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January 19, 2001

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

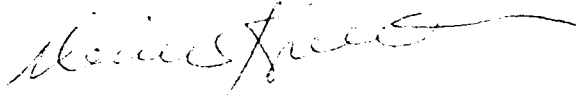
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FEDERAL ENERGY
REGULATORY COMMISSION

**Re: California Independent System Operator Corporation
Docket Nos. ER98-997-000 and ER98-1309-000**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the California Independent System Operator Corporation's Motion to Compel the Cogeneration Association of California to Respond to Data Requests. Two copies have been provided to the Presiding Judge. Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,



Michael Kunselman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington D.C. 20007

Counsel for the California
Independent System Operator Corporation

Enclosures

cc: Service List

The Honorable Jacob Leventhal

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

California Independent System Operator Corporation)	Docket Nos. ER98-997-000 ER98-1309-000
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**MOTION OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO COMPEL THE COGENERATION ASSOCIATION OF CALIFORNIA
TO RESPOND TO DATA REQUESTS**

Pursuant to Rules 212 and 410 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.212 and § 385.410, the California Independent System Operator Corporation ("ISO") hereby moves to compel the Cogeneration Association of California ("CAC") to answer certain data requests to which CAC has objected.

I. FACTUAL BACKGROUND

This proceeding involves the ISO's Participating Generator Agreements ("PGAs") with three Qualified Facilities ("QFs"): Midway Sunset Cogeneration Company ("Midway Sunset"), Texaco Exploration and Production Inc. ("Texaco"),¹ both of which are members of CAC, and the ARCO CQC Kiln ("ARCO").² These dockets were originally a part of consolidated proceedings concerning the ISO's pro forma PGAs, but were severed on November 19, 1998.

¹ The Texaco facility at issue here is identified in the PGA and has been referred to in various pleadings and testimony in this proceeding as the Texaco North Midway Cogeneration Project.

² PGAs facilitate the relationship between the ISO and Generating Units interconnected with the ISO Controlled Grid.

On October 3, 2000, CAC and ARCO submitted the Prepared Direct Testimony of James A. Ross. In that testimony, Mr. Ross argued that the ISO's current pro forma PGA, would, if applied to QFs, discourage the development, interconnection and operation of QFs in California. Mr. Ross based this conclusion on his assessment of increased costs to QFs associated with the ISO's requirements for QF metering, scheduling, and ancillary services, as well as the assessment of transmission and grid management charges, based on behind-the-meter and over-the-fence Loads. To support his conclusions, Mr. Ross included in his testimony several examples of hypothetical QF facilities operating under the ISO's requirements, using certain assumptions for megawatts of energy generated, on-site load requirements, and revenues from market sales of excess capacity.

On December 1, 2000, the ISO served CAC via e-mail with its first set of data requests, with hard copy following by mail. (Attached as Exhibit A). On December 7, 2000, CAC served the ISO via e-mail with a letter (Attached as Exhibit B) that included objections to the following data requests on the grounds that they are "not relevant to this proceeding, seek commercially sensitive information, and seek information better directed to the [Scheduling Coordinator]":

SO-CAC-20 Please state (1) the megawatthours of energy sold to the California PX by Midway during each of calendar years 1999 and 2000; (2) the variable costs of producing such energy; (3) the revenue received by Midway's Scheduling Coordinators for such energy; and (4) the revenue received by Midway from its Scheduling Coordinators for such energy.

ISO-CAC-23 Please state (1) the megawatthours of energy sold to the California PX by Texaco during each of calendar years 1999 and 2000; (2) the variable costs of producing such energy; (3) the revenue received by Texaco's Scheduling Coordinators for such energy; and (4) the revenue received by Texaco from its Scheduling Coordinators for such energy.

ISO-CAC-26 Please state (1) the megawatthours of energy sold to the California PX by ARCO during each of calendar years 1999 and 2000; (2) the variable costs of producing such energy; (3) the revenue received by ARCO's Scheduling Coordinators for such energy; and (4) the revenue received by ARCO from its Scheduling Coordinators for such energy.

On December 8, 2000, CAC served the ISO, via e-mail, hard copy following by mail, with a corrected letter (Attached as Exhibit C) that included an additional objection to the following request on the ground that it is "not relevant or necessary and seeks commercially sensitive information":

ISO-CAC-13 For each of the charges identified in lines 1 through 8 of Exhibit CAC-5, please state the actual charges incurred in each of calendar years 1999 and 2000 by the following:

- (a) Midway Sunset;
- (b) Texaco; and
- (c) ARCO

As described in the attached Declaration of Michael E. Ward (Exhibit D), counsel prepared a motion to compel but, in an effort to resolve this dispute, contacted CAC and proposed seeking a protective order that would address CAC's concerns, allowing CAC to produce information responsive to these requests without compromising the confidentiality of that information. After discussions between counsel for the ISO and CAC, it was agreed that CAC would waive objections to the timeliness of a Motion to Compel while counsel for CAC determined whether her clients would agree to such disclosure. Subsequently, counsel for CAC agreed to provide data subject to the negotiation of a mutually acceptable protective order. It was ISO counsel's good faith understanding that an agreement had been reached such that the CAC would provide the data requested in ISO-CAC-13, -20, -23 and -26, subject to the same condition. However, the ISO has now been informed that counsel for CAC interpreted the

agreement as only pertaining to ISO-CAC-13. In fact, counsel for CAC sent confirmatory e-mail messages that specifically identified only ISO-CAC-13 as subject to an agreement. However, counsel for the ISO, based on his misunderstanding of CAC's intent, did not notice this limitation. It was not until last week when the two parties engaged in discussions relating to other data requests that counsel for the ISO recognized the existence of this misunderstanding.

