

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

Strategic Energy L.L.C.)	
)	
v.)	Docket No. EL01-41-000
)	
California Independent System Operator Corporation)	

**ANSWER OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION TO
REQUEST FOR INTERIM RELIEF AND
COMPLAINT REQUESTING FAST TRACK PROCESSING
OF STRATEGIC ENERGY L.L.C.**

I. INTRODUCTION AND SUMMARY

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213 (2000), and the Commission’s March 2, 2001 Notice of Complaint, the California Independent System Operator Corporation (“ISO”)¹ hereby submits its Answer to the Request for Interim Relief and Complaint Requesting Fast Track Processing (“Complaint”) filed by Strategic Energy L.L.C. (“Strategic Energy”), on February 28, 2001. For the reasons described below, the Commission should find the Complaint is not ripe and dismiss the Complaint, without prejudice.

The Complaint is not ripe because Strategic Energy, an ISO Scheduling Coordinator, has not complied with the ISO Tariff provisions and process for

¹ Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.

dispute resolution. The ISO Tariff specifically sets forth an orderly process for parties to a dispute arising under ISO documents to follow in the resolution of disputes such as form the basis of the Complaint. The Tariff provides for a disputing party, such as a Scheduling Coordinator, to raise a dispute before the Commission, but only upon completion of specified steps in the dispute resolution process, including good faith negotiation, mediation, and arbitration. Upon exhaustion of these steps a Scheduling Coordinator may appeal an arbitration award to the Commission or any court of competent jurisdiction.

Additionally, apart from being procedurally improper, as detailed below, the Complain is incorrect in asserting that the ISO has failed to provide to Strategic Energy all information required under the ISO Tariff.

The ISO notes that if the Commission were to grant the relief requested in the Complaint, the Commission essentially would nullify the ISO Tariff procedures for dispute resolution, and would risk opening the door to numerous Commission filings by Scheduling Coordinators unwilling to abide by, and seeking to circumvent, the ISO Tariff.

For these several reasons the Complaint should be dismissed.

II. BACKGROUND

On February 28, 2001, Strategic Energy filed the Complaint against the ISO, related to the allocation of “as-bid” and out-of-market costs for December 2000. The Complaint concerns the approximately \$4.9 million due from Strategic Energy to the ISO on March 5, 2001. Strategic Energy requests that the Commission issue an interim order by March 5, 2001 that (1) permits Strategic

Energy to deposit the contested portion of its bill (all but approximately \$1.5 million) in an interest bearing escrow account and (2) declares that, in so doing, Strategic Energy will not be in default of its obligations under the ISO Tariff, pending resolution of the issues raised in the Complaint.

Strategic Energy states that some or all of the \$4.9 million owed arises from out-of-market costs for emergency dispatch orders, allocated pursuant to Section 11.2.4.2.1 of the Tariff and claims that "some of the charges at issue may reflect forward market purchases not properly attributable to the scheduling interval in which charges were assessed against Strategic Energy."² Strategic Energy alleges that the ISO has failed to break down the invoiced amounts by ten-minute intervals and that such information must be provided under Section 11.4.3 of the Tariff. Strategic Energy also alleges that the ISO has acknowledged that the ISO's current calculations for December 12, 2000 contain material errors, but that the ISO has not offered to correct these errors. The support for these claims include Strategic Energy's invoice and an affidavit, both of which were submitted under a claim of privilege.

On March 5, 2001, Strategic Energy paid the full amount listed on its invoice for December 2000. In a letter to the Commission filed in the above-referenced docket that same day, Strategic Energy stated that it made the payment under protest, without waiver of the Complaint, and reiterated the request stated in the Complaint that the Commission issue an interim order permitting Strategic Energy to deposit the contested portion of its bill from the ISO into an interest-bearing escrow account.

On March 9, 2001, the ISO requested that Strategic Energy provide the ISO with an unredacted copy of the Complaint containing the materials that Strategic Energy filed under a claim of privilege. Strategic Energy subsequently provided the ISO with the materials requested.

