UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**Docket No. ER14-480-001**

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO COMMENTS AND PROTEST

The California Independent System Operator Corporation (ISO)[1] hereby files this answer to the comments and protest submitted in response to the ISO's April 21, 2014, compliance filing in this proceeding.[2] Pacific Gas and Electric Company (PG&E) and the California Department of Water Resources State Water Project (CDWR) both question whether the ISO's April 21 filing complies with the Commission's mandate that the ISO define a process for resettling charges and credits for resources that are ruled ineligible for PIRP Protective Measures after a dispute resolution procedure. SESCO Enterprises, LLC objects

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[1] The ISO is also sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the ISO tariff.

[2] The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. The ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer the protest filed in this proceeding. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in its decision-making process, and help to ensure a complete and accurate record in this case. *See, e.g., Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005). The ISO also requests, to the extent necessary, leave to file this answer out-of-time, or in the alternative, for an extension of time until May 30, 2014 to submit this answer in response to the protest and comments. The Memorial Day holiday fell during the time the answer ordinarily would have been prepared and key personnel whose input was required for the drafting of a complete answer to the issues raised were either unavailable or had limited availability. The ISO does not believe that this short extension represents an undue delay that will interfere with the Commission's consideration of this matter.

to the ISO's settling of internal convergence bids at the fifteen-minute, as opposed to the five-minute, price.

Neither the comments provided by PG&E nor CDWR provides a basis for rejecting the ISO's compliance filing. The dispute resolution procedures the ISO outlined in its compliance filing are appropriate and in compliance with the Commission's directives. SESCO's protest of the compliance filing is, in actuality, a late request for rehearing on an earlier Commission order approving changes to convergence bidding to coincide with the ISO's new fifteen-minute market, which the Commission must reject. The compliance filing did not address convergence bidding in any way. As such, SESCO's protest does not even allege a deficiency in the ISO compliance filing. Even if the Commission were to consider SESCO's out-of-time protest of the Commission's prior order, SESCO fails to identify any error on the part of the Commission in approving the ISO's new market design or on the part of the ISO in implementing its new market. Moreover, SESCO fails to raise any evidence suggesting the need for wholesale changes to the ISO's new market design, and carelessly proposes a settlement rule for convergence bids that would lead to exactly the same conditions that led to the initial removal of convergence bidding at the interties in 2011. The Commission must reject SESCO's request because granting their requested action runs the risk of unraveling the careful balance the ISO struck in proposing the reintroduction of the intertie convergence bidding.

I. ANSWER

A. Comments of PG&E and CDWR

Section 4.8.3.1.1.2 of the ISO tariff provides for transitional protective measures for participating intermittent resources that have a limited ability to curtail output in response to an ISO dispatch instruction due to contractual limitations. Section 4.8.3.1.1.2 also addresses what happens in cases where the resource owner and the contractual counterparty disagree as to whether the resource meets the eligibility requirements.

In its March 20, 2014, order regarding implementation of the ISO's new fifteen-minute market, the Commission found that section 4.8.3.1.1.2 did not adequately describe "a refund process for [variable energy resources] found to be ineligible for the Protective Measures"[3] and therefore directed the ISO to propose such a process in a compliance filing. Under the process the ISO proposed in its April 21 filing, the resettlement would not begin "unless the parties submit a joint statement in writing indicating that the parties agree that the PIRP Protective Measures settlement received during the term that the matter was in dispute should be unwound and resettled as if the PIRP Protective Measures were not received."