Subsequent to their initial agreement in December (which ISO counsel now acknowledges to have been based in part on a misunderstanding), counsel for the ISO and CAC negotiated a mutually acceptable protective order. During these negotiations, the ISO continued to allow CAC additional time to prepare its responses. The ISO also expressed its willingness to support a protective order that was more restrictive than the Commission's Model Protective Order, and provided counsel for CAC with an example of such an agreement. Agreement has been reached concerning a protective order covering the response to ISO-CAC-13 that the ISO and CAC will ask the Presiding Judge to adopt.

In its letter of December 8, 2000, CAC also specifically requested that the ISO clarify the meaning of the following requests:

ISO-CAC-22 Of each amount for line 6 provided in response to ISO-CAC-20, please state the amount that Midway's Scheduling Coordinators billed or would have billed to Midway.

ISO-CAC-25 Of each amount for line 6 provided in response to ISO-CAC-23, please state the amount that Texaco's Scheduling Coordinators billed or would have billed to Texaco.

ISO-CAC-28 Of each amount for line 6 provided in response to ISO-CAC-26, please state the amount that ARCO's Scheduling Coordinators billed or would have billed to ARCO.

The ISO responded by submitting reformulated data requests to CAC by e-mail dated January 4, 2001. Hard copy followed. (Attached as Exhibit E). CAC objected to those reformulated requests by e-mail on January 11, 2001. Hard copy followed. (Attached as Exhibit F). In its letter, CAC asserted that because the ISO had made “no attempt to meet and confer with regard to these objections,” that the ISO, consistent with FERC rules, had lost its opportunity to further pursue responses to ISO-CAC-22, -25 and -28.” CAC also objected to these requests on the grounds that they sought commercially sensitive, proprietary, and otherwise confidential information. In response to CAC's January 11, 2001, objections, the ISO responded by e-mail dated January 12, 2001 (Attached as Exhibit G).

II. DISCUSSION

A. CAC's Objections Regarding Relevance are Meritless

CAC's argument that the information sought in requests CAC-20, -23 and -26 is irrelevant to this proceeding is without merit. CAC has contended, in its testimony submitted in this proceeding, that the ISO's current PGA configuration would result in the allocation of excessive additional costs to QFs. In his testimony, Mr. James A. Ross, relying on data in Exhibits CAC-5 and CAC-6, states, “End-use customers employing self-generation may be forced to isolate, where possible, the self-generation from the interconnected system . . . in order to avoid executing the PGA and the associated excessive charges proposed by the ISO.” (Exh. CAC-2 at 18:18-24.) Mr. Ross cites specific dollar amounts of costs and net revenues as the basis for his

position. The data presented in Exhibits CAC-5 and -6, however, are purely hypothetical.

The PGAs that the ISO filed in these dockets, which CAC and ARCO have protested, and which were severed and set for hearing are not PGAs for hypothetical facilities. They are PGAs for the Midway Sunset, Texaco, and ARCO facilities. Yet, CAC has failed to provide any analysis of the actual cost consequences to the three QFs that are the subject of this proceeding.

Through Mr. Ross's testimony, CAC has plainly put at issue the magnitude of the costs that a QF would incur under the pro forma PGA relative to the revenues it could expect to earn. The reasonableness of Mr. Ross's assertions regarding the impact of the ISO's policies on QFs is thus central to the issues in this proceeding, and it is entirely appropriate for the ISO to test the validity of those assertions by comparing Mr. Ross's assumptions regarding hypothetical QF projects with actual data on the various costs and revenues associated with the actual QF projects. Moreover, it is impossible to evaluate the impact of the ISO's policies on the specific QFs whose specific PGAs are the subject of this proceeding without data regarding those facilities' costs and revenues. It is difficult to imagine evidence that could be more relevant to the issues that CAC has raised in this proceeding than the actual costs and revenues of these facilities, which is the information requested by ISO-CAC-20, -23, and -26 and reformulated ISO-CAC-22, -25, and -28. CAC's objections concerning relevance are accordingly groundless.

B. CAC's Assertions of Commercial Sensitivity Provide No Basis for Withholding the Requested Data.

CAC's argument concerning commercially sensitive information fares no better than its argument concerning relevance. If CAC can demonstrate that the information is commercially sensitive, then at best it is entitled to a protective order under Rule 410(c) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.410(c).

