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

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| **Williams Energy Marketing & Trading Company** | **)** **)** | **Docket No. ER02-91-000** |

**JOINT RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION AND SOUTHERN CALIFORNIA EDISON COMPANY TO THE ANSWER OF WILLIAMS ENERGY MARKETING & TRADING COMPANY**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.213, the California Independent System Operator Corporation ("ISO") and Southern California Edison Company ("Edison") jointly respond to the answer filed by Williams Energy Marketing & Trading Company ("Williams") in the above-captioned proceeding.[1]

Edison and the ISO submit this response to keep the Commission fully and accurately appraised of the developments in this matter, and to assure that the Commission has all of the necessary information to render its decision. Specifically, to date – months after its initial filing – Williams has not provided complete discovery responses to the ISO and Edison, has not complied with provisions of its contract with the ISO regarding discovery, and has sought to include costs in its Schedule F that are not allowed under its RMR Agreement. The parties have engaged in extensive discussions regarding obtaining additional discovery from

[1] Although the ISO and Edison realize that the Commission's regulations generally prohibit answers to responsive pleadings, the ISO and Edison believe that a good cause exists to allow an answer in this case because the present reply is necessary to develop a complete and accurate record. *See Buckeye Pipe Line Co.*, 45 FERC ¶ 61,046 (1998) (allowing an answer that helped explain issues

Williams. Edison and the ISO, therefore, request that the Commission not rule on any of the pending motions, until January 25, 2002 to enable the parties to try and reach an agreement in this case. If no joint motion on further proceedings is filed by January 25, 2002, then Edison and the ISO reiterate their request that the Commission reject Williams filing, or in the alternative, protest the filing as set forth in the joint protest filed on December 17, 2002.

## I. BACKGROUND

On October 12, 2001, Williams submitted to the ISO and FERC[2] an informational rate filing ("Schedule F filing") proposing rate revisions under its Reliability Must-Run ("RMR") Service Agreements.[3] The filing was made in accordance with the terms of a settlement agreement approved by the Commission[4] under which each RMR Owner is required to adjust rates annually, beginning with calendar year 2002, using the rate formula set forth in Schedule F of the RMR Agreement. Schedule F establishes the procedures and methodology for determining the Annual Fixed Revenue Requirements ("AFRR") and Variable Operating & Maintenance ("O&M") Rates for facilities designated for must-run service.

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important to the case); *El Paso Natural Gas Co.*, 79 FERC ¶ 61,079 (1977) (allowing an answer in order to achieve a complete record).

[2] Schedule F, Article I, Part B of the RMR Agreement requires the Owner to submit the Information Package to the Commission to provide Staff and affected parties the opportunity to review the proposed rates and charges and the supporting materials involved in the calculation of those rates and charges.

[3] Because the generating units covered by these agreements must operate at certain times for the reliability of the transmission grid, they are referred to as "reliability must-run" or "RMR" units and the agreements covering them are referred to as "RMR Agreements." Other capitalized terms that are not defined in this filing have the same meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[4] *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999).

Under the RMR Agreement, Williams is required to provide specific information for each of its RMR facilities. Williams submitted its proposed rate increase along with supporting materials for its two designated RMR facilities. Williams' filing was intended to provide updated cost information used in determining the AFRR and the Variable O&M Rates to be effective January 1, 2002. However, the ISO and Edison found that the information provided by Williams for each of these facilities did not comply with the requirements of Schedule F, was incomplete and lacked sufficient detail to analyze the proposed rate increase. On November 2, 2001, the ISO and Edison filed separate motions to reject the filing and suspend any further proceedings until and unless Williams submitted adequate information in accordance with the requirements of Schedule F. In the alternative, the ISO and Edison protested the filing and sought a Commission order requiring Williams to submit additional information and the extension of discovery and protest dates to correspond with their discovery rights under Schedule F. On November 19, 2001, Williams submitted an answer claiming that its Schedule F filing was sufficient since the filing merely "mark[s] the starting point for the conduct of discovery to test the accuracy of the calculations presented by the Company."[5] (November 19 Answer). The ISO and Edison filed a joint response to Williams' November 19 Answer disagreeing with Williams that the discovery process is a substitute for a complete Schedule F filing and re-emphasizing that the ISO and Edison had not obtained any discovery from Williams. On December 17, 2001, the ISO and Edison renewed their motion to reject Williams' Schedule F filing since Williams – in direct violation of Schedule F -- had still not provided any discovery in this matter. On January 2, 2002, Williams

[5] Answer at 6.

filed a response to the renewed motion claiming that the motion was moot because Williams had now submitted responses to the data requests ("January 2 Answer").

## II. RESPONSE

In its November 19 Answer, Williams noted that it "does not seek to delay the review and evaluation of the Schedule F Informational Filing and the Company is committed to responding to discovery requests and to resolving any discovery disputes in a timely and efficient manner."[6] Despite these claims, Williams has not only delayed the review process, it has effectively precluded any further discovery by not responding to the data requests in a timely manner. Williams submitted its Schedule F filing on October 12, 2001. The ISO submitted discovery requests to Williams on November 2 and November 5, 2001, via electronic transmission as well as first class mail. Likewise, Edison served discovery requests on Williams on November 9, 2001. Williams submitted responses to the ISO's and Edison's discovery requests on December 17 and December 21, respectively. Under the terms of Williams' RMR contract, the discovery period ended on November 26, 2001 – three weeks before Williams responded to any of the data requests. Thus Williams may have unilaterally abrogated any follow-up discovery.[7] Moreover, the belated responses provided by Williams still did not contain all of the information necessary for the ISO and Edison to fully assess Williams' proposed rate increase. As importantly, the information provided by Williams revealed that Williams seeks payments from the ISO that are in violation of its RMR Agreement and should be disallowed. Specifically:

[6] Answer at 8.

