

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

California Independent System Operator Corporation)	Docket No. ER02-1656-008
)	
Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services In the Western Electricity Coordinating Council)	Docket No. EL01-68-024
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**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO
COMMENTS, PROTESTS, AND MOTION FOR RECONSIDERATION**

I. INTRODUCTION AND SUMMARY

On October 29, 2002, the California Independent System Operator Corporation ("ISO")¹ submitted a filing ("October 29 Compliance Filing") in compliance with the Commission's October 11, 2002 "Order On Rehearing and Compliance Filing," 101 FERC ¶ 61,061 ("October 11 Order") in the above-referenced dockets.² In response to the October 29 Compliance Filing, several parties submitted comments and/or protests.³

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

² In addition to referencing the October 11 Order and the October 29 Compliance Filing, the instant answer references, *inter alia*, the Commission's July 17, 2002 "Order on the California Comprehensive Market Redesign Proposal," 100 FERC ¶ 61,060; the Commission's October 25, 2002 "Order on Proposed Tariff Revisions and Compliance Filing," 101 FERC ¶ 61,084 ("October 25 Order"); the ISO's September 20, 2002 "Update To The Comprehensive Market Design Proposal And Request For Expedited Consideration" ("September 20 Filing"); and the ISO's November 25, 2002 compliance filing submitted in response to the October 25 Order ("November 25 Compliance Filing"). Each of these orders was issued, and each of these filings was submitted, in the Market Redesign 2002 ("MD02") proceeding (Docket Nos. ER02-1656, *et al.*).

³ Comments and/or protests were submitted by the California Department of Water Resources State Water Project ("SWP"); Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. ("Duke Energy"); Modesto Irrigation District ("MID"); and Powerex

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, the ISO hereby requests leave to file an answer, and files its answer, to the comments, protests, and motion for reconsideration submitted in the above-referenced dockets.⁴ As explained below, the ISO believes that the October 29 Compliance Filing should be accepted as submitted to the Commission, and that the relief requested in the filings submitted to the October 29 Compliance Filing should be denied.⁵

II. ANSWER

A. Proposed Section 2.2.6.12 of the ISO Tariff Reasonably Requires That Generating Units Be Responsible For Compliance With Their Individual Legal Requirements

Proposed Section 2.2.6.12 of the ISO Tariff would require each Scheduling Coordinator to be responsible for submitting bids so that any service provided in accordance with the bids does not violate environmental constraints, operating permits, or applicable law governing the specific generating unit offering such service to the ISO. The section would also mandate that all submitted bids reflect resource limitations and other constraints as such are required to be reported to the ISO Control Center.

Corp. ("Powerex"). In its filing, Powerex also included a motion for reconsideration.

⁴ Some of the parties commenting on the October 29 Compliance Filing do so in portions of their pleadings that are variously styled, without differentiation. Parties also request affirmative relief in pleadings styled as comments and protests. There is no prohibition on the ISO's responding to the assertions in these pleadings. The ISO is entitled to respond to these pleadings and requests notwithstanding the labels applied to them. *Florida Power & Light Co.*, 67 FERC ¶ 61,315 (1994). To the extent 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 and complexity of this proceeding and the usefulness of this Answer in ensuring the development of a complete record. See, e.g., *Enron Corp.*, 78 FERC ¶ 61,179, at 61,733, 61,741 (1997); *El Paso Electric Co.*, 68 FERC ¶ 61,181, at 61,899 & n.57 (1994).

⁵ However, as described in Section II.B below, the ISO plans to submit in the future further

As explained in the transmittal letter for the October 29 Compliance Filing, the ISO has proposed Section 2.2.6.12 because it is impossible for the ISO to know each environmental rule, permit condition, or applicable law for each of the very numerous generating units that may bid and be Dispatched by the ISO at any given time, let alone to perform due diligence studies of the generating units' compliance with these rules and regulations while it is receiving bids in real time. Moreover, the generating units have a legal obligation to comply with such rules and regulations.⁶ Thus, from both a practical and a legal standpoint, it is reasonable that the generating units, not the ISO, shoulder the responsibility of making sure their bids are in compliance with applicable law.