The Commission has held that "once the party [seeking discovery] has demonstrated relevance, the objecting party has the burden of demonstrating that the request should be denied or limited under Rule 410(c)." See *All American Pipeline Company*, 70 FERC ¶ 61,210 (1995) at 61,658. In the same decision, the Commission noted that in the case of competitively sensitive materials, "the competitive harm of releasing the materials must be weighed against the need for the information in preparing the opponent's case, and the ALJ should consider whether protective measures are available to alleviate the harm that could result from disclosure." *Id.*

Because the information sought by the ISO is relevant to the issues in this proceeding, in order to prevent its disclosure, CAC must meet its burden by establishing that this information is, in fact, of a such a commercially sensitive nature that CAC's interests cannot be adequately safeguarded by a protective order. The requested information is of the type routinely produced under a protective order. CAC's demonstration will be particularly difficult because the ISO is a not-for-profit entity, and, thus, exposure to commercially sensitive information would not provide it with any competitive benefit. At best, therefore, CAC should receive the protection provided by a protective order.

With respect to CAC's argument that the information sought in requests ISO-CAC-20, -23, and -26 and reformulated ISO-CAC-22, -25, and -28 should be obtained from the QFs' Scheduling Coordinators ("SCs"), the ISO clarifies that it is only requesting such information from the QFs as to which they have access. This includes all of the information sought in the reformulated requests and the information sought in parts (1), (2) and (4) of ISO-CAC-20, -23, and -26. (i.e., information on the number of megawatt hours sold to the California Power Exchange, the costs to produce such energy, and the revenue received by the QFs from their SC for such energy) Therefore, CAC's objection is unfounded.

C. The Motion to Compel Should Not Be Time-Barred

There is no question that the Motion to Compel responses to reformulated ISO-CAC-22, -25, and -28 is timely brought, as it is being filed within ten days of the objections thereto, consistent with the Office Of Administrative Law Judge's Time Standards for Discovery. CAC's argument that the ISO has lost the opportunity to pursue responses to these reformulated requests is therefore baseless. When CAC submitted its objections to the ISO's First Set of Data Requests on December 8, 2000, it did not pose specific objections to ISO-CAC-22, -25 and -28. Instead, CAC only asked for clarification of those requests. Thus, until it submitted its letter of January 11, 2001, no objections to those requests yet existed. Moreover, even if CAC's request for clarification were to be characterized as an objection, it was still within the ISO's discretion to reformulate ISO-CAC-22, -25 and -28 and submit them prior to the deadline for discovery in this proceeding, which it did. The ISO is not aware of any

Commission rule or precedent to the contrary. Under either circumstance, the ISO is still entitled to CAC's response to these requests.

The ISO also requests that the Presiding Judge grant the Motion to Compel with respect to requests ISO-CAC-20, -23, and -26. The ISO's delay in bringing the Motion to Compel is attributable to counsel's mistaken understanding that counsel for CAC has agreed to include these requests were among those that were the subject of the negotiations regarding a protective order. The ISO acknowledges that counsel could have rectified his misunderstanding by asking for clarification of CAC's e-mail communications. Nonetheless, as explained in Exhibit D, counsel's mistaken impression was in good faith. Counsel prepared a motion to compel in a timely fashion that included ISO-CAC-20, -23, and -26 and contacted CAC prior to filing. But for counsel's misunderstanding that CAC intended to answer those requests, counsel would certainly have filed the motion to compel within the time specified in the Standards Governing Discovery.

To be weighed against counsel's error is the importance of the information requested to a fair resolution of the current dispute. The data requested in ISO-CAC-22, -25, and -28 pertain to costs imposed upon the three QFs that have objected to being subject to the ISO's standard pro forma PGA. The data requested in ISO-CAC-20, -23, and -26 pertain to revenues and operating costs of the three subject QFs. The evaluation of the economic impact of the ISO's policies on the subject QFs requires examination of both sides of the ledger – costs and net revenues. The data could be as helpful to CAC as to the ISO, and will certainly assist the Presiding Judge, and ultimately the Commission in their deliberations. Moreover, production of the evidence

will impose little burden on CAC. The data (megawatts of Energy sold, the costs of producing the Energy, and the revenues therefrom) is of a type that any business operation must retain, and the ISO does not doubt that companies the size of Texaco and ARCO can easily retrieve the data. The ISO is only seeking the information on an annualized basis. Moreover, the ISO has already expressed to CAC its willingness to await production of the data until shortly before the hearing commences. The only prejudice that could result to CAC from being required to respond would derive from the evidentiary value of the requested data. To deny the Presiding Judge and the Commission the value of this evidence would place form over substance. In light of these considerations, the ISO requests that the Presiding Judge grant the Motion to Compel despite any finding of nonconformance with the Time Standards Governing Discovery.

