UNITEDSTATESOFAMERICA
BEFORETHE
FEDERALENERGYREGULATORYCOMMISSION

CaliforniaIndependentSystem OperatorCorporation	))	**DocketNo.ER02 -651-000**

ANSWEROF
THECALIFORNIAINDEPENDENTSYSTEMOPERATORCORPORATION
TOMOTIONSTOINTERVENE,LIM ITEDPROTESTS,ANDPROTESTS

I. INTRODUCTIONANDSUMMARY

OnDecember28,2001,theCaliforniaIndependentSystemOperator Corporation(“ISO”) [1]filedAmendmentNo.41totheISOTariffintheabove - referenceddocket.AmendmentNo.41proposedtomodifythep rovisionsofthe ISOTariffinfourrespects.First,theISOproposedchangesintheuseofinterest receivedbytheISOonpaymentsindefaulttopermittheuseofsuchinterestto payunpaidcreditorsfirstandsecondlytodepositsuchfundsintheISO Surplus Account.Second,theISOproposednewprovisionstocreatea“safeharbor” mechanismtopermittheISOtoprovideconfidentialinformationtogovernmental agenciesthathaveestablishedtheirownconfidentialityprovisionsand procedures.Third, theISOproposedchangestothedefinitionoftheNon - EmergencyClearingPriceLimittoprovideforanegativemaximumlimit.Fourth, theISOproposedthecorrectionofatypographicalerrorinISOTariffSection 9.2.6.TheISOrequestedthatthefirstp roposaldescribedabovebemade

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[1] CapitalizedtermsnototherwisedefinedhereinshallhavethemeaningsetforthintheMasterDefinitionsSupplement,AppendixAtotheISOTariff.

effectiveNovember1,2001,andthattheotherthreeproposalsdescribedabove bemadeeffectiveFebruary26,2002.

Anumberofpartieshavemovedtointerveneinthepresentproceeding. Someofthemotionstointervenein cludelimitedprotestsandprotests concerningAmendmentNo.41. [2]PursuanttoRule213oftheCommission's RulesofPracticeandProcedure,18C.F.R.§385.213,theISOnowsubmitsits Answertothemotionstointervene,limitedprotests,andprotestssub mittedin theabove -referenceddocket. [3]TheISOdoesnotopposetheinterventionof partiesthathavesoughtleavetointerveneinthisproceeding.However,as explainedbelow,theISObelievesthatAmendmentNo.41shouldbeaccepted bytheCommissioni nitsentirety.

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[2] Motionstointervene,limitedprotests,andprotestsweresubmittedbyMotionsto intervene,limit edprotests,andprotestswerefiledbythefollowingentities:theAttorneyGeneral oftheStateofCalifornia("CaliforniaAttorneyGeneral");CogenerationAssociationofCalifornia andTheEnergyProducersandUsersAssociations("CAC/EPUC");Californi aDepartmentof WaterResources("CDWR");CaliforniaElectricityOversightBoard("CEOB");TheCitiesof Redding,SantaClaraandPaloAlto,CaliforniaandTheM -S-RPublicPowerAgency("Cities/M - S-R");CityofVernon,California("Vernon");Constellation PowerSource,Inc.("CPS");Duke EnergyNorthAmerican,LLC,andDukeEnergyTradingandMarketing,LLC("DukeEnergy"); DynegyPowerMarketing,Inc.("Dynegy");IndependentEnergyProducersAssociation("IEP"); ModestoIrrigationDistrict("MID");Mirant AmericasEnergyMarketing,LP,MirantCalifornia,LLC, MirantDelta,LLC,andMirantPotrero,LLC("Mirant");TheMetropolitanWaterDistrict("MWD"); TheNorthernCaliforniaPowerAgency("NCPA");;ReliantEnergyPowerGeneration,Inc.and ReliantEnergy Services,Inc.("Reliant");SouthernCaliforniaEdisonCompany("SCE");The SacramentoMunicipalUtilityDistrict("SMUD");TurlockIrrigationDistrict("TID");WilliamsEnergy Marketing&TradingCompany("Williams");andWesternPowerTradingForum("WP TF").A noticeofinterventionandlimitedprotestwasfiledbyThePublicUtilitiesCommissionoftheState ofCalifornia("CPUC").