Both PG&E and CDWR question why such a joint statement is necessary if it is already determined that the resource was ineligible to receive PIRP Protective Measures. PG&E states that if "the determination has been made that the refund is required, it should be made regardless of whether the VER is

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[3] *California Indep. Sys. Operator Corp.* 146 FERC ¶ 61,204 (2014) (March 20 Order).

voluntarily willing to request"[4] the refund and that "the VER should not be given a de facto ability to veto the requirement that it provide refunds after it has been determined that such refunds are appropriate."[5] Similarly, CDWR states that resettlement "should be mandatory regardless of whether the parties to the dispute resolution process submit the statement"[6] because "it is not clear why [the losing] party would ever agree that the Protective Measures should be unwound."[7] CDWR additionally argues that the ISO tariff should also provide that the PIRP Protective Measures would not be unwound "if the administrative costs of that resettlement exceed the credit or refund to or from the VER."[8]

The requirement of a joint statement was meant to provide the parties flexibility in unwinding the protective measures based on their mutual agreement. Therefore, the parties may agree between themselves that the ineligibility for PIRP Protective Measures would only apply prospectively, and not require the unwinding of the previous settlement. For example, in some cases a unit receiving PIRP Protective Measures may actually receive greater payment from the ISO markets if it had not opted for PIRP Protective Measure than if it had, and *vice versa*. If that resource's eligibility for PIRP Protective Measures were disputed and it ultimately is determined not to qualify, then a mandatory resettlement rule would result in some resources making a payment back to the ISO that the ISO reallocates to the market through the unwinding of the prior

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4 PG&E comments, 2.

5 *Id.* at 3.

6 CDWR comments, 4.

7 *Id.* at 3.

8 *Id.* at 4.

settlement and in other instances it may require a payment to the resource upon losing protective measures. It is possible that the parties may agree that in order to avoid such resettlements and their attendant uncertainty, it is preferable not to unravel the prior settlements. Nothing in the Commission's March 20 order prohibited such flexibility.

The ISO does not believe the Commission's order required the ISO to make the resettlement automatic irrespective of the terms agreed to by the parties. Rather paragraph 79 of the March 20 order states:

> We disagree with CAISO that its proposed tariff revisions include a process for providing refunds of Protective Measure payments made to resources that are ultimately found through dispute resolution to be ineligible for the Protective Measures. Proposed tariff section 4.8.3.1.2.2 provides, 'Unless, the parties together request the CAISO to reverse any previously applied [participating intermittent resource program] Protective Measures, the CAISO will not undo any Settlement of the [participating intermittent resource program] Protective Measures.' We do not find this provision adequately addresses SoCal Edison's concern regarding a refund process for VERs found to be ineligible for the Protective Measures. We, therefore, direct CAISO to submit in a compliance filing within 30 days of the date of this order, revised tariff language setting forth a process for distribution of refunds if a VER, subject to the Protective Measures, is found ineligible following the dispute resolution process. The process should account for how eligibility for refunds will be determined, who would be eligible to receive a refund, and how and when refunds would be distributed.

The Commission ordered the ISO to propose a process for distribution of refunds if a resource is found to be ineligible following the dispute process. The ISO did exactly that in its April 21 compliance filing. The Commission did not direct the ISO to eliminate the option that if the parties agree no unwinding is necessary. Nevertheless, if the Commission now orders on further compliance

that the ISO should eliminate that option, the ISO is prepared to revise its tariff and make the resettlement automatic.

With respect to CDWR's comments that the ISO should include a provision that requires the parties to consider the cost of resettlement, the ISO submits that it would be difficult to quantify the ISO's costs of resettlement. This is because the ISO would conduct the resettlement through its existing settlement statement issuances and not through any special resettlement mechanisms. Any resettlement amount would be covered through the ISO's normal settlement processes and likely would be one of many line items covered on a settlement statement. The cost to the ISO of adding such resettlement amounts should therefore be minimal. The parties may consider the implications of the resettlement to themselves, including costs, when they are determining whether or not they require resettlement of past costs, which they can do even if the Commission does not explicitly order them to do so. Therefore there is no need for such a requirement. Moreover, if resettlement were to be automatic, as requested by CDWR, there is no need to consider administrative costs – because resettlement would be as requested by CDWR – automatic.

The Commission should accept the ISO's proposed language regarding the process for resettlement as filed.