III. EFFORTS UNDERTAKEN TO RESOLVE THIS DISPUTE

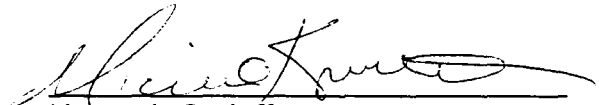
As described in Exhibit D, in order to resolve this dispute, the ISO has offered to support a protective order more restrictive than the Model Protective Order for all of the data requests in dispute. The ISO has also offered to extend until the latest reasonable moment the time for responding to the requests. At this point, the ISO's offer has only been accepted with respect to ISO-CAC-13.

IV. CONCLUSION

In light of the foregoing, the ISO respectfully requests that the Presiding Judge direct CAC to respond to data requests ISO-CAC-20, -23, and -26, and reformulated requests ISO-CAC-22, -25, and -28, subject to the agreed upon protective order.

Respectfully submitted,

Charles F. Robinson, General Counsel
Roger E. Smith, Sr. Regulatory Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630



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Counsel for the California Independent
System Operator Corporation

Dated: January 19, 2000

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System)
Operator Corporation) Docket No. ER98-997-000, et al.

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S
FIRST SET OF DATA REQUESTS TO
COGENERATION ASSOCIATION OF CALIFORNIA**

**GENERAL DEFINITIONS & INSTRUCTIONS TO BE USED
IN RESPONDING TO ALL CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION DATA REQUESTS**

A. General Instructions

1. Please respond to each data request by email or hardcopy as soon as the information is available, and in no instance later than December 14, 2000. If you respond by e-mail, please provide hardcopy within a reasonable time thereafter. If you are unable to respond to any specific data requests by this date, or if you intend to interpose a claim of privilege or other immunity to discovery, please so notify the ISO by December 7, 2000.
2. In connection with any claim of privilege or other discovery immunity, list all information and documents withheld under the claim of privilege and, for each, state:
 - a. a summary of the information and documents sufficient for there to be a determination as to their status;
 - b. the privileges or discovery immunities being interposed and how the privileges apply;
 - c. the age of the information and, for documents, their date, number of pages, and number and title of attachments;
 - d. the name and address of the person that collected or created the information and wrote, prepared, or signed the documents;
 - e. the name and address of the recipients of the information and documents; and

- f. the name and address of the custodians of the information and documents, and the name and locations of the files containing the documents.
3. If you assert that documents or information responsive to any data request have been discarded or destroyed, state when and explain why any such document or information was discarded or destroyed, and identify the person directing the discarding or destruction. If a claim is made that the discarding or destruction occurred pursuant to a discarding or destruction program, identify and produce the criteria, policy, or procedures under which such program was undertaken.
4. In response to each data request, provide information from corporate and individual files.
5. Copies of responses to the Data Requests are to be served on:

Michael Ward	Deborah A. Le Vine
Swidler Berlin Shereff Friedman, LLP	California Independent System
3000 K Street, N.W.	Operator Corporation
Washington, D.C. 20007	151 Blue Ravine Road
MEWard@Swidlaw.com	Folsom, California 95630
	DLeVine@caiso.com
6. In the event there is no information or document responsive to a data request, so state.
7. Each data request is continuing in nature and requires supplemental responses as soon as further information is obtained that is responsive to the request.
8. For each response that is generated by a computer or data storage mechanism, separately state:
 - a. the name of the program or file from which the information came;
 - b. how the data is stored (punch cards, tapes, discs, etc.) and how it can be transmitted and retrieved; and
 - c. the identity of the persons who collected or entered the information into the computer or data storage mechanism.
9. For each response in which data is presented in spreadsheet form, both a hardcopy and an electronic copy on a 3.5 inch IBM-compatible diskette using Excel software should be provided. If a spreadsheet is voluminous, hardcopy may be omitted.

10. Each written response, document or objection should designate the corresponding data request, and subpart or portion of the data request under which it is being provided. For this purpose, begin each page with a new data request first, followed by the corresponding response. No more than one response should appear on a page. Where the information or document responds to more than one request, a duplicate need not be provided. You need only provide cross-reference.
11. As to any data request consisting of a number of separate subparts or portions, a complete response is required to each subpart or portion as if the subpart or portion were propounded as a separate data request.
12. Whenever a data request specifically requests an answer rather than the identification of documents, an answer is required and the production of documents in lieu thereof will not substitute for an answer.
13. The term "or" should be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of each data request any information or document which might otherwise be considered to be beyond its scope.
14. The singular form of a word should be interpreted as plural, and the plural form of a word should be interpreted as singular whenever appropriate in order to bring within the scope of each data request any information or document which might otherwise be considered to be beyond its scope.
15. For each data request, identify the individual responsible (whether primarily or indirectly) for preparing the response and provide a certification as required by Rule 403 of the Commission's Rules of Practice and Procedure.
16. If you have any question or uncertainty as to what is intended by any instruction or definition or what is sought by any data request, contact Michael Ward (202) 424 - 7588.

