

**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 Nos.</b> | <b>EL00-95-074</b>  |
|   | ) |                    | <b>EL00-95-081</b>  |
| <b>Sellers of Energy and Ancillary Services</b>     | ) |                    | <b>EL00-95-086</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>Docket Nos.</b> | <b>EL00-98-062</b>  |
| <b>Independent System Operator and the</b>          | ) |                    | <b>EL00-98-069</b>  |
| <b>California Power Exchange</b>                    | ) |                    | <b>EL00-98-073</b>  |
|   | ) |                    |                     |
|   | ) |                    |                     |
| <b>Californians for Renewable Energy, Inc.</b>      | ) |                    |                     |
| <b>(CARE)</b>                                       | ) |                    |                     |
| <b>Complainant,</b>                                 | ) |                    |                     |
|   | ) |                    |                     |
| <b>v.</b>   | ) | <b>Docket No.</b>  | <b>EL01-2-000</b>   |
|   | ) |                    |                     |
| <b>Independent Energy Producers, Inc., and</b>      | ) |                    |                     |
| <b>All Sellers of Energy and Ancillary</b>          | ) |                    |                     |
| <b>Services into Markets Operated by the</b>        | ) |                    |                     |
| <b>California Independent System Operator</b>       | ) |                    |                     |
| <b>And the California Power Exchange; All</b>       | ) |                    |                     |
| <b>Scheduling Coordinators Acting on</b>            | ) |                    |                     |
| <b>Behalf of the Above Sellers; California</b>      | ) |                    |                     |
| <b>Independent System Operator</b>                  | ) |                    |                     |
| <b>Corporation; And California Power</b>            | ) |                    |                     |
| <b>Exchange Corporation,</b>                        | ) |                    |                     |
| <b>Respondents</b>                                  | ) |                    |                     |
|   | ) |                    |                     |
|   | ) |                    |                     |
| <b>El Paso Electric Company, Enron Power</b>        | ) | <b>Docket No.</b>  | <b>EL02-113-000</b> |
| <b>Marketing, Inc., Enron Capital and Trade</b>     | ) |                    |                     |
| <b>Resources Corporation</b>                        | ) |                    |                     |

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| <b>Portland General Electric Company</b>  | ) | <b>Docket No.</b> | <b>EL02-114-000</b> |
|   | ) |                   |                     |
| <b>Enron Power Marketing, Inc.</b>  | ) | <b>Docket No.</b> | <b>EL02-115-000</b> |
|   | ) |                   |                     |
| <b>Avista Corporation, Avista Energy, Inc.</b>  | ) | <b>Docket No.</b> | <b>EL02-115-001</b> |
|   | ) |                   |                     |
| <b>American Electric Power Service Corporation</b>  | ) | <b>Docket No.</b> | <b>EL03-137-000</b> |
|   | ) |                   |                     |
| <b>California Independent System Operator Corporation</b>                                       | ) | <b>Docket No.</b> | <b>ER03-746-000</b> |
|   | ) |                   |                     |
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| <b>Investigation of Anomalous Bidding Behavior and Practices in the Western Markets</b>         | ) | <b>Docket No.</b> | <b>IN03-10-000</b>  |
|   | ) |                   |                     |
| <b>Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices</b> | ) | <b>Docket No.</b> | <b>PA02-2-000</b>   |
|   | ) |                   |                     |

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
TO THE FEBRUARY 13, 2007 “MOTION FOR CLARIFICATION”  
SUBMITTED BY CALIFORNIANS FOR RENEWABLE ENERGY**

The California Independent System Operator Corporation (“CAISO”) submits this answer to the pleading (the “Motion”) filed February 13, 2007, by Californians for Renewable Energy (“CARE”) entitled “Motion for clarification on the effect on two prior Orders of two very recent court cases decided on December 19, 2006 by the US Court of Appeals for the Ninth Circuit in a pair of opinions — PUD v. FERC and PUC v. FERC.” See 18 C.F.R. § 385.213 (governing answers).

The Motion asks the Commission to rule, among other things, that the current and future CAISO tariffs violate the Federal Power Act. The Commission should deny this portion of the Motion, because there is nothing in its prior orders to clarify, and because the appellate decisions discussed in the Motion have nothing to say about the validity of the CAISO tariffs.