B. Protest of SESCO Enterprises, LLC

SESCO Enterprises, LLC protests the ISO's April 21 filing on the basis that since implementation of the ISO's new fifteen-minute market on May 1, 2014, there have been significant unintended consequences brought about as a

result of the ISO now settling internal convergence bids at the fifteen-minute, rather than the five-minute, price. SESCO argues that the ISO "has essentially isolated convergence bids away from generation and load, thus eliminating price discovery for generation and load through convergence bidding."[9] According to SESCO, price discovery is harmed because generation and load settle at the five-minute price, while convergence bids now settle at the fifteen-minute price. SESCO states: "These two prices are derived from two separate markets, based on two separate models. CAISO has essentially isolated convergence bidding into one market, while placing load and generation into a completely separate market. This market structure defeats the very purpose of convergence bidding, which aims to converge prices between load and generation, not between convergence bids themselves."[10] Pending comprehensive review of the ISO's new market, SESCO requests that the ISO be ordered "to revert to settling internal convergence bids against the 5-minute real-time prices, pending a more comprehensive review of the realities of market operations since May 1st."[11]

In no way does SESCO's protest speak to the question of whether the ISO did or did not comply with the Commission's March 20 order. The ISO's April 21 filing did not even broach the general topic of convergence bidding. SESCO's protest is completely unrelated to the subject of the ISO's compliance filing in the above-referenced proceeding, which is the only issue remaining in this

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9 SESCO protest, 3.

10 *Id.* at 5.

11 *Id.* at 8.

proceeding. Instead, SESCO's protest is an out-of-time collateral attack on the Commission's March 20 order and, as such, should be rejected.

Part of the ISO market reforms approved in the March 20 order included reinstatement of convergence bidding on the interties. As the ISO explained in its initial tariff filing, the need for suspending intertie convergence bidding was driven, in part, by the fact that intertie convergence bids and internal convergence bids were settled at different prices.[12] A key factor the ISO cited in support of its request to re-implement intertie convergence bidding was the proposal to now settle both types of convergence bids at the fifteen-minute price.[13] The ISO explained that settling:

> convergence bids at both internal nodes and the interties . . . at the average of the four fifteen-minute market prices for the hour . . . will fully address the first and more significant issue that required convergence bidding on the interties to be discontinued: the existence of a separate settlement structure in real-time that settled intertie convergence bids based on the hour-ahead scheduling process but settled internal node convergence bids based on the five-minute real-time dispatch price. This made it possible for market participants to profit by offsetting virtual supply bids on the interties and virtual demand bids at internal nodes . . . .[14]

In the context of the new market design, the ISO would have the same problem if it settled intertie convergence bids at the fifteen minute market price and internal convergence bids were settled at the five minute market price. Ordering the ISO to settle internal convergence bids at the five-minute price, therefore, essentially precludes the ISO from ever implementing intertie convergence bidding.

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12 *Cal. Indep. Sys. Operator Corp.*, Transmittal Letter at 9-14, FERC Docket Nos. ER14-480-000 (November 26, 2013).

13 *Id.* at 44-48.

14 *Id.* at 44-45.

In any case, through the March 20 order, the Commission granted the ISO's request to now settle internal convergence bids at the fifteen-minute price.[15] Per the Federal Power Act, any requests for rehearing of the Commission's decision were due on April 21, 2014, and SESCO did not file a request for rehearing by that date.[16] The Commission routinely rejects requests for rehearing that are filed outside the 30-day rehearing window.[17] Indeed, courts have found that the 30-day rehearing window established by the Federal Power Act "is as much a part of the jurisdictional threshold as the mandate to file for a rehearing."[18] Accordingly, the Commission here should reject SESCO's untimely request for rehearing.

Furthermore, even if SESCO had filed a request for rehearing by April 21, SESCO does not have standing in this case to request rehearing of the Commission's order having not intervened in this case previously. Under the Federal Power Act, only a party to a proceeding may seek rehearing.[19] SESCO only requested to become a party in the above-captioned proceedings through its May 12 protest. SESCO argues that it meets the standards for an out-of-time intervention.[20] Specifically, SESCO claims that there is good cause for granting it late intervention because the unintended consequences of FERC's approval of

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15 March 20 Order, at P 55.