B. Definitions

1. Any reference to "you," or variants thereof, the Cogeneration Association of California, or "CAC" also includes all individual members of the association, all merged or consolidated predecessors or predecessor in interest; subsidiaries past or present; and employees, officers, directors, agents, consultants, attorneys, and all persons acting under contractual arrangements with or acting or purporting to act on behalf of the Cogeneration Association of America and all individual members of the Association.

2. "Document" should be interpreted to include, but not limited to, the original and all nonidentical copies of any written or retrievable matter, including electronic media, or data of any kind, however produced or reproduced, to which you have or have had access. The final version as well as each draft of each document should be produced separately. Any document that is not exactly identical to another document for any reason, including, but not limited to, marginal notations or deletions, should be considered to be a separate document. As to any document related to the matters addressed herein that is not in your possession but that you know or believe to exist, you are requested to identify or indicate to the best of your ability its present or last known location or custodian.
3. "Person" should be interpreted to include every natural person, corporate entity, partnership, association (whether formally organized or ad hoc), joint venture, cooperative, municipality, commission, governmental body, or agency.
4. "Relating to" should be interpreted to mean presenting, discussing, commenting on, or analyzing.
5. "Correspondence" should be interpreted to include, but not limited to, all letters, telexes, facsimiles, telegrams, E-mail or other electronic communication, messages, memoranda, or other written communications.
6. "Communications" should be interpreted to include, but not limited to, all forms of communication, whether written, printed, electronic, oral, pictorial or otherwise, including testimony or sworn statement.
7. "Midway" means Midway Sunset Generating Company.
8. "Texaco" means Texaco Exploration and Production, Inc.
9. "ARCO" means ARCO CQC Kiln.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
Docket No. ER98-977-000, et al.
California Independent System Operator Corporations
First Set of Data Requests to Cogeneration Association of California

- ISO-CAC-1 Please provide copies of the CAC responses to the data requests of any other participant in this proceeding.
- ISO-CAC-2 (a) Please state whether CAC or Mr. James A. Ross has made any evaluations of the costs of compliance, whether for any particular co-generating plant or on a generic basis, with the ISO's metering requirements?
- (b) If the answer to (a) is yes, please identify and provide the results of any and all such evaluations, the workpapers for such evaluations, and any other documents relating to such evaluations.
- ISO-CAC-3 (a) Please state whether CAC or Mr. James A. Ross has made any evaluations of the costs of physical modifications to any particular co-generating plant or on a generic basis that are required for compliance with the ISO's metering requirements?
- (b) If the answer to (a) is yes, please provide the results of any and all such evaluations, the workpapers for such evaluations, and any other documents relating to such evaluations.
- ISO-CAC-4 With regard to page 17, lines 14 - 23 of the testimony of Mr. James A. Ross identified as Exh. CAC-2,
- (a) Does CAC admit that it protested the application of the ISO's Transmission Access Charge to the gross load of cogenerating facilities in Docket No. ER00-2019-000?
- (b) If the answer to (a) is yes, does CAC believe (1) that the Commission has determined whether the application of the ISO's Transmission Access Charge to the gross load of cogenerating facilities is just and reasonable or (2) that this issue has been set for hearing?
- (c) If CAC believes that the issue is set for hearing, does CAC admit that the Commission will decide whether the application of the ISO's Transmission Access Charge to the gross load of

cogenerating facilities is just and reasonable in Docket No. ER00-2019-000?

- (d) If the answer to (c) is yes, and if the Commission were to decide that the application of the ISO's Transmission Access Charge to the gross load of cogenerating facilities is just and reasonable, would CAC nonetheless contend that the PGA should only require cogenerating facilities to schedule net load?

ISO-CAC-5 With regard to page 18, lines 10 through 14 of the testimony of Mr. James A. Ross, identified as Exh. CAC-2, and to Exhibit CAC-5 attached to said testimony, please state specifically any and all charges discussed therein that would be billed to members of CAC under the ISO Tariff.

ISO-CAC-6 With regard to page 18, lines 10 through 14 of the testimony of Mr. James A. Ross, identified as Exh. CAC-2, and to Exhibit CAC-5 attached to said testimony, please identify specifically any and all charges discussed therein that would be billed to the Scheduling Coordinators for members of CAC under the ISO Tariff.

ISO-CAC-7 Please identify CAC's understanding of the rate mechanism by which Scheduling Coordinators would pass through to members of CAC the charges identified in ISO-CAC-6 and the regulatory body that would review that rate mechanism.

ISO-CAC-8 With regard to the testimony of Mr. James A. Ross identified as Exh. CAC-2, page 22, lines 1-23, does CAC admit that California's investor-owned utilities are no longer responsible for maintaining the reliability of the transmission grid within their former Control Areas?

ISO-CAC-9 With regard to the testimony of Mr. James A. Ross identified as Exh. CAC-2, page 22, lines 1-23, does CAC contend California's two largest investor-owned utilities are responsible for defining the ISO's Load Responsibility?

ISO-CAC-10 If the answer to ISO-CAC-9 is no, does CAC admit that the Western Systems Coordinating Council is responsible for defining the ISO's load responsibility?

