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September 11, 2002

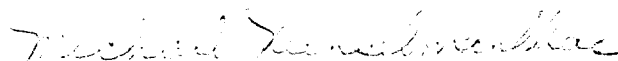
The Honorable Magalie Ramon Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: San Diego Gas & Electric Co., et al.  
Docket Nos. EL00-95-045, et al.**

Dear Secretary Salas:

Enclosed is an original and fourteen copies of the Answer of California Independent System Operator Corporation to Interlocutory Appeal on Behalf of Public Utility District No. 2 of Grant County, Washington. A copy has been provided to the Presiding Judge via email. Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,



Michael Kunselman  
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Washington D.C. 20007

Counsel for the California  
Independent System Operator Corporation

Enclosures

cc: Service List  
Honorable Bruce Birchman

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

<b>San Diego Gas &amp; Electric Company,</b>	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL00-95-045</b>
	)	
<b>Sellers of Energy and Ancillary Services</b>	)	
<b>Into Markets Operated by the California</b>	)	
<b>Independent System Operator and the</b>	)	
<b>California Power Exchange,</b>	)	
<b>Respondents.</b>	)	
	)	
<b>Investigation of Practices of the California</b>	)	
<b>Independent System Operator and the</b>	)	<b>Docket No. EL00-98-042</b>
<b>California Power Exchange</b>	)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO INTERLOCUTORY APPEAL ON BEHALF OF  
PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON**

**To: Motions Commissioner**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. § 385.213 (2002), the California Independent System Operator Corporation ("ISO") hereby answers the Interlocutory Appeal on Behalf of Public Utility District No. 2 of Grant County, Washington ("Grant PUD").<sup>1</sup> For the reasons set forth below, the Motions Commissioner should deny Grant PUD's Interlocutory Appeal.

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<sup>1</sup> Although Grant PUD styles its pleading to the Motions Commissioner an "Interlocutory Appeal," this title is somewhat misleading, since it is, in fact, a request of the Motions Commissioner to permit it to take an interlocutory appeal.

## I. ARGUMENT

Under the Commission's Rules, if a party wishes to take an interlocutory appeal of a Presiding Judge's ruling, that party must first file a motion requesting that the Presiding Judge permit the interlocutory appeal. If the Presiding Judge denies permission to make an interlocutory appeal, then the party may appeal that decision to the Motions Commissioner. 18 C.F.R. § 385.715 (2002). In this case, Grant PUD's current request for permission to take interlocutory appeal to the Motions Commissioner is inappropriate. As the Presiding Judge specifically stated in his Order Rejecting Motion, 100 FERC ¶ 63,023, dated August 29, 2002, he was *not ruling* on Grant PUD's Motion for Certification of Interlocutory Appeal because he had "not made any findings under Rule 715 which would be the predicate for a timely and appropriate interlocutory appeal." *Id.* at P 9. Without such findings, Grant PUD has no right even to seek an interlocutory appeal, although it does have the right, by virtue of the stipulation adopted by the Presiding Judge, to present the excluded evidence as an offer of proof and raise the issue to which that evidence is relevant with the Commission following the Presiding Judge's certification of findings of fact.

Moreover, Grant PUD's current pleading is procedurally deficient because the Presiding Judge did not rule on Grant PUD's request for permission to take an interlocutory appeal, but instead rejected it outright based on Grant PUD's having entered into the trial stipulation discussed in his order. Therefore, Grant PUD cannot at this time even bring before the Motions Commissioner the issue of whether it should be allowed to take an interlocutory appeal. Grant PUD must

first request permission from the Presiding Judge to take an interlocutory appeal of the Presiding Judge's August 29, 2002 ruling that he had not made any findings under Rule 715 which could be the subject of an interlocutory appeal. If the Presiding Judge denies that request, then and only then would it be appropriate for Grant PUD to request from the Motions Commissioner permission to take an interlocutory appeal – and Grant PUD could seek from the Motions Commissioner permission to take an interlocutory appeal *only* on the issue of whether, in fact, the Presiding Judge had made findings that could be the basis of an interlocutory appeal. Only if the Motions Commissioner granted that permission, and Grant PUD subsequently won from the Commission a ruling that the Presiding Judge in fact had made such findings, could Grant PUD then seek permission (first, from the Presiding Judge and then, if necessary, from the Motions Commissioner) to take an interlocutory appeal from those findings.

Even if Grant PUD's current pleading is determined not to be procedurally deficient, the Motions Commissioner may only permit interlocutory appeal "if the Motions Commissioner finds extraordinary circumstances which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or irreparable harm to a person." Contrary to Grant PUD's assertions, the present circumstances do not meet this standard, and therefore, interlocutory review is not warranted.

First, Grant PUD's allegation that interlocutory review is necessary to prevent further delay in this proceeding is speculative, at best. As Grant PUD points out, the United States Court of Appeals for the Ninth Circuit has just

recently issued an order remanding to the Commission issues associated with this proceeding for further factual development by the Commission. Interlocutory Appeal on Behalf of Grant PUD at 12. Additionally, as a result of Staff's ongoing investigation of natural gas price manipulation in the West, the Commission just recently issued an order soliciting comments as to whether the gas proxy price input into the refund formula is tainted and should be replaced. These developments all but ensure that further delay is inevitable, regardless of when the issue that Grant PUD seeks to raise on appeal is resolved. Therefore, there is no harm to the public interest in awaiting the Presiding Judge's initial decision before permitting Grant PUD to appeal his ruling on this issue.

Second, further development of the record is simply not necessary to enable Grant PUD to present its issue, *i.e.*, whether sales by governmental entities, such as Grant PUD, to the ISO, made outside of the ISO's single-price auction markets, should be mitigated, nor would further development of the record assist the Commission in reaching a decision. This issue is purely a legal one, involving interpretation of Commission orders. Grant PUD's offer of proof has been preserved for Commission consideration should the Commission agree with Grant PUD's position upon a timely review of the exclusion of that evidence, after the Presiding Judge has forwarded his proposed findings of fact. Therefore, if necessary, the record could be re-opened, subsequent to the Presiding Judge's initial decision, to accept that offer of proof. There is no risk to the due process rights of the participants, nor to the integrity of this proceeding, in waiting until that stage (cross-examination would not assist any of the parties because this

issue involves a legal interpretation). Therefore, the strict standard set forth in the rules for permitting interlocutory appeals is not met.

## II. CONCLUSION

For the foregoing reasons, the Presiding Judge should deny Grant PUD's Interlocutory Appeal.

Respectfully submitted,

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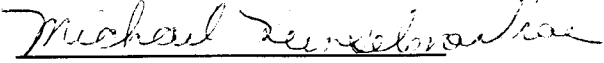
J. Phillip Jordan  
Michael Kunselman  
Swidler Berlin Shereff Friedman, LLP  
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Tel: (202) 424-7500

Dated: September 11, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the restricted service list compiled by the Presiding Judge in this proceeding.

Dated at Washington, D.C., this 11<sup>th</sup> day of September, 2002.

  
Michael Kunselman  
Michael Kunselman