16 16 USC § 825l(a) (establishing a requirement to seek rehearing of a Commission order within 30 days of issuance of the order).

17 *E.g., Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61111, P 16 (2013); *Eastern Hydroelectric Corp.*, 142 FERC ¶ 61055 (2013).

18 *Campbell v. FERC*, 770 F.2d 1180, 1183 (DC Cir. 1985).

19 16 USC § 825l(a) ("a *party* may apply for a rehearing within thirty days after the issuance of such order") (emphasis added).

20 18 C.F.R. § 385.214(d).

the ISO proposal were not apparent until after the new market design went into effect on May 1. The Commission has been clear that where late intervention is sought after the Commission issues an order, there is the potential for substantial prejudice to other parties and burden on the Commission.[21] In such cases "movants bear a higher burden to demonstrate good cause for the granting of such late intervention."[22] SESCO has not met its burden. SESCO has failed to allege that there were flaws in the ISO proposal that could not have been identified in advance of the March 20 order. As explained in more detail below, the limited instances of price divergence SESCO highlights are not in any way an inherent feature of the ISO's new approach to settling convergence bids.

In its protest SESCO seemingly acknowledges that its protest constitutes a collateral attack by "noting that if the Commission construes the instant protest as an out-of-time request for rehearing, then SESCO respectfully requests that this pleading be treated as a motion for reconsideration."[23] Assuming that the Commission were to accept SESCO's protest as a motion to reconsider the March 20 order, SESCO provides no meaningful basis for the Commission to reconsider its prior decision.

SESCO highlights a few select intervals during the first nine days of the new market's operation in which five-minute and fifteen-minute prices diverge. These limited examples provide no basis to conclude that the Commission's March 20 order was flawed. With any new market design there is an inevitable

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21 *E.g., NorthWestern Corp.*, 147 FERC ¶ 61049, P 13 (2014); *Broadwater Energy LLC Broadwater Pipeline LLC*, 124 FERC ¶ 61,225, PP 12-13 (2008).

22 *Broadwater Energy*, 124 FERC ¶ 61,225, at P 13.

23 SESCO protest, 3 n.6.

"shakeout" period in which the market participants and the market operator become familiar with the new market design. The ISO is working with market participants to address any unexpected market issues and through these efforts is already observing changes in market outcomes. Therefore, the market results during this time cannot be the basis of any conclusions about the validity of the market design, which is at the core of SESCO's protest.

More generally, the ISO does not believe that a protest of an ISO compliance filing is the proper forum to initiate a conversation about market performance. The ISO has several venues, including its weekly market issues calls and its Market Planning and Performance Forum,[24] in which market participants can seek feedback on market result questions. Through these regularly scheduled meetings, the ISO has been providing market participants with significant insights into the drivers of market results in the initial days of the new market and the issues the ISO is working on to refine the market solutions.

Beyond these general procedural and logistic concerns, the ISO is also concerned that SESCO's complaints are driven by several key misunderstandings regarding convergence bidding and the ISO markets generally. For example, SESCO suggests that generation and load are not settled at the fifteen-minute price. This is not correct. As with convergence bids, generation and load *are* settled at the fifteen-minute price. Generation and load are only settled at the five-minute price to the extent there are deviations between the five-minute and fifteen-minute schedules. It is also incorrect to say

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[24] More information on the Market Planning and Performance Forum is available at: http://www.caiso.com/informed/Pages/ReleasePlanning/Default.aspx.

that the FMM and RTD are based on different market models. The ISO utilizes the same market model between those two markets. Actual conditions, of course, can change between the two markets. Congestion could be present in the fifteen-minute market but not be present in the five-minute market, or vice versa. The result can be different prices between the two markets. That difference, however, is not the result of different market models. Instead, it is the result of changed market conditions.

II. CONCLUSION

For the reasons provided herein, the Commission should accept the ISO's April 21, 2014, compliance filing as filed.

Respectfully submitted,

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Dated: May 30, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced proceedings, 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 Folsom, California this 30th day of May 2014.

/s/ Anna Pascuzzo

Anna Pascuzzo