ISO-CAC-11 Does CAC contend that the Western Systems Coordinating Council has defined the ISO's load responsibility as excluding on-site consumption by cogenerating facilities?

ISO-CAC-12 If the answer to ISO-CAC-11 is yes, please provide any and all documents supporting or relating to CAC's contention.

ISO-CAC-13 For each of the charges identified in lines 1 through 8 of Exhibit CAC-5, please state the actual charges incurred in each of calendar years 1999 and 2000 by the following:

- (a) Midway Sunset;
- (b) Texaco; and
- (c) ARCO

The following questions pertain to Exhibit CAC-6:

ISO-CAC-14 Please provide the following assumptions regarding the costs presented:

- (a) the number of megawatthours of energy consumed by the 35 MW on-site load and the period of time during which they were consumed;
- (b) the number of megawatthours of energy consumed by the 2 MW auxilliary load and the period of time during which they were consumed;
- (c) the number of megawatthours of energy produced by the 52 MW of generation and the period of time during which they were produced; and
- (d) the price per megawatt hour for energy from the generator sold through the Power Exchange.

ISO-CAC-15 Please state the megawatts of Standby Service that would be provided to the hypothetical generating unit in CAC-6.

ISO-CAC-16 Of each of the amounts identified in lines 2 through 6 of the Column identified as "CPUC QF Contract Provisions," please state the following:

- (a) the amount that the ISO would bill to the QF; and
- (b) the amount that the ISO would bill to the QF's Scheduling Coordinator.

ISO-CAC-17 Of that portion of the amount identified in line 6 of the Column identified as "CPUC QF Contract Provisions" that the ISO would bill to the QF's Scheduling Coordinators, please state the amount that the QF's Scheduling Coordinators would bill to the QF.

ISO-CAC-18 Of each of the amounts identified in lines 2 through 6 of the Column identified as "ISO PGA Provisions," please state the following:

- (a) the amount that the ISO would bill to the QF; and
- (b) the amount that the ISO would bill to the QF's Scheduling Coordinator.

ISO-CAC-19 Of that portion of the amount identified in line 6 of the Column identified as "ISO PGA Provisions" that the ISO would bill to the QF's Scheduling Coordinators, please state the amount that the QF's Scheduling Coordinators would bill to the QF.

ISO-CAC-20 Please state (1) the megawatthours of energy sold to the California PX by Midway during each of calendar years 1999 and 2000; (2) the variable costs of producing such energy; (3) the revenue received by Midway's Scheduling Coordinators for such energy; and (4) the revenue received by Midway from its Scheduling Coordinator for such energy.

ISO-CAC-21 For each of the types of charges identified in lines 2-6, please state the amount of charges incurred during each of calendar years 1999 and 2000 by the Scheduling Coordinator for Midway and the amount that the Scheduling Coordinator would have incurred under the assumptions used for the calculations in the column identified as "ISO PGA Provisions."

ISO-CAC-22 Of each amount for line 6 provided in response to ISO-CAC-20, please state the amount that Midway's Scheduling Coordinators billed or would have billed to Midway.

ISO-CAC-23 Please state (1) the megawatthours of energy sold to the California PX by Texaco during each of calendar years 1999 and 2000; (2) the variable costs of producing such energy; (3) the revenue received by Texaco's Scheduling Coordinators for such energy; and (4) the revenue received by Texaco from its Scheduling Coordinators for such energy.

ISO-CAC-24 For each of the types of charges identified in lines 2-6, please state the amount of charges incurred during each of calendar years 1999 and 2000 by the Scheduling Coordinators for Texaco and the amount that the Scheduling Coordinators would have incurred under the assumptions used for the calculations in the column identified as "ISO PGA Provisions."

ISO-CAC-25 Of each amount for line 6 provided in response to ISO-CAC-23, please state the amount that Texaco's Scheduling Coordinators billed or would have billed to Texaco.

ISO-CAC-26 Please state (1) the megawatthours of energy sold to the California PX by ARCO during each of calendar years 1999 and 2000; (2) the variable costs of producing such energy; (3) the revenue received by ARCO's

Scheduling Coordinators for such energy; and (4) the revenue received by ARCO from its Scheduling Coordinators for such energy.

ISO-CAC-27 For each of the types of charges identified in lines 2-6, please state the amount of charges incurred during each of calendar years 1999 and 2000 by the Scheduling Coordinators for ARCO and the amount that the Scheduling Coordinators would have incurred under the assumptions used for the calculations in the column identified as "ISO PGA Provisions."

ISO-CAC-28 Of each amount for line 6 provided in response to ISO-CAC-26, please state the amount that ARCO's Scheduling Coordinators billed or would have billed to ARCO.

EXHIBIT B



December 7, 2000

Via Electronic Mail and U.S. Mail

Michael Ward
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington D.C. 20007

Deborah A. Le Vine
California ISO
151 Blue Ravine Road
Folsom, California 95630

Re: CAISO First Set of Data Requests To CAC

Dear Mr. Ward and Ms. Le Vine:

Pursuant to your instructions to be used in responding to all CAISO data requests, this letter outlines certain objections and requests for clarification.