III. ANSWER

A. **The Commission Should Not Permit Strategic Energy to Circumvent Its Obligation to Participate In the Established Procedures for Disputing An ISO Invoice**

In filing the Complaint, Strategic Energy has failed to meet the Alternative Dispute Resolution (“ADR”) requirements contained in Section 13 the ISO Tariff. As a Scheduling Coordinator, Strategic Energy is subject to these requirements. First, Section 4.4.6 of the Settlement and Billing Protocol (“SABP”) provides as follows:

Payment Pending Dispute

Each Scheduling Coordinator, Black Start Generator or Participating TO which receives an invoice shall pay any net debit and shall be entitled to receive any net credit shown in the invoice on the Payment Date, whether or not there is any dispute regarding the amount of the debit or credit. *The provisions of Section 13 (Dispute Resolution) of the ISO Tariff shall apply to the disputed amount.*

(Emphasis added.) Second, Strategic Energy’s Scheduling Coordinator Agreement with the ISO – and indeed each of the Scheduling Coordinator Agreements – provides in relevant part that:

[Strategic Energy] will abide by, and will perform all of the obligations under the ISO Tariff placed on Scheduling Coordinators in respect of all matters set forth therein *including, without limitation*, all matters relating to the scheduling of Energy and

² Complaint at 3.

Ancillary Services on the ISO Controlled Grid, ongoing obligations in respect of scheduling, *Settlement*, system security policy and procedures to be developed by the ISO from time to time, *billing and payments*, confidentiality and *dispute resolution*.³

Strategic Energy was incorrect in failing to follow the ISO ADR Procedures merely because it “does not believe that further ADR procedures would assist in resolving this dispute.”⁴ As described above, Strategic Energy violated the terms of the ISO Tariff and its Scheduling Coordinator Agreement. In the order authorizing ISO operations, the Commission rejected a request that the ISO ADR Procedures be made voluntary. The Commission explained that, “[d]ue to the limited time and resources of the Commission, we find that it is essential that the parties to the ISO Tariff attempt to resolve their disputes before bringing them before the Commission.”⁵ Indeed, one of the eleven principles for ISOs described in Order No. 888 is that an ISO “should provide for a voluntary dispute resolution process that allows parties to resolve technical, financial, and other issues without resort to filing complaints at the Commission.”⁶ Additionally, in Order No. 2000, the Commission noted “that an independent RTO with an impartial dispute resolution mechanism could resolve disputes without resort to the Commission complaint process, and that it is generally more efficient for

³ Scheduling Coordinator Agreement Between the California Independent System Operator Corporation and Strategic Energy L.L.C., Docket No. ER99-3757-000 (filed July 27, 1999), at 2 (emphasis added).

⁴ Cf. Complaint at 13.

⁵ *Pacific Gas and Electric Company, et al.*, 81 FERC ¶ 61,122, at 61,489 (1997).

⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21540 (May 10, 1996), FERC Stats. & Regs., Regs. Preambles ¶ 31,036 (1996), at 31,732.

these organizations to resolve many disputes internally rather than bringing every dispute to the Commission.”⁷

Strategic Energy presents no compelling reason why it should be exempted from the ISO ADR Procedures. If Strategic Energy does not obtain the relief it requests through the ISO ADR Procedures, the ISO Tariff specifically provides that it then may appeal to the Commission.

The Commission should not open the door for entities to file with the Commission in lieu of compliance with the ISO Tariff dispute resolution process, because opening such a door is likely to result in the Commission being deluged with such filings, by Scheduling Coordinators and other parties seeking to skirt the ISO Tariff procedures.

Additionally, Strategic Energy provides no support for its assertion that it filed the Complaint, instead of following the ISO ADR Procedures, because a “limited amount of time” was available to address the December 2000 allocation of costs.⁸ Strategic Energy is subject to no such time limit.

B. The ISO Has Complied With All Requirements to Provide Information In Support of Settlement Statements

Contrary to Strategic Energy’s assertions, the ISO has met the relevant requirements of the ISO Tariff. Section 11.4.3 of the ISO Tariff provides in relevant part as follows:

Data Files

Settlement Statements relating to each Scheduling Coordinator shall be accompanied by a data file of supporting information that

⁷ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs., Regs. Preambles ¶ 31,089 (1999), at 31,027.

⁸ *Cf.* Complaint at 13.

includes the following for each Settlement Period of the Trading Day on a Zone-by-Zone basis:

. . . .

- (e) details of Imbalance Energy and penalty payments; and
- (f) detailed calculation of all fees, charges and payments allocated amongst Scheduling Coordinators and each Scheduling Coordinator's share.

