

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

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| Turlock Irrigation District and |) | |
| Modesto Irrigation District |) | |
| |) | |
| v. |) | Docket No. EL99-93-001 |
| |) | |
| California Independent System Operator |) | |
| Corporation |) | |
| |) | |

**ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
TO TURLOCK IRRIGATION DISTRICT'S
MOTION FOR APPROVAL OF A PROTECTIVE ORDER AND FOR AN ORDER
SHORTENING TIME TO RESPOND TO THIS MOTION**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), the California Independent System Operator ("ISO") hereby submits its Answer to Turlock Irrigation District's ("TID") filing of a motion for the approval of a protective order on March 28, 2002 in the captioned proceeding.

I. Background

Following the ISO's objection to one of the data requests served by TID in this proceeding, on the basis that the documents requested were confidential under section 20.3 of the ISO Tariff,¹ the active parties attempted to negotiate the

¹ Section 20.3.2 identifies certain information that the ISO receives from Scheduling Coordinators -- entities that submit schedule transactions on the ISO Controlled Grid and submit bids in the ISO's markets -- that the ISO is required to treat as confidential. Section 20.3.4(b) describes the procedures that must be followed if the ISO is required to disclose any such information in the course of an administrative proceeding:

(b) If the ISO is required by applicable laws or regulations, or in the course of administrative or judicial proceedings, to disclose information that is otherwise required to be maintained in confidence pursuant to this Section 20.3, the ISO may disclose such information; provided,

terms of a protective order. The ISO proposed a modification to the Commission's "model" protective order to recognize the ISO's obligations under its approved tariff. In particular, the ISO proposed to include a paragraph that stated that nothing in the protective order shall supersede the ISO's obligation under section 20.3.4 of its Tariff to give prior notice of a request for disclosure of confidential information to any affected Market Participant.

The parties were unable to reach agreement on an appropriate provision and, on March 28, 2002, TID filed a motion of adoption of a protective order that would, by its terms, override the provisions of the ISO Tariff with respect to the procedures for the protection of confidential information. TID's proposed protective order would: (1) obligate the ISO to notify all potentially affected Market Participants within two business days of any TID information request that would require the disclosure of protected information; (2) give Market Participants only five business days thereafter to file particularized written objections in this proceeding; and (3) require the ISO to disclose requested information on the sixth business day after a request in the absence of an objection. TID's proposed protective order also would have parties determine if they were compliant with the Tariff as to confidentiality issues.

however, that as soon as the ISO learns of the disclosure requirement and prior to making such disclosure, the ISO shall notify any affected Market Participant of the requirement and the terms thereof. The Market Participant may, at its sole discretion and own cost, direct any challenge to or defense against the disclosure requirement and the ISO shall cooperate with such affected Market Participant to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The ISO shall cooperate with the affected Market Participant to obtain proprietary or confidential information by the person to whom such information is disclosed prior to any such disclosure.

II. TID's Proposal To Override the Terms of the ISO Tariff Creates an Untenable Situation

The Commission has approved the ISO Tariff's approach to the protection of confidential information received by the ISO from market participants. Section 20.3.4 specifically permits the ISO to disclose otherwise confidential information, including individual bid data, if required by applicable laws or regulation or in the course of administrative or judicial proceedings, but only after notifying any affected Market Participant of the terms of the disclosure requirement. In addition, the ISO is obliged to cooperate with the affected Market Participant "to the maximum extent practicable" to minimize the extent of the disclosure, and to cooperate with the affected Market Participant to obtain proprietary or confidential treatment of the disclosed information.

TID proposes to truncate the process in the ISO's Commission-approved tariff by imposing unreasonably stringent time limits on the ISO's review of discovery requests to determine whether confidential information is requested and on Market Participants' actions thereafter. TID's proposal is unworkable and inconsistent with the ISO Tariff and the procedural orders governing this proceeding in at least four respects.

First, it is unreasonable and contrary to the ISO Tariff and the procedures governing this proceeding to require the ISO to identify any discovery request calling for confidential information protected by the ISO Tariff and notify the affected market participants within two business days. No such limitation is contained in the ISO Tariff, which requires the ISO to notify affected market participants "as soon as it learns of the disclosure requirement." No such

limitation is contained in the procedures adopted in this docket, which give each party 5 days to lodge objections to discovery requests. Practically speaking, it is not feasible for the ISO to review all discovery requests, ascertain whether confidential information is requested, identify all potentially affected market participants, and provide notice to each of them, all within two business days. This deadline, selected unilaterally and arbitrarily by TID, would impose an unreasonable burden on the ISO and preclude its ability to review discovery requests and provide meaningful notice to market participants that information they provided in confidence may be disclosed to a competitor – TID. The ISO believes that no time limit is appropriate beyond the ISO Tariff obligation to provide notice as soon as it ascertains that confidential information has been requested. If the Presiding Judge determines that a deadline should be included in the protective order, the deadline should be no shorter than the 5-day deadline applicable to all other objections to discovery.

Second, TID's proposed five-day deadline for a market participant to lodge objections to the disclosure of information similarly would impose a deadline that is not contained in the ISO Tariff. The ISO agrees that a market participant must act promptly when it receives notice that confidential information it provided to the ISO is the subject of a disclosure requirement and thus establishes a reasonable deadline, appropriate to the nature and scope of the requested information, when notifying Market Participants (usually 5 to 10 days). An unduly inflexible time period could compromise the ability of market participants to protect confidential business information.

Third, TID's proposed deadlines would make it impossible for the ISO to fulfill its ISO Tariff obligation to cooperate with affected market participants "to the maximum extent practicable" to minimize the disclosure of information. TID's unreasonably tight deadlines would leave no time for negotiation of alternatives to the disclosure of confidential information, effectively overriding this portion of section 20.3.4.

Fourth, TID's demand that, in the absence of objection, requested material be made available six business days after the ISO gives notice that confidential information is sought (eight business days after the request is received) contravenes the procedures established for this docket. Those procedures specify that each party will use its best efforts to respond to discovery requests on a rolling basis within ten business days of their submission. TID offers no basis for shortening this period or converting it to an absolute obligation set forth in an order of the Presiding Judge. This provision of TID's the proposed protective order should be stricken.

The ISO is willing to make reasonable accommodations to TID's needs for information in this proceeding. The ISO must, however, comply with its obligations under the tariff approved by the Commission. Those obligations are not subject to modification through TID's motion here. TID's attempts to place unreasonable time limits on the ISO's compliance with those obligations are both inappropriate and unnecessary. The ISO will, as its tariff requires, give potentially affected market participants notice of a discovery request in this proceeding that seeks confidential information they have submitted to the ISO as

soon as it ascertains that is the case and will request notice within an appropriate time. In the absence of an objection submitted within the specified time, the ISO will make requested data available (subject to any other applicable objections) as promptly as possible. Under the approved ISO Tariff and the procedures established for this docket, TID is entitled to no more. Its proposed protective order should accordingly be modified by eliminating paragraph 14 or modifying that paragraph as the ISO had initially proposed, i.e., paragraph to state only that the ISO will follow the procedures of section 20.3 of its Commission-approved tariff in providing confidential information in accordance with the protective order.

III. Conclusion

For the foregoing reasons, the ISO requests the Presiding Administrative Law Judge to reject TID's expedited motion for a protective order in the form of TID's protective order and instead to modify TID's proposed protective order by eliminating TID's proposed paragraph 14 or modifying that paragraph to state only that the ISO will follow the procedures of section 20.3.4 of its Commission-approved tariff in providing confidential information in accordance with the protective order.

Respectfully submitted,

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