First, we object to any and all data requests to the extent that the data request seeks information from an entity that is not a member of the Cogeneration Association of California.

Second, we object to any and all data requests to the extent that the data request seeks information protected by the attorney-client privilege or attorney work product.

Third, we object to any data request that is not relevant, is intended to harass, or is duplicative.

Lastly, we object to the disclosure of any commercially sensitive information until and unless adequate confidentiality provisions are agreed to by the parties.

With regards to specific data requests:

- Please clarify the intended meaning of ISO-CAC-22, ISO-CAC-25, and ISO-CAC-28. It is not clear what the ISO intends by "amount for line 6" or the assumptions underlying "billed or would have billed." As such CAC is unable to respond to these requests.

- With regards to ISO-CAC-21, ISO-CAC-24, and ISO-CAC-27, CAC does not have access to the information necessary to respond to these questions. These questions are better directed to the relevant Scheduling Coordinator (SC) as only the SC would know the total charges incurred by it in 1999 and 2000.
- With regards to ISO-CAC-20, ISO-CAC-23, and ISO-CAC-26, CAC objects that these requests are not relevant to this proceeding, seek commercially sensitive information, and seek information better directed to the SC.

Sincerely,

Michael P. Alcantar

Counsel for Cogeneration
Association of California

cc: James A. Ross

EXHIBIT C



ALCANTAR & ELSESSER

One Embarcadero Center, Suite 2420
San Francisco, CA 94111
Phone 415/421-4143
Fax 415/989-1263

December 8, 2000

Via Electronic Mail and U.S. Mail

Michael Ward
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington D.C. 20007

Deborah A. Le Vine
California ISO
151 Blue Ravine Road
Folsom, California 95630

Re: CAISO First Set of Data Requests To CAC

Dear Mr. Ward and Ms. Le Vine:

Pursuant to your instructions to be used in responding to all CAISO data requests, this letter outlines certain objections and requests for clarification. This letter supercedes the letter sent to you yesterday that inadvertently omitted one objection.

First, we object to any and all data requests to the extent that the data request seeks information from an entity that is not a member of the Cogeneration Association of California.

Second, we object to any and all data requests to the extent that the data request seeks information protected by the attorney-client privilege or attorney work product.

Third, we object to any data request that is not relevant, is intended to harass, or is duplicative.

Lastly, we object to the disclosure of any commercially sensitive information until and unless adequate confidentiality provisions can be agreed to by the parties.

With regards to specific data requests:

- Please clarify the intended meaning of ISO-CAC-22, ISO-CAC-25, and ISO-CAC-28. It is not clear what the ISO intends by "amount for line 6" or the assumptions underlying "billed or would have billed." As such CAC is unable to respond to these requests.

- With regards to ISO-CAC-21, ISO-CAC-24, and ISO-CAC-27, CAC does not have access to the information necessary to respond to these questions. These questions are better directed to the relevant Scheduling Coordinator (SC) as only the SC would know the total charges incurred by it in 1999 and 2000.
- With regards to ISO-CAC-20, ISO-CAC-23, and ISO-CAC-26, CAC objects that these requests are not relevant to this proceeding, seek commercially sensitive information, and seek information better directed to the SC.
- With regards to ISO-CAC-13, CAC objects that this request is not relevant or necessary and seeks commercially sensitive information.

Sincerely,

Michael P. Alcantar

Counsel for Cogeneration
Association of California

cc: James A. Ross

EXHIBIT D

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

California Independent System Operator Corporation)	Docket Nos. ER98-997-000 ER98-1309-000
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DECLARATION OF MICHAEL E. WARD

I, Michael E. Ward, declare under penalty of perjury that the following is true, to the best of my knowledge and belief.

1 I am counsel at the firm Swidler Berlin Shereff Friedman, and represent the California Independent System Operator Corporation ("ISO") in the above-named proceeding.

2 On December 1, 2000, I sent data requests via e-mail to counsel for the Cogeneration Association of California ("CAC") (Exhibit A). I directed staff to follow-up with hard copies.

3 On December 7, 2000, counsel for CAC sent me, via e-mail, a letter including objections to the data requests (Exhibit B). The letter included three bullet points, the last of which referred to requests ISO-CAC-20, -23, and -26.

4 On December 8, 2000, counsel for CAC sent me, via e-mail, a corrected version of the objections to the data requests (Exhibit C). The letter included a new final bullet point, referring to request ISO-CAC-13.

5 Between December 7, 2000 and December 14, 2000, I directed Michael Kunselman, an associate at Swidler Berlin Shereff Friedman, to prepare a Motion to Compel regarding ISO-CAC-20, -23, and -26. I do not recall whether I mentioned ISO-

CAC-13 or whether Mr. Kunselman called it to my attention. I subsequently reviewed and revised the draft and was prepared to file it on December 15, 2000.

