rules of conduct under the EP. Transmittal Letter for Compliance Filing at 1-2.

Moreover, EP 8 provides that until further order by the Commission, the rules of conduct will be enforced by the Commission, in accordance with the

Commission's standard rules and procedures, and the ISO and the market monitoring staff will refer to the Commission and its staff all matters as to which a determination has been made that a violation of these rules may have occurred. Thus, the EP already acknowledges that the Commission will enforce the EP until it issues a further order accepting a filing by the ISO that demonstrates the independence of the ISO Governing Board.

The Commission should not provide any clarification concerning a delegation of authority by the Commission to a market monitor. The only action the ISO's market monitoring staff can currently take under the EP is to refer to the Commission matters as to which a determination has been made that a violation of the EP may have occurred, and the only actions the ISO can currently take under the EP are to assess penalties that the Commission has approved and to collect and distribute penalty amounts. EP 1.10, 8, 9.3, 9.4. The Commission has *authorized* the market monitoring staff and the ISO to take these actions under the EP, but the Commission has not thereby *delegated its own authority* to them. The market monitoring staff, not the Commission, has the ability to monitor the ISO's markets to determine if violations of the EP may have occurred and to refer possible violations of the EP to the Commission. The ISO, not the Commission, issues the Settlement Statements on which assessed penalties appear and collects and distributes penalty amounts. Therefore, no clarification is needed concerning a delegation of authority by the Commission.²

² Because the Commission has not delegated its own authority to the market monitoring staff or the ISO, there is no need for the Commission to address the merits of NCPA's argument that the Commission cannot delegate its own authority to a market monitor. The ISO notes, however, that NCPA appears to misinterpret the finding in a recent decision of the United States

II. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept the Compliance Filing with the proposed modification provided above in Section I.A.

Respectfully submitted,

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Date: January 4, 2005

Court of Appeals for the District of Columbia Circuit, *Electric Power Supply Association v. FERC*, ___ F.3d ___, 2004 U.S. App. LEXIS 25470 (Dec. 10, 2004). NCPA argues that the decision “seems to make clear that FERC cannot delegate authority to a market monitor.” NCPA at 1. In fact, the court found that Commission could not exempt communications between private market monitors and decisional employees of the Commission that are relevant to the merits of a pending on-the-record proceeding involving an agency hearing, from the ban on *ex parte* communications under the Sunshine Act.

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 4th day of January, 2005.

/s/ Anthony J. Ivancovich
Anthony J. Ivancovich