Williams has included in its Schedule F filing capital expense for Goodwill and Deferred Financing. These expenses were part of purchase costs of the RMR facilities operated by Williams. The RMR Agreement does not allow Williams to passthrough such costs to the ISO and the California ratepayers. (Williams is, of course, free to recover these costs through its market operations.) The inappropriately charged expenses amount to $24 million of Goodwill and $8.4 million of Deferred Financing cost for the Alamitos facility , and $6 million of Goodwill and $2.1 million of Deferred Financing cost for the Huntington Beach facility. Williams' attempt to pass-through costs not allowed under the RMR Agreement with the ISO should be summarily rejected by the Commission.

Equally inappropriate is Williams attempt to include in its filings capital costs that are subject to prior approval and recovery though a different mechanism in the RMR Agreement. Specifically, the RMR Agreement (See Article 7.4) sets forth a detailed scheme that requires Williams to obtain ISO approval for Capital Additions costs before such costs can be pass on to the ISO. Williams, however, has included in its filing capital costs not previously approved as part of the Capital Additions provisions of the RMR Agreement. Further, the RMR Agreement specifies that Capital Addition costs are to be recovered via surcharge payments under Schedule B of the Contract. Schedule F, Article II, Part C, Section 1 (A) specifically excludes such costs from the Formula to prevent double counting of costs. Accordingly, such costs should be disallowed.

[7] The parties have in the past attempted and are continuing to date to try and negotiate an extension agreement that would allow Edison and the ISO to obtain follow-up discovery. On January 18, 2002, Williams has sent a proposed extension agreement to the ISO. .

Further, Williams has stated t that a substantial amount of costs included in the O&M Expenses included in Schedule F are Emissions Costs. Information Williams provided showed specific emissions costs in an account called "WEM&T Emissions Costs" of $17.2 million for the Alamitos facility and $10.2 million for the Huntington Beach facility. Further emissions costs were indicated to be included in the remaining amount of the O&M Expenses for the two facilities, but the specific amounts were not identified. Williams included these costs in the Formula for the Steam Production O&M element which corresponds to (FERC Account numbers 500-515). Emission costs are not appropriately reported in FERC Account numbers 500-515. Further, generators located in the South Coast Air Quality Management District ("SCAQMD") may recover emissions costs through the variable emission cost payment in Schedule C of the RMR Agreement, and as such these costs constitute a Duplicative Charge precluded from recovery through the Schedule F process by Schedule F, Article II, Part C, Section 1 (A). Accordingly, these costs should be removed from rates calculated through the Schedule F process.

Williams has also failed to substantiate an over 300% (or $12.6 million) increase in its claimed A&G expense for Alamitos for the period July 1, 2000 through June 30, 2001. In addition, Williams has not substantiated an over 367% (or $4.8 million increase) in A&G expense for Huntington Beach for the period July 1, 2000 through June 30, 2001. Without more detailed data – data that has not been provided by Williams -- to support the increase in costs, these costs cannot be charged to Williams' RMR operations. Finally, Williams has requested a 44% or $12.4 million increase in O&M expense for Alamitos for the period July 1, 2000 through June 30, 2001. These costs, if justified, may indicate that a major unit

overhaul was performed during the record period, which would indicate that the performance curves for the subject units should be updated, and any extraordinary costs should be amortized. Schedule F, Article II, Part C, Section 1 (G) provides that "Extraordinary Costs…shall be subject to amortization over a reasonable period of time." The data provided by Williams, however, has neither clearly substantiated the requested increase nor indicated whether a major unit overhaul has been performed. Moreover, the bottom line totals Williams provided for O&M expense for comparison purposes for two prior periods did not provide the requested breakdown by FERC accounts making further comparisons of the data impossible.

In short, even the incomplete information provided by Williams to date suggests that the Williams' filing does not comply with the terms of its RMR Agreement and that the increase sought by Williams is unjust and unreasonable. Given the length of time Williams has had to provide complete discovery in this case, and since Williams' delays have impacted Edison's and the ISO's contractual right to conduct follow-up discovery, the Commission should reject Williams' Schedule F filing, unless the parties can agree on further proceedings and file a joint motion with the Commission to that effect, by January 25, 2002. In the alternative, the Commission should suspend Williams' rates, set a refund date of January 1, 2002, and set this case for hearing to provide the parties with a fair and adequate opportunity to obtain additional discovery, and to assure that any established Williams' rates are just and reasonable.

## II. CONCLUSION

For the foregoing reasons, the ISO and Edison respectfully (1) that the Commission take no action on this matter until after January 25, 200; and (2) request

that, if no joint motion on further proceedings is filed by the parties on or before January 25, 2002, the Commission reject Williams' October 12 filing. In the alternative, if the Commission declines to reject Williams' filing, the ISO and Edison respectfully request that the Commission initiate an evidentiary hearing, provide for further discovery, suspend Williams' proposed rates and set a refund date of January 1, 2002 , consistent with the outcome of the hearing.

Respectfully submitted,

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Counsel for Southern California Edison Company

Dated: January 18, 2002

## 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 this proceeding.

Dated at Folsom, CA on this 18th of January 2002.

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Jeanne M. Solé
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CALIFORNIA ISO

California Independent
System Operator

January 18, 2002

Mr. C.B. Spencer
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Williams Energy Marketing & Trading Company**
**Docket No. ER02-91-000**

Dear Mr. Spencer:

Enclosed please find an electronic filing of the Joint Response of the California Independent System Operator Corporation and Southern California Edison Company in the above-captioned proceeding. Thank you for your attention to this filing.

Respectfully submitted,

Jeanne M. Solé
Counsel for the California Independent System Operator Corporation