

# SWIDLER BERLIN LLP

Michael Kunselman  
Phone 202.295.8465  
Fax 202.424.7643  
mknunselman@swidlaw.com

The Washington Harbour  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
Phone 202.424.7500  
Fax 202.424.7647

[www.swidlaw.com](http://www.swidlaw.com)

May 13, 2005

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

**Re: California Independent System Operator Corporation  
Docket Nos. ER04-445-000, et al.  
Pacific Gas and Electric Company  
Docket Nos. ER04-443-000, et al.  
San Diego Gas & Electric Company  
Docket Nos. ER04-441-000, et al.  
Southern California Edison Company  
Docket Nos. ER04-435-000, et al.**

Dear Secretary Salas:

Enclosed please find one original and fourteen copies of the Joint Motion of the California Independent System Operator Corporation and Participating Transmission Owners for Deferral of Commission Action on LGIP/LGIA Filings filed in the above-captioned dockets.

Also enclosed are two extra copies of the Joint Motion to be time/date stamped and returned to us by the messenger. Thank you for your assistance. Please contact the undersigned if you have any questions regarding this filing.

Sincerely,



Michael Kunselman

Counsel for the California Independent  
System Operator Corporation

Enclosures

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

<b>California Independent System Operator Corporation</b>	)	<b>Docket Nos. ER04-445-000</b>
	)	<b>ER04-445-001</b>
	)	<b>ER04-445-002</b>
	)	<b>ER04-445-003</b>
	)	
<b>Pacific Gas and Electric Company</b>	)	<b>Docket Nos. ER04-443-000</b>
	)	<b>ER04-443-001</b>
	)	<b>ER04-443-002</b>
	)	
<b>San Diego Gas &amp; Electric Company</b>	)	<b>Docket Nos. ER04-441-000</b>
	)	<b>ER04-441-001</b>
	)	<b>ER04-441-002</b>
	)	
<b>Southern California Edison Company</b>	)	<b>Docket Nos. ER04-435-000</b>
	)	<b>ER04-435-001</b>
	)	<b>ER04-435-003</b>

**JOINT MOTION OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION AND  
PARTICIPATING TRANSMISSION OWNERS FOR DEFERRAL OF  
COMMISSION ACTION ON LGIP/LGIA FILINGS**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.212, the California Independent System Operator Corporation ("ISO")<sup>1</sup> and its Commission-jurisdictional Participating Transmission Owners (Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E") and Southern California Edison ("SCE") (the "PTOs")) respectfully request that the Commission defer acting on the ISO's January 5, 2005 and February 18, 2005 Large Generator Interconnection Procedures ("LGIP")

---

<sup>1</sup> Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A, as filed August 15, 1997, and subsequently revised.

compliance filings and the joint ISO/PTO January 5, 2005 and February 18, 2005 Large Generator Interconnection Agreement (“LGIA”) compliance filings, until such time as the Commission issues a decision on the ISO’s Petition for Declaratory Order (“Petition”) concerning the ISO’s governance structure, filed as of the same date as this Motion.

The undersigned PTOs have taken no position with respect to the issues raised in ISO’s Petition, but they join the ISO in asking that the Commission defer action on the LGIA/LGIP compliance filings.

## I. BACKGROUND

In addressing the issue of variations from the standardized *pro forma* interconnection procedures and agreement set forth in Order Nos. 2003<sup>2</sup> and 2003-A,<sup>3</sup> the Commission indicated that “non-independent Transmission Providers” would be permitted to propose deviations from the Commission’s *pro-forma* LGIP and LGIA only if the deviations were in response to established regional reliability standards or were “consistent with or superior to” the *pro forma* provisions. In contrast, the Commission stated that it would allow regional transmission organizations (“RTOs”) and independent system operators “more flexibility to customize an LGIP and LGIA to meet their regional needs,” in regards to both terms and conditions, and pricing policies. The Commission recognized, among other things, that the *pro forma* LGIP and LGIA were not drafted to take into account that, in an ISO, the transmission owner and transmission provider will be two separate entities, and thus those procedures and agreements would not accurately reflect the rights and responsibilities of the various parties. RTOs and

---

<sup>2</sup> Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, Stats. & Regs. ¶ 31,146, 68 Fed. Reg. 49,846 (August 19, 2003) (“Order No. 2003”).