Duke Energy and MID ask the Commission to reject Section 2.2.6.12.⁷ The parties' arguments ignore the generating units' legal obligations to satisfy applicable rules and regulations, and the impracticability of the ISO's being able to police them comprehensively.⁸ The ISO believes that Section 2.2.6.12 should

changes to certain sections of the ISO Tariff in response to concerns expressed by SWP.

⁶ Transmittal Letter for October 29 Compliance Filing at 6.

⁷ Duke Energy at 9-11; MID at 5, 6-8. Additionally, SWP asserts that Section 2.2.6.12 "treats the problems of environmental compliance in ISO dispatch simply by deeming all bids to be in compliance." SWP at 3. SWP puts forth this assertion as part of its more general claim that MD02 does not make sufficient provision for hydroelectric resources. *Id.* at 1-3. However, this general claim should not be addressed in an order focusing on the October 29 Compliance Filing, because the claim either has been or is going to be addressed in other contexts. In the October 11 Order, the Commission explained, in response to SWP's arguments that the ISO Tariff does not sufficiently accommodate demand-based resources and hydroelectric resources whose primary purpose is water management, that the arguments were premature because the ISO had yet to submit a compliance report outlining the measures taken to improve demand response participation in all ISO markets (October 11 Order, 101 FERC at P 74); on October 21, 2002, the ISO submitted the required report on demand response. Moreover, in the July 17 Order the Commission explained that it will determine the reasonableness of MD02 with regard to non-gas-fired generators in the context of reviewing the ISO's June 17, 2002 filing in the MD02 proceeding. July 17 Order, 100 FERC at PP 155-56. The Commission has not yet conducted this review of the June 17, 2002 filing.

⁸ One argument put forth by MID is that the ISO's proposal places the ISO in the position of interpreting compliance with licenses, operating permits, and applicable law, to the disadvantage of the generating units. MID at 7. However, the ISO's proposal, by putting the

be accepted by the Commission as a viable solution to the otherwise intractable problem of ensuring that generating units' bids comply with legal requirements.

Moreover, before proposed Section 2.2.6.12 becomes effective, the ISO will have implemented software that will allow the ISO to receive information on real-time generating unit limitations and incorporate that information into Dispatch Instructions. Specifically, Section 2.2.6.12 is a "Phase 1-B" element of MD02, and, as the ISO explained in the October 29 Compliance Filing, "[d]ue to the time needed to develop software to implement these Phase 1-B elements, the ISO estimates that the elements will be implemented in 2003, and proposes that the elements become effective upon written notice by the ISO to the Commission and Market Participants."⁹ Thus, the ISO anticipates that, before implementation of the proposed change to Section 2.2.6.12, the ISO already will have complied with the Commission's requirement that the ISO incorporate real-time operational limitation information into Dispatch instructions.¹⁰ Thus, the use of real-time operational data will alleviate concerns that the ISO will not be able to consider changes in unit capability as reflected in proposed Section 2.2.6.12.

B. The Proposed Changes to Sections 2.5.22.4.1 and 5.13.2.1 of the ISO Tariff, and to Dispatch Protocol Section 7.3, Should Be Accepted As Filed, But the ISO Believes that Further Changes to These Section Are Reasonable and Will Make Them In a Future Filing

In the September 20 Filing and the October 29 Compliance Filing, the ISO variously proposed that Tariff Sections 2.5.22.4.1 and 5.13.2.1 and Dispatch

onus for such compliance on the relevant generating units, would in fact largely obviate the amount of interpretation required of the ISO.

⁹ Transmittal Letter for October 29 Compliance Filing at 5.