[3] SomeofthepartiesthathavesubmittedfilingsconcerningAmendmentNo.41request affirmativereliefinpleadingsstyl edasprotests.ThereisnoprohibitionontheISO'sresponding totheassertionsinthesepleadings. *FloridaPower&Light.,* 67FERC¶61,315(1994). Additionally,totheextentthatthisAnswerisdeemedananswertoprotests,theISOrequests waiver ofRule213(18C.F.R.§385.213)topermitittomakethisAnswer.Goodcauseforthis waiverexistsheregiventhenatureandcomplexityofthisproceedingandtheusefulnessofthis Answerinensuringthedevelopmentofacompleterecord. *See,e.g.,E nronCorp.,* 78FERC¶ 61,179,at61,733,61,741(1997); *ElPasoElectricCo.,* 68FERC¶61,181,at61,899&n.57 (1994).

II. ANSWER

A. TheISO'sProposalConcerningInterestonDefaultedMarket PaymentsIsReasonable

TheCDWRargumentthattheISO'sproposedchangetoISOTariff SettlementandBillingProtocol("SABP")Section6.5.2appearstorepresenta departurefromwithin -monthsettlementandpayment [4]isincorrect.Inits November21filingtocomplywiththeCommission'sNovember7,2001Order, theISOproposedtomodifytheISO'sbillingandsettlementproceduresothat paymentsmadebyCDWRwouldb eappliedtothemonthremitted. [5]Amendment No.41doesnotmodifythisproposalinanyway.Rather,proposedSABP Section6.5.2concernstheapplicationofdefaultinterestwiththeproposed changebeingthattheISOwouldapplythedefaultinterestamo untstoany unpaidcreditorbalances.Thisisachangefromthecurrent Tariffprovision, whichrequiresthatallinterestpaymentsbedepositedintheISOSurplus Account.FundsintheISOSurplusAccountarerefundedtoMarketParticipants thatpaidth eISOGridManagementCharge.Underthechangeproposedin AmendmentNo.41,interestpaymentsstillmaybedepositedintheISOSurplus Account,butonlyafterallISOmarketcreditorshavebeenpaidinfull.TheISO notesthat,fromtheviewpointofany ISOmarketcreditor,theproposedchangeis asignificantimprovementoverthepresentTariffprovision.

MirantandReliantarguethattheISOdoesnotspecifyhowitproposesto allocatedefaultinteresttopayunpaidcreditors. [6]TheISOwillapplyd efault

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[4] CDWRat1 -3.

[5] ISOComplianceFiling,DocketNos.ER01 -3013-001andER01 -889-009(Nov.21,2001).

[6] Mirantat12 -13;Reliantat 4-5.

interestfirsttowardsunpaidcreditorbalancesforthetrademonthinwhichthe defaultinterestwasassessedandsecondtoanyotherunpaidcreditorbalances. Then,andonlythen,uponfullpaymenttoallunpaidcreditorbalancesintheISO marketswillanyexcessfundspertainingthedefaultinterestbecreditedtothe SurplusAccount.Section6.5.3oftheSABPprovidesthatfundsintheSurplus AccountinexcessofanamountdeterminedbytheISOGoverningBoardand noticedbytheISOtoMarket ParticipantswillbedistributedtoScheduling Coordinatorsusingthesamemethodofapportioningtherefundasthemethod employedinapportioningtheliabilityfortheGridManagementCharge.