<sup>3</sup> Order on Rehearing, 106 FERC ¶ 61,220 (2004) (“Order No. 2003-A”).

independent system operators were therefore permitted to submit LGIP and LGIA terms and conditions that meet an “independent entity variation” standard that is more flexible than the “consistent with or superior to” and regional reliability standards.

In response to Order No. 2003, the ISO filed its proposed LGIP on January 20, 2004, and the ISO and PTOs jointly filed their proposed LGIA on February 9, 2004. Pursuant to Order No. 2003-A, the ISO filed a compliance LGIP and the ISO and PTOs jointly filed a compliance LGIA on April 26, 2004. In those filings, the ISO and PTOs proposed a number of modifications to the Commission’s *pro forma* LGIP and LGIA based on the “independent entity variation” standard.<sup>4</sup> By order issued July 30, 2004, in the above-captioned dockets, 108 FERC ¶ 61,104 (“July 30 Order”), the Commission summarily rejected the LGIP and LGIA filings made by the ISO and PTOs under Order Nos. 2003 and 2003-A, based on a finding that the ISO did not qualify for the “independent entity variation” standard, and citing its earlier July 2002 “Order Concerning Governance,” 100 FERC ¶ 61,059 (2002), *vacated sub nom. California ISO Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004) (“Governance Order”).<sup>5</sup> The Commission ordered the ISO to submit a compliance filing adopting the Commission’s *pro forma* LGIP and LGIA, with any proposed variations justified under either the “consistent with or superior to” or regional reliability standards.

Pursuant to the July 30 Order, on January 5, 2005, the ISO filed a compliance LGIP, and the ISO and PTOs jointly filed a compliance LGIA. Therein, the ISO and PTOs proposed a number of modifications to the standardized LGIP and LGIA, and

---

<sup>4</sup> Additionally, the ISO and PTOs explained that many of their proposed variations also satisfied the “consistent with or superior to” standard.

<sup>5</sup> The ISO and PTOs sought rehearing of this decision. Those rehearing requests are still pending.

explained why those variations were appropriate pursuant to the “consistent with or superior to” standard. On February 18, 2005, the ISO and PTOs filed a compliance LGIP and LGIA in order to account for the changes made by the Commission to its *pro forma* documents in the order on rehearing of Order No. 2003-A.<sup>6</sup>

Thereafter, on February 25, 2005, the Commission issued a deficiency letter pursuant to its regulations at 18 C.F.R. § 375.307(n)(2), asking the ISO to provide further information and explanation with respect to four issues connected with the compliance filings. On April 5, 2005, the ISO submitted its response to the deficiency letter. The matter is now pending before the Commission.

## **II. REQUEST FOR DEFERRAL OF ACTION**

In the ISO’s Petition, filed on the same date as the present Motion, the ISO has requested that the Commission find that changes to the selection process for the ISO Board of Governors (“Board”) recently adopted by the Board results in an ISO governance structure that is acceptable to the Commission. In the Governance Order, the Commission concluded that the ISO was not in compliance with certain requirements pertaining to governance. It was this order that the Commission relied upon in reaching its finding in the July 30 Order that the LGIP and LGIA filings were not entitled to review under the “independent entity variation” standard. In the Petition, the ISO explains that the recently adopted changes to the Board selection process address the concerns raised by the Commission in the Governance Order and are consistent

---

<sup>6</sup> “Order on Rehearing and Directing Compliance,” 109 FERC ¶ 61,287 (2004) (“Order No. 2003-B”). In the February 18 filings made pursuant to this order, the ISO and PTOs requested that the Commission consolidate those filings with the compliance filings made on January 5, 2005 in accordance with the July 30 Order.

with the intent of such order. The Board selection process adopted by the Board includes many of the features prescribed in the Governance Order.