¹⁰ See July 17 Order, 100 FERC at PP 140-41. For all of its operations logging, the ISO

Protocol (“DP”) Section 7.3 be modified to change the deadline for submitting Supplemental Energy bids from 45 minutes before the operating hour to 60 minutes before the operating hour.¹¹ In the October 25 Order, the Commission accepted the changes proposed by the ISO.¹² Powerex now asserts that the deadline for submitting Supplemental Energy bids should be restored to 45 minutes prior to the operating hour, unless the ISO’s pre-dispatch deadline for intertie resources is 40 minutes prior to the hour as opposed to the current 30 minutes. Powerex states that its assertions are based on experience to date with the recent (October 30, 2002) change to the Supplemental Energy bid deadline.¹³

In response to the concerns expressed by Powerex, the ISO plans to propose further revisions to Tariff Sections 2.5.22.4.1 and 5.13.2.1 and DP Section 7.3, to provide that the ISO will deem intertie bids to be binding and subject to penalties from the top of the hour until 20 minutes after, *i.e.*, until 40 minutes prior to the next hour. The ISO further will propose changes to the effect that if it seeks to accept an intertie bid between 21 minutes and 30 minutes into the hour, the ISO may ask for the power that is to be sold pursuant to the bid, but all such power may have already been sold elsewhere; and, moreover, in such an event, no penalties would apply to such ISO attempts to accept bids during that period between 21 minutes and 30 minutes into the hour.

uses the “Scheduling and Logging for the ISO of California” (“SLIC”) computer-based logging program.

¹¹ Transmittal Letter for September 20 Filing at 3 and Attachment D to September 20 Filing; Transmittal Letter for October 29 Compliance Filing at 8 and Attachment B to October 29 Compliance Filing at 11, 12. The October 29 Compliance Filing proposed a similar modification to Section 5.13.2.1 of the ISO Tariff. Transmittal Letter for October 29 Compliance Filing at 8 and Attachment B to October 29 Compliance Filing at 11-12. Duke Energy, however, incorrectly states that the ISO proposes a change to Section 5.1.2.1. Duke Energy at 8 n.22.

¹² October 25 Order, 101 FERC at PP 6-8.

C. The Proposed Changes to Sections 2.5.23.1, 2.5.23.2.1, and 2.5.23.3.8 of the ISO Tariff Should Be Accepted As Filed

In the October 11 Order, the Commission explained that:

[t]o avoid [] supply disincentives and to address megawatt laundering concerns that would otherwise arise, on rehearing, we will reverse the July 17 Order on the issue of applying AMP to imports and we will exempt bids from outside California from AMP. In light of concerns regarding megawatt laundering, we will require that bidders outside California continue to be “price takers,” *i.e.*, they must continue to submit zero bids into CAISO markets.¹⁴

The ISO submitted changes to Sections 2.5.23.1, 2.5.23.3.8, and 2.5.23.2.1 of the ISO Tariff in the October 29 Compliance Filing in response to these Commission directives. The ISO explained that it was unsure whether the phrases “imports” and “outside California” in the October 11 Order refer to “outside the ISO Control Area” or “outside the State of California.” In light of the Commission’s concerns about megawatt laundering, and since megawatt laundering can occur within California but outside the ISO Control Area, and, as is consistent with prior ISO compliance filings, the ISO stated that its proposed changes continued to interpret the phrase “outside California” to mean “outside the ISO Control Area.”¹⁵

MID argues that the ISO’s submission of these changes “departs from the plain language of the October 11 Order and is inappropriate.”¹⁶ However, as

¹³ Powerex at 2-4.

¹⁴ October 11 Order, 101 FERC at P 20. “AMP” stands for “Automatic Mitigation Procedures.”

¹⁵ Transmittal Letter for October 29 Compliance Filing at 2-3.

¹⁶ MID at 3-4. MID also incorrectly asserts that the changes the ISO proposes are to “section 4.2.2(e).” *Id.* at 4. On this point, MID is wrong in two respects. First, MID refers to Section 4.2.2(e) when it apparently means to refer to Section 4.2.2(e) of the Appendix A to the Market Monitoring and Information Protocol (“MMIP”). Second, the proposed changes are not to that section but rather to Sections 2.5.23.1, 2.5.23.3.8, and 2.5.23.2.1 of the ISO Tariff as

explained above, the changes proposed by the ISO do not depart from the language of the October 11 Order but rather are based on the ISO's understanding that the phrase "outside California" means "outside the ISO Control Area." Therefore, the changes proposed by the ISO are entirely appropriate. Such interpretation is consistent with prior ISO filings previously accepted by the Commission, including the ISO's July 10, 2001 filing in compliance with the Commission's June 19, 2001 order,¹⁷ in which the ISO proposed to implement price mitigation on an ISO Control Area basis. Similarly, and consistent with use of the ISO Control Area as a basis for the Commission's several mitigation measures, the Commission's express goal of prevention of megawatt-laundering is effective only if implemented on such a Control Area basis.