## **I. BACKGROUND: THE MOTION AND THE CAISO TARIFFS**

The Motion requests that the Commission clarify the implications that two recent appellate rulings may have for, among other things, two CAISO tariffs. See Motion at 13. The tariffs include, first, the currently effective CAISO tariff, which was initially approved in 1997, and has been amended many times since.<sup>1</sup> A second tariff, which will replace the current one next year when MRTU becomes effective, was conditionally approved last fall.<sup>2</sup> Both of these tariffs, including the amendments to the currently effective tariff, were approved by the Commission as just and reasonable.<sup>3</sup>

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<sup>1</sup> *Pacific Gas & Electric Co.*, 81 FERC ¶ 61,122 (October 30, 1997). A complete list of amendments and the FERC docket numbers can be found on the CAISO website at <http://www.caiso.com/pubinfo/amendments/index.html>.

<sup>2</sup> *California Independent System Operator Corp.*, 116 FERC ¶ 61,274 (September 21, 2006).

<sup>3</sup> For the MRTU Tariff, see 116 FERC ¶61,274, ¶25 (“ . . . we find the MRTU Tariff, as modified by the CAISO in accordance with the directives contained in this order, to be just and reasonable . . .”). For the current tariff, see 81 FERC at 61,435 (“We find that, with the modifications and conditions discussed herein, the ISO meets the Commission’s eleven ISO principles set forth in Order No. 888”) and *id.* at 61,446 (“If, at any time, the Commission determines that changes to the ISO . . . tariffs and agreements are warranted, we will act accordingly. . . . [W]e reiterate that parties may also raise issues concerning the ISO . . . in the future by filing a complaint under section 206 of the FPA”). For one example regarding an amendment to the currently effective tariff, see *California Independent System Operator Corp.*, 105 FERC ¶ 61,284 (December 15, 2003) (approving Amendment No. 53, and ruling “[t]he Commission finds that these provisions are just and reasonable and accepts them”; ¶ 53).

The appellate decisions discussed in the Motion are two rulings issued December 19, 2006 by the United States Court of Appeals for the Ninth Circuit – *Public Utility District No. 1 of Snohomish County Washington v. FERC*, 471 F.3d 1053 (9<sup>th</sup> Cir. 2006), and a companion case, *Public Utility Commission of the State of California v. FERC*, 2006 U.S. App. LEXIS 31140 (9<sup>th</sup> Cir. Dec. 19, 2006). These decisions concern the circumstances when the *Mobile-Sierra* doctrine applies to the Commission’s review of wholesale contracts entered by suppliers with market-based rate authority. *See generally* 471 F.3d at 1056-57. Assuming the decisions withstand further review, their import would be that certain types of agreements that the Commission previously reviewed under a “public interest” standard now may be reviewed instead for whether they are “just and reasonable.”

The Motion, after describing the conditions under which the *Snohomish* ruling would apply the stricter “public interest” standard of review, rather than “just and reasonable” review, asserts that these conditions were not satisfied for “CAISO’s current market based Tariffs on file with the FERC.” Motion at 13. On the basis of this assertion, and apparently nothing else, the Motion “request[s] clarification whether or not the Tariffs CAISO is currently operating under now violates section 206(a) of the FPA.” *Id.*

## **II. THE MOTION SHOULD BE DENIED**

Clarification is inappropriate here because the Commission’s prior orders approving the CAISO tariffs are not ambiguous and do not cause uncertainty.

The Motion fails to identify any aspect of these orders that requires additional explanation.

In addition, the Motion should be denied because it makes no sense. The *Snohomish* decision that forms the basis for the Motion applies only to matters in which the Commission applied the “public interest” standard of review instead of the “just and reasonable standard” – and then only to certain supply agreements entered under market based rate authority. The CAISO tariffs, however, were approved as just and reasonable. So *Snohomish* does nothing to undermine them.

### **III. CONCLUSION**

Accordingly, the CAISO asks the Commission to deny CARE’s motion for clarification as it relates to the CAISO tariffs.

Respectfully submitted,

**/S/Daniel J. Shonkwiler**

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Dated: February 28, 2007

## **CERTIFICATE OF SERVICE**

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

Dated at Folsom, CA, on this 28th day of February, 2007.

**/s/Susan L. Montana**  
Susan L. Montana