The ISO and PTOs respectfully request that the Commission defer a decision on the LGIP and LGIA compliance filings until such time as the Commission issues an order on the ISO's Petition. Pursuant to the reasoning expressed in the July 30 Order, it is the ISO's and PTOs' hope that if the Commission were to accept the ISO's Petition, then the LGIP and LGIA compliance filings would be entitled to review under the "independent entity variation" standard. The ISO and PTOs are confident that their proposed modifications to the Commission's standardized LGIP and LGIA are "consistent with or superior to" those *pro forma* documents, for the reasons set forth in their compliance filings. Nevertheless, as the Commission explained in Order No. 2003, the "independent entity" standard is more permissive than the "consistent with or superior to" standard, in that independent system operators and RTOs have "greater flexibility to customize [their] interconnection procedures and agreements to fit regional needs." Order No. 2003 at P 827. Thus, the ISO and PTOs recognize that the Commission's evaluation of the LGIP and LGIA compliance filings may differ based on the standard of review that the Commission applies to those filings.


Deferral is appropriate because, absent a postponement, if the Commission were to review the LGIP and LGIA compliance filings under the "consistent with or superior to" standard (rather than the more flexible "independent entity" variation), and then later issued the requested Declaratory Order, generators and the transmission providers in California would face a dilemma. Specifically, if the Commission's orders on the LGIA and LGIP compliance filings differed based on the standard applied, any interconnection

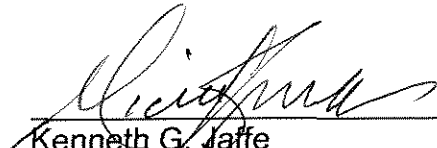
arrangements consummated in the interim period would be governed by what might become a superseded set of agreements and procedures. The more orderly way to proceed would be for the Commission to postpone action on the compliance filings until after the Commission rules on the ISO's Petition. In the meantime, the California PTOs can continue to use their existing forms of agreement and procedures for new generator interconnection requests, as the Commission has previously ordered. (See "Order Granting Extension of Effective Date," 110 FERC ¶ 61,004 at P 3 (January 5, 2005); "Order Granting Extension of Time and Providing Clarification," 108 FERC ¶ 61,315 at P 4 (September 28, 2004)).

### **III. CONCLUSION**


For these reasons, the ISO and PTOs respectfully request that the Commission defer acting on the January 5, 2005 and February 18, 2005 LGIP and LGIA compliance filings until such time as the Commission issues an order on the ISO's Petition for Declaratory Order concerning the ISO's Board selection process.

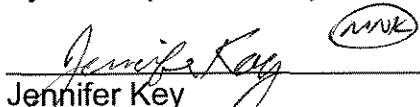
Respectfully submitted,

  
Charles F. Robinson  
General Counsel  
Gene L. Waas  
Regulatory Counsel  
The California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630

  
Kenneth G. Jaffe  
Michael Kunselman  
Swidler Berlin, LLP  
3000 K Street, NW – Suite 300  
Washington, DC 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7643

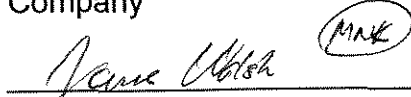
Counsel for the California Independent  
System Operator Corporation


  
Michael D. Mackness  
Ellen A. Berman  
2244 Walnut Grove Avenue  
Rosemead, California 91770  
Tel: (626) 302-3623  
Fax: (626) 302-1935

  
Jennifer Key  
Stephoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
Tel: (202) 429-6746  
Fax: (202) 261-7531

Counsel for Southern California Edison  
Company

Counsel for Southern California Edison  
Company

  
James F. Walsh  
101 Ash Street, HQ 13  
San Diego, CA 92101-3017  
Tel: (619) 699-5022  
Fax: (619) 699-5027

  
Joshua Bar-Lev  
Frank R. Lindh  
77 Beale Street, B30A  
San Francisco, CA 94105  
Tel: (415) 973-2776

Counsel for San Diego Gas & Electric  
Company

Counsel for Pacific Gas and Electric  
Company

Dated: May 13, 2005



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Folsom, CA, on this 13<sup>th</sup> day of May, 2005.



A handwritten signature in cursive script, reading "Gene L. Waas". To the right of the signature, the initials "GWL" are circled in a hand-drawn oval.

---

Gene L. Waas