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

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| California Independent System Operator Corporation | ) ) | Docket No. ER08-585-002 |

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO THE MOTION TO INTERVENE OUT OF TIME AND COMMENTS OF THE FINANCIAL INSTITUTIONS ENERGY GROUP**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2009), the California Independent System Operator Corporation ("ISO") hereby submits its answer to the motion to intervene out of time and comments submitted by the Financial Institutions Energy Group ("FIEG") on June 16, 2009 in this proceeding. Similarly to the Western Power Trading Forum ("WPTF"), FIEG seeks to intervene in this proceeding after over a year and two Commission orders.[1] It further seeks leave to submit untimely "comments," in substance almost identical to WPTF's protest, to the ISO's March 31, 2009 compliance filing, which adopted certain tariff language proposed by Northern California Power Agency ("NCPA").[2]

Like WPTF, FIEG does not in fact protest that the ISO failed to comply with the Commission's order. Rather, it challenges the propriety of the tariff language directed by the Commission. A late-filed intervention and comments are not the appropriate vehicles for such contentions. For this reason and the others set forth below, Commission should deny FIEG's untimely request for intervention and comments. However, notwithstanding the fact that both the

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[1] The WPTF late-filed motion for intervention and protest was filed on April 21, 2009.

[2] Capitalized terms not otherwise defined herein have the meaning set forth in ISO Tariff Appendix A "Master Definition Supplement."

FIEG's and WPTF's motions should be denied, the ISO recognizes that issues involving the application of the Grid Management Charge ("GMC") to Inter-Scheduling Coordinator Trades ("Inter-SC Trades") should be revisited. The ISO's proposal for addressing these issues is also described below.

## I. BACKGROUND

The subject of FIEG's motion and comments is the application of the Market Usage-Forward Energy charge to net sales of Energy in the ISO's Day Ahead Market, based on the absolute value of these Energy sales once physical and financial Inter-SC Trades have been netted against Energy in the Day Ahead Market. From a procedural standpoint, both the FIEG and WPTF pleadings raise issues that are beyond the scope of the ISO's March 31, 2009 compliance filing in this proceeding.

As the Commission is aware, the December 19, 2008 Order Conditionally Accepting Tariff Revisions ("December 19 Order") approved all of the proposed GMC MRTU changes with the exception of two issues raised by NCPA.[3] One of these items involved an inadvertent omission of language regarding Load-Following Metered Subsystems from tariff section 11.22.5.7. The other raised a question whether the calculation of Energy in the Day Ahead Market subject to the Market Usage-Forward Energy Charge would be offset (1) solely by "physical" Inter-SC Trades (*i.e*. trades at PNodes, which are subject to physical validations based on Energy Bids or Self-Schedules from a resource at the location of the PNode), which seemed to be the intent of the algorithm set forth in the Settlements BPM for Charge Code 4537, or (2) by both physical and financial

[3] 125 FERC ¶ 61,338 (2008).

Inter-SC Trades (i.e. trades at the Default Load Aggregation Points or Trading Hubs, which are not subject to physical validation). In its January 21, 2009 compliance filing, the ISO corrected the section 11.22.5.7 tariff language omission and submitted revised tariff language clarifying that the forward Energy offset was intended to include only physical Inter-SC Trades. The ISO also noted that, after MRTU was implemented, the ISO would consider addressing with its stakeholders alternative cost recovery methods for both physical and financial Inter-SC Trades.

In comments filed on February 11, 2009, in response to the compliance filing, NCPA again raised concerns about the exclusion of financial Inter-SC Trades in the Energy charge calculation. Upon further consideration of these comments, the ISO, in its February 26, 2009 answer, agreed that both "financial" and "physical" trades should be used in the allocation formula to offset Energy charges in the Day Ahead Market. The ISO reasoned that both types of Inter-SC Trades are, in fact, financial. The purpose of both types of trades is to allow for contractual delivery of bilateral energy contracts at agreed-upon locations and to "reverse" the ISO charges from one party to the counter party. Inter-SC Trades are, thus, a purely financial service. The only purpose for the physical validation requirement for Inter-SC Trades at PNodes was to address problems associated with "seller's choice" contracts.[4] Accordingly, the ISO, in its February 26, 2009 answer, agreed with NCPA that the choice of location for an Inter-SC Trade should not dictate whether the trade should be used as an offset to an energy or demand schedule.

[4] *See Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 62,384 (2005).

On March 30, 2009, the Commission directed the ISO to submit a compliance filing with revised tariff language reflecting the position set forth in its February 26, 2009 answer,[5] and that filing was submitted on March 31, 2009. FIEG's and WPTF's requests to intervene out-of-time focus on this second compliance filing, but do not contest, or even address, the reason that the tariff language was filed.