IEP'sprotestoftheISO's"proposaltoapplyinterestona mountspast -due tosupplierstopaydownthe[ISO's]GMC"isinapposite. [7] Asnoted *supra* inthe AmendmentNo.41TransmittalLetter,SABPSection6.5.3alreadyprovidesfor thepaymentofexcessfundsintheSurplusAccounttobereturnedtoallMarket ParticipantswhopaidtheISOGridManagementCharge. [8] Thus,IEPisineffect attemptingtostageacollateralattackonapaymentmethodologythatthe Commissionlongagoapproved.Moreover,undertheISO'sproposedchangeto SABP6.5.2,defaultinterest wouldfirstbeappliedtopayoffallunpaidcreditor balances,andonlyiftherewereDefaultinterestamountsremainingafterthiswas donewouldtheremainingamountsbedepositedintheISOSurplusAccountfor refundtoMarketParticipantsthatpaidth eGridManagementCharge.Itappears thatIEPfailstorecognizethattheISO'sproposedchangeisverymuchtothe benefitofallunpaidcreditorsinISOmarkets.

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[7] IEPat3.

[8] AmendmentNo.41TransmittalLetterat2.

B. The ISO's Proposal Concerning ISO Release of Confidential Information Is Reasonable

Parties are incorrect in arguing that proposed Section 20.3.4(b) represents a significant departure from the ISO's current practice.[9] The only change the ISO has proposed to that section is one that emphasizes the fact that it is the Market Participant that must take the lead in directing a challenge to or defense against a disclosure requirement, after being notified of the disclosure requirement by the ISO. The provision in Section 20.3.4(b) stating that such a challenge is to be "at the *sole discretion and own cost*" (emphasis added) of the Market Participant has been left intact; the ISO's proposal to "provide such information and assistance as is necessary to enable" the Market Participant to conduct its own challenge or defense, rather than collaborate with the Market Participant in its challenge or defense, is in keeping with the focus of that unaltered provision. Moreover, the provision stating that the ISO will provide information and assistance is more specific than the existing language requiring the ISO to "cooperate" with the Market Participant.

SMUD is incorrect in arguing that the proposed confidentiality provisions concerning the Commission and the CEOB should for the most part simply follow the language of current Section 20.3.4(b).[10] The ISO's proposed changes in Sections 20.3.4(c) and 20.3.4(d) purposely are specific to the Commission and the CEOB and provide, beyond the detail in Section 20.3.4(b), further explanation with regard to the provision of confidential information to these two entities.

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[9] CAC/EPUC at 4; Duke Energy at 7-8; Dynegy at 4; SMUD at 3-4; Williams at 4-6; WPTF at 8-9.

[10] SMUD at 4-8.

AstoproposedSection20.3.4(c),theISOnotesthatthissectionisclosely modeleduponthedisclosureprovisionsincludedintheNewEnglandPowerPool (“NEPOOL”)InformationPolicy,whichhavebeenapprovedbythe Commission.[11]Thus,theCommiss ionalreadyhasindicatedthatsuchprovisions arejustandreasonable.Further,theprovisionsofSection20.3.4(c)largely paralleltheprovisionsofSection20.3.4(d),withthedifferencebetweenthetwo sectionsmainlybeingthatSection20.3.4(c)pro videsfortheISOtorequestthat informationbewithheldfrompublicdisclosurebytheCommissionoritsstaff pursuantto18C.F.R.§388.112,whereasSection20.3.4(d)providesfortheISO togiveconfidentialinformationtotheCEOBoritsstaffprovid edthatadequate confidentialityarrangements(asexplicitlydefinedinthesection)areinplace.

WithregardtotheprovisionofconfidentialinformationtotheCEOB,the ISOproposedSection20.3.4(d)inordertoallowforamoreefficientmethodof providinginformationtotheCEOBthanhasbeenthecaseuntilnow,whileatthe sametimeensuringthatconfidentialinformationwillnotbereleasedunless adequateconfidentialityarrangementsareinplace.AstheCEOBnotes,theISO hasreceivednumerous subpoenasfromtheCEOBconcerningtheprovisionof confidentialinformationtotheCEOB. [12]Eachofthesesubpoenashashadtobe addressedindividuallybytheISO.Eachtimeasubpoenahasbeenaddressed,

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[11] *SeeNewEnglandPowerPool* ,95FERC¶61,105(2001); *NewEnglandPowerPool* ,95 FERC¶61,248(2001).