Indeed, the ISO developed additional charge types subsequent to the filing of Amendment No. 33, and thus customers such as Strategic Energy now receive more settlement information than they did previously.

Specifically, and in full compliance with Section 11.4.3, the ISO has provided to Strategic Energy, for all appropriate days and time periods, the total price for out-of-market dispatches in the Trading Day, the total Net Negative Uninstructed Deviation in that same interval, the percentage of the Net Negative Uninstructed Deviation that was caused by the Scheduling Coordinator, and the total dollar amount that the ISO will collect from Strategic Energy as a result.

Further, the Complaint refers to a purported lack of information about the prices used to calculate the charges allocated to Strategic Energy, i.e., the prices used to calculate charge type 487. Such information, while not mandated under the ISO Tariff, may be obtained by Strategic Energy through the discovery procedures set forth in the ISO Tariff ADR Procedures. Strategic Energy should follow the ISO provisions for dispute resolution and in so doing will be able to obtain additional information it deems essential for dispute resolution.⁹

Apart from procedural non-compliance and inaccuracy as to ISO informational requirements, the certain sections of the ISO Tariff cited in the

Complaint as support for Strategic Energy's positions, are inapposite. First, Section 2.5.29 of the Tariff concerns only the Day-Ahead Market, which is not the subject of the Complaint.¹⁰ Second, the Scheduling Protocol and the Dispatch Protocol have to do only with the ISO's operations, not with the settlement information that is required to be provided.¹¹

Moreover, Strategic Energy is incorrect in asserting that the ISO "misled" Scheduling Coordinators as to the Imbalance Energy price.¹² The page on the ISO Home Page concerning ex post 10-minute price information states that the BEEP Interval Ex Post Prices are not settlement quality. That information is posted for the convenience of Scheduling Coordinators and other Market Participants and is clearly delineated as being of non-settlement quality.

C. Strategic Energy's Others Claims Are Either Without Merit Or Are Not Ripe

Strategic Energy alleges that "some of the charges at issue may reflect forward market purchases not properly attributable to the scheduling interval in which charges were assessed against Strategic Energy."¹³ The ISO has complied with Tariff regarding the attribution of costs of forward market purchases to the appropriate settlement intervals.

Strategic Energy also alleges that the ISO has acknowledged that the ISO's calculations for December 12, 2000 contain material errors, but that the ISO has not offered to correct these errors.¹⁴ The ISO produces settlement

⁹ See ISO Tariff, Section 13.3.7.

¹⁰ Cf. Complaint at 5.

¹¹ Cf. *id.* at 5-6.

¹² Cf. *id.* at 6-7.

¹³ *Id.* at 3.

¹⁴ See *id.* at 4.

"statements" for Scheduling Coordinators daily and it bills, or sends invoices to, each Scheduling Coordinator twice a month. The first invoice (referred to as the "Preliminary Invoice") contains the bulk of the monthly charges while the second invoice (referred to as the "Final Invoice") contains charges that are additional or incremental to the first invoice. Strategic Energy's allegation refers to the settlement "statement" for December 12, 2000. With regard to settlement statements, the ISO has a complete process for review, revision, and correction in the event of material errors. The ISO will initiate a correction upon its own discovery of any such error or as a result of the dispute resolution process. Once again, Strategic Energy should avail itself of the dispute resolution process set forth in the ISO Tariff.

IV. COMMUNICATIONS

Communications regarding this docket should be sent to the following individuals, whose names should be entered on the official service list established by the Secretary for this proceeding:

Charles F. Robinson
General Counsel
Roger E. Smith
Senior Regulatory Counsel
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, California 95630
Tel: (916) 608-7135
Fax: (916) 608-7296

Edward Berlin
Kenneth G. Jaffe
David B. Rubin
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

V. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission find that Strategic Energy must follow the procedures set forth in the ISO Tariff for resolving disputes concerning its December invoices, reject Strategic Energy's request for interim relief, and summarily dismiss, without prejudice, the Complaint filed by Strategic Energy in this proceeding.

Respectfully submitted,

Charles F. Robinson
General Counsel
Roger E. Smith
Senior Regulatory Counsel
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7135
Fax: (916) 608-7296

Edward Berlin
Kenneth G. Jaffe
David B. Rubin
Bradley R. Miliauksas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Dated: March 20, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 20th day of March, 2001.

Bradley R. Miliauskas