## II. ARGUMENT

### A. FIEG's Motion and Comments are Untimely and Procedurally Inappropriate and Should be Rejected.

FIEG does not question whether the ISO's March 31, 2009, tariff filing complies with the directives of the March 30 Order. Furthermore, FIEG provides no valid reason as to why it is now seeking intervention in a proceeding that has spanned over one and a half years and two Commission orders. Like WPTF, FIEG did not participate in the ISO's lengthy stakeholder process that addressed the GMC under MRTU rate design and cost causation principles. At the very least, FIEG should have been put on notice by NCPA's comments filed in *March 2008* that the mechanics of Forward Energy charges in the Day Ahead Market, as applied to Inter-SC Trades, were at issue. Given the ample opportunities that FIEG had to seek clarification about how these charges would be applied, any assertions that bill impacts could not be anticipated until June 2009 are simply without merit.

Indeed, FIEG clearly challenges the substance of the Forward Energy Charge as it is applied to net Inter-SC Trades in the Day Ahead Market, claiming

5 Letter Order, 126 FERC ¶ 61,289 (2009) ("March 30 Order").

that "a charge of $0.43/MWh on Inter-SC Trades cannot be justified on the basis of cost-causation," that it is an "incorrect application," and that it is "one that is inconsistent with the stated assumptions in deriving the rate."[6] However, as the ISO explained in its Answer to WPTF, the derivation and application of the charge to Inter-SC Trades was known at the time NCPA filed comments in this proceeding and during the stakeholder process. The algorithm set forth in the Settlements Business Practice Manual Configuration Guide for Charge Code 4537 (Market Usage-Forward Energy) contemplated that net Energy from physical Inter-SC Trades would be netted against Energy in the Day Ahead Market.[7] Based on the information presented by NCPA and the lack of input about this issue from any other stakeholders,[8] the ISO re-evaluated the Market Usage-Forward Energy charge calculation and concluded that the ISO should not treat the financial Inter-SC Trades differently than physical Inter-SC Trades. The ISO therefore proposed that financial trades should be included in the netting of Inter-SC Trades against forward Energy and filed tariff language on March 31, 2009 that reflected this determination.

Accordingly, although FIEG may object to the Market Usage-Forward Energy Charge algorithm, which applies the rate to the net value (whether

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6 FIEG Motion at 6-7 (unmarked).

7 In its March 12, 2008 Motion for Intervention at page 5 NCPA cited Version 1.3 of the Settlements BPM, GMC Configuration Guide. According to the ISO settlements procedures, the "physical" Inter-SC Trades for Energy are first validated against Day Ahead Schedule results. If the trade exceeds the results, the Inter-SC Trade is reduced. The Inter-SC Trade is then validated against meter data. To the extent the trade was not fully supported by the generating resource, the difference is converted to a financial Inter-SC Trade.

8 The application of Market Usage charges to Inter-SC Trades was not specifically addressed during the ISO's GMC Under MRTU stakeholder process that was initiated in 2006. Neither NCPA, WPTF nor FIEG participated in that process. See http://www.caiso.com/1872/18728fb96b370.html

positive or negative) of Inter-SC Trades in the Day Ahead Market, it cannot accurately state that the ISO is calculating the charge “incorrectly” or “inconsistently.” The ISO is calculating the charge in accordance with the March 31, 2009 tariff filing, and FIEG has not provided a valid basis for seeking intervention at this point in the proceeding. Furthermore, as noted in the ISO Answer to WPTF’s late-filed motion for intervention, FIEG members will not be prejudiced by such denial because they may use other services to settle bilateral energy transactions, such as the Inter-Continental Exchange and need not schedule Inter-SC Trades through the ISO.[9]

For these reasons and the other arguments set forth in the ISO answer to WPTF’s late-filed motion for intervention, FIEG’s motion should be denied.

### B. Although the Application of the Market Usage-Forward Energy Charge to the Net Value of Inter-SC Trades Is Reasonable and in Compliance with Tariff Requirements, the ISO Will Revisit the Issue with Its Stakeholders.

In both compliance filings and its answer to WPTF, the ISO described its intention to address the allocation of the Market Usage-Forward Energy Charge to Inter-SC Trades with its stakeholders at some point in the future. Now that the ISO’s new market has been in place for several months, the ISO is in a position to devote resources to a re-examination of this issue. Accordingly, the ISO intends to initiate a stakeholder process in late August that will provide FIEG and WPTF members with an opportunity to raise the concerns expressed in pleadings in this proceeding. Additionally, based on the data now available, the

[9] This information was provided at page 11 of WPTF’s motion for late-filed intervention and protest, where WPTF comments that the Inter-Continental Exchange transaction charges are on the order of $0.01/MWh.

ISO will implement a decrease in the Market Usage-Forward Energy Charge as soon as practicable. This adjustment will address FIEG's concern that the application of the Market Usage-Forward Energy Charge to the net value of Inter-SC Trades in the Day Ahead Market will cause an over-collection of the ISO's revenue requirement.

## III. CONCLUSION

For the reasons described above, the Commission should deny FIEG's untimely motion to intervene.

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Respectfully submitted,

*/s/ Michael E. Ward*

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July 2, 2009

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon the parties listed on the official service list in the 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 2nd day of July, 2009.

_*/s/ Michael E. Ward*____________

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