[12] CEOBat3.RelianttcharacterizetheISOashavingreceived“astaggeringnumberof subpoenasanddatarequests”overthepasteighteenmonths.Reliantat6.However,evenwhile recognizingthisenormousnumberofsubpoenasandda tarequests,RelianttCompaniesargue thattheISO’scurrentproceduresforrespondingtothemshouldnotonlybemaintainedbut “enhanced.”Reliantat6.Asexplainedbelow,theISObelievesthatitismorepracticableto adoptitsproposedstreamlinedp rocedures,ratherthantoaugmentthecurrentprocedures therebymakingthemmuchslowerandlessworkable.

theISOhashadtonotifyeachMarketParticipan tandworktoresolve confidentialityconcernswiththeCEOBandtherelevantMarketParticipant.The processofconsideringeachsubpoenaonanindividualbasisentailssignificant ISOresources. [13]

UndertheISO'sproposedTariffchange,thesameinformat ionwouldbe providedtothesameentity,theCEOB,asiscurrentlybeingprovidedthroughthe subpoenaprocess.ThedifferenceisthattheISO'sproposedTariffchange wouldstreamlinethatprocess.Moreover,theproposedTariffchangeprovides forsimi larprotectionofconfidentialinformationasMarketParticipantscurrently enjoy.TheTariffchangeprohibitsconfidentialinformationfrombeingprovided unlessanduntilthereisagoodreasonforittobeprovided,andunlessadequate confidentiality arrangementsareinplace.Further,theTariffchangedescribesin detailtheconditionsthatmustexistinorderforadequateconfidentiality arrangementstobedeemedtobeinplace.

Additionally,providingchannelsthroughwhichconfidentialinformatio n maybeprovidedtotheCEOB –intheappropriatecircumstances –isconsistent withtheCommission'srecognitionthattheCommissionandstateagencies shouldworkinpartnershiptofurthertheircommongoal,namely,theprotectionof consumerinterests. Forexample,theCommission,initsordergrantinga petitionforadeclaratoryorderfiledwiththeCommissionbytheCEOB,explained that"[w]efindthattheOversightBoard'srequestconfirmationthatthepending

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[13] *Seegenerally* MemorandumfromElenaSchmid,VicePresident –Corporateand StrategicDevelopmenttotheISOGoverningBoardconcerningtheInform ationPolicyTariff RevisionFiling(Nov.2001).ThismemorandumwasreviewedbytheISOGoverningBoardprior

legislationremovesthe[federal -state]jurisdictionalconflictisappropriateand thatitwillhelppromote *acooperativestate/federalpartnershipthatisconsistent withourrespectiveresponsibilitiestoprotectelectriccustomers*."[14] Dynegydoes notpresentarelevantargumentbynotingth attheCommission,initsDecember 19,2001Order,foundthattheCEOBhasnoauthoritytoevaluatewholesale rates.[15] WhatDynegymissesisthesimpletruththattheCEOBcertainlyhasa vitalroletoplayintheevaluationof *retail*rates;thatthisrole clearlyiswithinthe jurisdictionoftheCEOB;andthat,indeed,theCEOBhasadutytoprotectthe interestsofretailcustomers.TheonlywayinwhichtheCEOBcanevaluate retailratesisbyhavingaccesstorelevant,confidentialpricedata.TheIS O's proposedTariffchangeprovidesforsuchaccessinappropriatecircumstances. TheCEOBcan,anddoes,acquirethesameinformationnowthroughsubpoena. ThechangesproposedinAmendmentNo.41neitheraddtonorsubtractfrom thatexistingsubpoena authority,butratherprovidefortheCEOBtoacquirethe sameinformationitwouldacquireundersubpoenaanywayinamoreefficient andlessburdensomeway.

Astoargumentsthatitisprematuretoproposeadefinitionofthe CEOB thatanticipatesasucc essorininteresttotheCEOB,[16] becauseitisunclearwhat suchasuccessor(orsuccessors)mightbe,theISObelievesthatitsdefinitionis

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totheNovember29,2001meetinginwhichtheBoardapprovedmodificationstoSection20.3.4, andisavailableontheISOHomePageat<http://w ww.caiso.com/pubinfo/BOG/>.