D. The ISO Has Proposed Changes to Section 5.13.1 of the ISO Tariff In Exact Accordance With the Commission's Direction

In its filing, Duke Energy relates the following sequence of events: in response to the July 17 Order, it requested that the Commission clarify how uncommitted capacity in the Day-Ahead Market may be bid in subsequent markets, the October 11 Order provided the clarification requested by Duke Energy and directed the ISO to submit complying Tariff language, and the ISO submitted in the October 29 Compliance Filing proposed changes to Section 5.13.1 of the ISO Tariff that "incorporat[e] verbatim the Commission's directive."¹⁸

described above.

¹⁷ "Order on Rehearing of Monitoring and Mitigation Plan for the California Wholesale Electric Markets, Establishing West-Wide Mitigation, and Establishing Settlement Conference," 95 FERC ¶ 61,418 (2001) ("June 19 Order").

¹⁸ Duke Energy at 7-9. Duke Energy incorrectly states in three places that the ISO has proposed changes to Section 15.3.1 of the ISO Tariff, where Duke Energy apparently means to

Despite the fact that the ISO has closely replicated in Section 5.13.1 the language provided in the October 11 Order – which the Commission supplied in response to Duke Energy’s own request for clarification – Duke Energy now asks the Commission to reject the proposed change to Section 5.13.1. Thus, Duke Energy makes the singular request that the Commission reject its own language.

Moreover, this nonsensical request stems from an erroneous understanding of the current closing times of the Hour-Ahead and Real Time Markets. Duke Energy states that:

[t]he Commission’s October 25 Order moved up the deadline for submitting supplemental energy bids for the next hour’s Real Time market from 45 minutes before the start of that operating hour to 60 minutes. The Hour-Ahead Market closes with the ISO’s acceptance of the Final Hour-Ahead schedule, which also occurs at one hour prior to the operating hour. Thus, it is not possible for a seller to know its uncommitted capacity in the Hour-Ahead Market, prior to having to submit supplemental energy bids to the Real-Time Market.¹⁹

Duke’s assertion that Final Hour-Ahead Schedules are not issued until 60 minutes prior to the operating hour is incorrect. When the October 11 Order was issued, the deadline for submitting bids to the Hour-Ahead Market was 120 minutes prior to the operating hour. Now, based upon the October 25 Order, the deadline for submitting bids for the Hour-Ahead Market is 135 minutes prior to the operating hour. While it is true that the ISO may infrequently, as a result of bidding and Scheduling problems, issue Final Hour-Ahead Market Schedules as late as 60 minutes prior to the operating hour, the ISO typically issues Final Hour-Ahead Market Schedules 20 to 30 minutes following the deadline for

say that the ISO has proposed changes to Section 5.13.1. *Id.* at 2, 7, 9.
¹⁹ *Id.* at 8-9 (footnotes omitted).

submitting bids to that market. Thus, prior to the October 25 Order, the ISO typically provided some 30 to 40 minutes to generators to submit bids for uncommitted capacity into the Real Time Market. As a result of the October 25 Order, the ISO now typically provides some 45 to 60 minutes for submission of such bids. Thus the typical operation of the Hour-Ahead Market gives Market Participants ample time to bid their uncommitted capacity into the Real Time Imbalance Energy Market. Therefore, the premise on which Duke Energy bases its request to the Commission is incorrect.

E. The ISO Was Correct In Proposing the Addition of a Required Sentence to Section 11.2.4.1.2(b) of the ISO Tariff, Rather Than to Section 11.2.4.1.2(c)

In the transmittal letter for the October 29 Compliance Filing, the ISO explained in detail why, in light of the texts of the various filings that have been submitted in the MD02 proceeding, the only sensible place to insert the proposed sentence “Uninstructed energy resulting from declining Intra-hour instructions will not be subject to an Uninstructed Deviation Penalty” is in Section 11.2.4.1.2(b) of the ISO Tariff.²⁰ MID ignores the common sense of the ISO’s explanation and instead insists that the sentence should be inserted in Section 11.2.4.1.2(c), thus effectively rendering the Uninstructed Deviation Penalty meaningless, as explained by the ISO in its transmittal letter.²¹ Because the Commission has accepted the Uninstructed Deviation Penalty, it plainly did not intend that the Uninstructed Deviation Penalty should be rendered meaningless. Therefore, the sentence should be included in Section 11.2.4.1.2(b) as the ISO has proposed.

²⁰ Transmittal Letter for October 29 Compliance Filing at 6-7.

²¹ MID at 5-6.

F. The Commission Placed No Conditions On Its Acceptance of Section 14.4 of the ISO Tariff

Duke Energy requests that the Commission “[d]irect the ISO to amend proposed Tariff § 14.4 to reflect the condition on the extension of limitations on liability to Potomac Economics, Ltd.”²² Duke Energy does not explain this request further anywhere in its filing. However, the ISO assumes that Duke Energy is referring to the Commission’s statement, in the October 25 Order, that its acceptance of the limitation of liability with regard to Potomac “is subject to the final outcome of the Commission’s Standard Market Design.”²³ In that is the case, Duke Energy is incorrect in asserting that the Commission conditionally accepted Section 14.4; rather, the Commission simply noted that its acceptance is subject to the outcome of the Standard Market Design (“SMD”) process. If and when the SMD process ultimately requires a change to be made to Section 14.4, the ISO will make any such change. However, the ISO need not and should not include in its current Tariff the amendment to Section 14.4 that Duke Energy requests.

G. In Proposing Changes to Sections 3.1.1.1 and 3.2.1 of Appendix A to the Market Monitoring and Information Protocol, the ISO Implements the Specific Direction Provided by the Independent Entity That Calculates Automatic Mitigation Procedure Reference Prices

In the October 29 Compliance Filing, the ISO proposed clarifications based on direction provided by Potomac, the independent entity that calculates AMP reference prices, to address (1) the effect of the “soft” \$250/MWh price cap

²² Duke Energy at 3. Potomac Economics, Ltd. will be referred to as “Potomac” in the instant answer.

²³ October 25 Order, 101 FERC at P 5.

on reference price calculations and (2) the inclusion of bids above the soft \$250/MWh price cap in the market impact test. These clarifications were included in Sections 3.1.1.1 and 3.2.1 of Appendix A to the MMIP.²⁴

Duke Energy and MID submit arguments in opposition to the clarifications.²⁵ These parties do not give sufficient consideration to the fact that the clarifications were provided in direct response to the letter written to the ISO by Potomac, the independent entity that calculates reference prices.²⁶ The Commission has required the use of this independent entity.²⁷ In submitting the clarifications, the ISO was simply implementing the direction on reference prices supplied by Potomac. Thus, all protests of the clarifications should be dismissed.

H. The Proposed Changes to Section 3.1.1.1(a) of Appendix A to the Market Monitoring and Information Protocol Effecting the Use of Monthly Changes In Gas Prices to Adjust Generator Reference Prices Should Be Accepted As Filed

In the October 29 Compliance Filing, the ISO reiterated its request from the September 20 Filing that the Commission approve a change to Section 3.1.1.1 of Appendix A of the MMIP effecting the use of monthly changes in gas prices to adjust generator reference prices.²⁸ As the ISO explained in the September 20 Filing:

the ISO notes that it has always intended to use monthly bid week gas prices for determining the reference prices for gas-fired units that do not have sufficient bid histories. Thus, the ISO has always intended to use the same proxy prices for natural gas for purposes

²⁴ Transmittal Letter for October 29 Compliance Filing at 4 and Attachment B to October 29 Compliance Filing at 5-7.

²⁵ Duke Energy at 6-7; MID at 5.

²⁶ The letter is contained in Attachment E to the October 29 Compliance Filing.

²⁷ July 17 Order, 100 FERC at P 70; October 11 Order, 101 FERC at PP 31-34; October 25 Order, 101 FERC at P 5.