[14] *CaliforniaElectricityOversightBoard*,88FERC¶61,172,at61,577 -78(1999)(emphasis added).

[15] Dynegyat3(citing *SanDiegoGas&ElectricCompany,etal.*,97FERC¶61,275 (2001)).Similarly,WilliamsandWPTFareinco rrectinassertingthattheISO'sproposal representsaneffortto makeanend -runaroundtheDecember19,2001Order.Williamsat9 -10; WPTFat6.

[16] IEPat7.

sufficientlyspecificwithoutbeingtoonarrow.ThedefinitionappliestotheCEOB or“anysuccessorininterest totheresponsibilitiesofsuchagency.”Thus,even iftheresponsibilitiesoftheCEOBweretobesplitamongoneormore successorsininterest,theISO’sdefinitionofCEOBwouldapplytoeachofthose successorsininterest.

C. TheISO’sProposalCo ncerningthePriceLimitationDuring Non-SystemEmergencyPeriodsIsReasonable

ContrarytotheassertionofReliant, [17]theISO’sproposaltoestablisha lowerlimitontheNon -EmergencyClearingPriceLimit(“NECPL”)isnotinany way“arbitrary.”Thel owerlimitisproposedtobecompletelysymmetricalwith theupperlimitontheNECPL.AstheISOexplainedintheAmendmentNo.41 TransmittalLetter,thissymmetryisconsistentwiththemannerinwhichtheISO hasimplementedpreviouspricecaps. [18]Mor eover,thelowerlimitontheNECPL recognizesthat,justaspositive -pricedbidscanbeunreasonable,thesameis equallytrueofnegative -pricedbids.Therefore,theISO’sproposalisentirelyjust andreasonable.

Mirantarguesthattheproposedsymmet ricallowerlimitontheNECPLis inappropriatebecauseitfailstoreflecttheCommission’sDecember19,2001 order[19]directingtheISOtodeterminea“winterseason”mitigatedpriceforuse throughApril30,2002andthefactthatallpricemitigationmea suresintheISO

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17 Reliantat13.

18 AmendmentNo.41TransmittalLetterat3.

19 95FERC¶61,294(2001).

marketsterminateonSeptember30,2002. [20]Thefilingforasymmetricallower limitontheNECPLisappropriatebecausetheNECPLwillbeusedagain, beginningonMay1,2002.Giventheneedforalowerlimit,itisappropriateto have suchaprovisionalreadyintheISOTariffpriortoresumptionofuseof NECPLasthemechanismtocalculatethemitigatedprice.Moreover,theISO submittedacompliancefilingonJanuary25,2002,reflectingtheimplementation ofthewinter -seasonmitig atedpricecalculationfortheperiodofDecember20, 2001throughApril30,2002,andproposinganewTariffsectionspecifically providingfortheterminationofallpricemitigationmeasuresonSeptember30, 2002.ThusMirant'sconcernsarewithoutfou ndation.

III. CONCLUSION

Fortheforegoingreasons,theISOrespectfullyrequeststhatthe CommissionacceptAmendmentNo.41asfiled.

Respectfullysubmitted,

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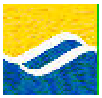
Dated:February4,2002

[20] Mirantat13 -15.

 CALIFORNIA ISO

California Independent
System Operator

February 4, 2002

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

Re: California Independent System) Docket No. ER02-651-000
Operator Corporation)

Dear Secretary Salas:

Enclosed for electronic filing please find the Answer of The California Independent System Operator Corporation To Motions To Intervene, Limited Protests, And Protests to Amendment No. 41 to The California Independent System Operator Corporation Tariff, filed on December 28, 2001 in the above-referenced docket.

Thank you for your assistance in this matter.

Respectfully submitted,

Margaret A. Rostker
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the Answer of The California Independent System Operator Corporation to Motions to Intervene, Limited Protests, and Protests upon each person designated on the official service list compiled by the Secretary in the above-captioned docket.

Dated at Folsom, California, on this 4th day of February, 2002.

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