²⁸ Attachment B to October 29 Compliance Filing at 3; Transmittal Letter for September 20 Filing at 6 and Attachment D to September 20 Filing.

of the AMP reference prices as the Commission has already approved for use in calculating proxy prices under the Commission's market power mitigation method. Moreover, this will be consistent with the ISO's continuing use of such monthly bid week gas prices to calculate proxy prices for available capacity for generating units under the Must Offer Obligation. Moreover, the Commission has rejected the use of a daily index (rather than a monthly index) on several occasions and, as a result, the ISO neither contemplated nor proposed use of a daily gas price for the AMP reference prices. See 95 FERC ¶ 61,418 (2002) at 62,561; 97 FERC ¶ 61,293 (2001) at 62,204. Therefore, in an abundance of caution, the ISO proposes to clarify that monthly gas prices will be used for the reference price calculations developed each day within the relevant month.²⁹

Duke Energy opposes the requested change, arguing that the ISO should instead be instructed to use daily gas prices for the reference price calculations.³⁰

Duke Energy's central argument is that the ISO's continued use of monthly gas prices is an impermissible continuation of the Commission's mitigation plan, which terminated on October 30, 2002. However, Duke Energy ignores the fact that the Commission has *not* terminated the use of a proxy price for the Must Offer Obligation.³¹ Moreover, the Commission noted in its June 19 Order that "[t]his price [average of monthly bid-week prices] represents a reasonable proxy for the marginal cost that generators will incur, since they can pre-buy their gas requirements for the month at this price."³² Thus, the Commission indicated that average monthly bid-week prices are reasonable reflections of gas costs for suppliers regardless of imposition of any price mitigation measures.

²⁹ Transmittal Letter for September 20 Filing at 6.

³⁰ Duke Energy at 4-6.

³¹ See October 11 Order at PP 10-13, 35-36.

³² June 19 Order, 95 FERC at 62,561.

I. The Proposed Clarification in Section 4.2.2(b) of Appendix A to the Market Monitoring and Information Protocol Should Be Accepted As Filed

MID argues that it was inappropriate for the ISO to provide clarification, in the October 29 Compliance Filing, of Section 4.2.2(b) of Appendix A to the MMIP.³³ As the ISO has explained, this clarification serves the necessary purpose of eliminating any doubt that the mitigation measures will only be applied to incremental bids and not to decremental bids.³⁴ The ISO would have thought that MID would welcome the clarification, both because it serves to eliminate any possible ambiguity in the section and because it explicitly limits the set of bids to which the mitigation measures will be applied. In any case, the clarification should be accepted as filed.

J. The Proposed Changes to Section 4.2.2(e) of Appendix A to the Market Monitoring and Information Protocol Should Be Accepted As Filed

Duke Energy argues that the Commission should reject the proposed changes to Section 4.2.2(e) of Appendix A to the MMIP, which would apply AMP to all bids, including those below the \$91.87/MWh price screen.³⁵ Duke Energy made similar arguments in an earlier filing in the MD02 proceeding.³⁶ Notably, its argument in the earlier filing that “[t]he July 17 Order clearly contemplated that by bidding at or below \$91.87, a seller would be certain not to be subjected to

³³ MID at 4-5.

³⁴ Transmittal Letter for October 29 Compliance Filing at 4.

³⁵ Duke Energy at 3-4.

³⁶ See Protest of Duke Energy North America, LLC, and Duke Energy Trading and Marketing, L.L.C. of the California Independent System Operator Corporation’s August 16 and August 21, 2002 Compliance Filings In Response to the July 17, 2002 Order on the California Comprehensive Market Redesign Proposal, Docket Nos. ER02-1656-005 and EL01-68-020 (Sept. 3, 2002), at 2-3.

AMP,³⁷ was not addressed at all in the October 11 Order. Now Duke Energy has taken the fallback position that the October 11 Order “did not clarify whether AMP will be applied to all bids, or only those bids above \$91.87.”³⁸

The changes should be accepted as proposed by the ISO. Neither the July 17 Order nor the October 11 Order directed that the \$91.87 level would be a “safe harbor” below which no bid, no matter where it was in relation to its reference price, would be mitigated. Instead, the July 17 Order directed that “if the market clearing price for all zones is \$91.87 or below, AMP will not be applied,” and the October 11 Order provided clarification of this directive but did not undermine it.³⁹ The price screen is intended to be a threshold condition for determining whether AMP should be applied, not a safe harbor for bids in hours where the price screen is violated. Thus, if a price of \$91.87 is projected for any or all zones, the ISO will run AMP and mitigate any bid.

Moreover, the Commission clearly intended in the July 17 Order that bids below \$25/MWh would not be subject to AMP.⁴⁰ Had the Commission intended that no bid below \$91.87 would ever be mitigated, there would have been no need for the Commission’s explicit exemption from mitigation of bids below \$25/MWh.

³⁷ *Id.* at 3.

³⁸ Duke Energy at 3.

³⁹ July 17 Order, 100 FERC at P 67; October 11 Order, 101 FERC at P 26.

⁴⁰ July 17 Order, 100 FERC at P 73. The October 11 Order did not disturb this determination by the Commission.

K. SWP Inappropriately Raises a Number of Arguments That Do Not Concern Changes to the ISO Tariff Proposed In the October 29 Compliance Filing

In its filing, SWP raises a number of arguments that do not concern changes to the ISO Tariff proposed in the October 29 Compliance Filing. SWP argues that “[i]t is not clear whether or how the ISO will adhere to the requirement to permit aggregation or netting of deviations.”⁴¹ The Commission determined in the October 11 Order that the ISO Tariff sufficiently addresses concerns regarding the aggregation of resources for purposes of determining Uninstructed Deviation Penalties.⁴² Moreover, as the Commission notes, should a Market Participant believe that it was improperly denied the ability to aggregate deviations, it can request dispute resolution under the ISO Tariff.⁴³ Thus, the Commission has found that it need not provide any further direction on the provisions concerning aggregation of deviations.

Additionally, SWP asks the Commission to clarify that Section 31.2.3.2.3.4.4 “has not been and will not be accepted for filing.”⁴⁴ The ISO can confirm that the section has not yet been accepted for filing, because it was included solely in the ISO’s June 17, 2002 filing in the MD02 proceeding, and the Commission has not yet acted on the portion of the June 17 filing concerning that section. Further, the ISO has requested that the section not be made effective until the later of mid-2003 or when the ISO announces it is ready to implement

⁴¹ SWP at 4.
⁴² October 11 Order, 101 FERC at P 64.
⁴³ *Id.*
⁴⁴ SWP at 5.

the MD02 long-term elements.⁴⁵ Therefore, the section is not now in effect. As to whether Section 31.2.3.2.3.4.4 *should* be accepted for filing, revisions to that section are not the subject of the October 29 Compliance Filing, and therefore it would be inappropriate to address, in an order on the October 29 Compliance Filing, whether the section should be accepted for filing.

SWP also asserts that, although the Commission has clarified AMP treatment for certain categories of providers, it should provide clarification as to how this would apply to load; SWP requests that “these rules, which apparently are currently effective, be clarified and amended with respect to their applicability to demand response.”⁴⁶ The ISO has no quarrel with SWP’s making such a request to the Commission in the appropriate proceeding. However, as SWP has instead presented its request in the proceeding concerning the October 29 Compliance Filing, the ISO believes that request is inapposite.

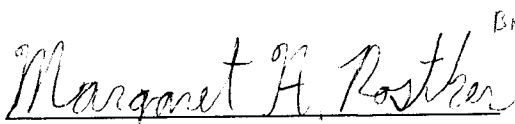
⁴⁵ See Transmittal Letter for June 17, 2002 MD02 Filing at 31 and Attachment A to June 17, 2002 MD02 Filing at 81.

⁴⁶ SWP at 4-5.

III. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission accept the October 29 Compliance Filing as submitted to the Commission.

Respectfully submitted,



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BAM



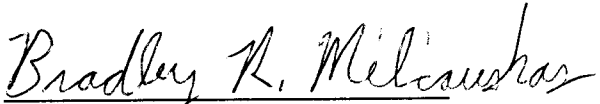
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Date: December 17, 2002

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., on this 17th day of December, 2002.


Bradley R. Miliauskas

Attorney for the California Independent
System Operator Corporation