6 On December 14, 2000, I contacted counsel for CAC via e-mail and suggested that we attempt to resolve the dispute. Counsel suggested we talk the next day.

7 On December 15, 2000, I discussed the matter with counsel for CAC. To the best of my recollection, I had before me the letter of December 7, 2000, and informed counsel for CAC that our motion concerned the final bullet point. Although our motion in fact also concerned the additional bullet point included in the December 8, 2000, letter, I do not recall whether that fact entered my mind. There was some confusion in our conversation about the bullet point to which I was referring, but I was affirmatively of the belief that our subsequent conversations included the contents of the final bullet point in the December 7, 2000, letter, i.e., ISO-CAC-20, -23, and -26.

8 During the December 15, 2000, conversation, I explained to counsel for CAC why we believed that data regarding the QFs at issues was relevant and why we did not feel we should rely solely on additional hypothetical scenarios in order to rebut Mr. James A. Ross's testimony about the costs that the ISO's PGA policy imposes on QFs. That testimony uses assumed data for hypothetical QFs. I also explained to counsel our belief that, if we filed the motion to compel, the best result they could expect would be production subject to a protective order.

9 Counsel for CAC stated she would have to discuss the matter with her clients, but that she would agree to waive the time for the Motion to Compel while she sought an answer. We also agreed that, if the responses were required, additional time would be necessary. She suggested that I might wish to send a confirmatory e-mail to that effect.

I replied that, inasmuch as she was waiving the time requirements, it would be more appropriate for her to send the e-mail.

10 Also on December 15, 2000, counsel for CAC sent me an e-mail confirming our agreement. Her e-mail limited the agreement to their objection to ISO-CAC-13.

Because I thought I had a clear understanding of our agreement, however, and because I considered the e-mail a formality, I did not review the e-mail closely enough to notice the limitation to ISO-CAC-13. Had I understood that the agreement was limited to ISO-CAC-13, I would have filed the motion to compel, which also applied to ISO-CAC-20, -23, and -26.

11 Over the course of the next week, CAC informed me by e-mail that her clients had agreed to provide the information in response to ISO-CAC-13. Again, however, due to my understanding, I did not avert to the limitation and continued in my belief that the agreement included ISO-CAC-20, -23, and -26.

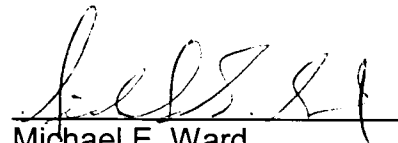
12 On January 4, 2001, Mr. Kunselman served on counsel for CAC, via e-mail, reformulated requests ISO-CAC-22, -25, and -28. In her December 7 and 8, 2000, letters, counsel for CAC had requested clarification of those questions.

13 On January 11, 2001, I received an e-mail from counsel for CAC indicating that CAC need additional time for a response, to which I agreed. Although I did note that the e-mail mentioned only ISO-CAC-13, I interpreted that to mean that only that request was causing the delay.

14 Also on January 11, 2001, counsel for CAC sent Mr. Kunselman, via e-mail, objections to the reformulated ISO-CAC-22, -25, and -28.

15 On January 12, 2001, I responded to CAC's objections via e-mail. I stated my disagreement with the objections, and offered to treat the responses in the same manner as ISO-CAC-13, -20, -23, and -26.

16 Also on January 12, 2001, counsel for CAC responded via e-mail to my response. It was at this time that I first became aware that counsel for CAC did not understand our agreement as including ISO-CAC, -20, -23, and -26.



Michael E. Ward

Executed on January 19, 2001

EXHIBIT E

January 4, 2001

Michael P. Alcantar, Esq.
Linda Y. Sherif, Esq.
Alcantar & Elsesser LLP
One Embarcadero Center, Suite 2420
San Francisco, CA 94111

**Re: California ISO's First Set of Data Requests to CAC
Docket Nos. ER98-997-000, et al.**

Dear Mr. Alcantar:

Pursuant to your objections to the California ISO's First Set of Data Requests, as received on December 8, 2000, please find enclosed reformulated data requests ISO-CAC-22, ISO-CAC-25, and ISO-CAC-28. Please note that all instructions accompanying the ISO's First Set of Data Requests still apply.

Yours truly,

Michael Kunselman

Counsel for the California Independent
System Operator Corporation

cc: Service List

Enclosure

ISO REFORMULATED DATA REQUESTS

The following questions pertain to Exhibit CAC-6:

ISO-CAC-22 For each of the types of charges identified in lines 2-6 of Exhibit CAC-6, please state the amounts during each of calendar years 1999 and 2000 that Midway's Scheduling Coordinators collected from Midway or would have collected from Midway in order to obtain payment for these charges under the assumptions used for the calculations in the column identified as "ISO PGA Provisions."

ISO-CAC-25 For each of the types of charges identified in lines 2-6 of Exhibit CAC-6, please state the amounts during each of calendar years 1999 and 2000 that Texaco's Scheduling Coordinators billed to Texaco or would have billed to Texaco in order to obtain payment for these charges under the assumptions used for the calculations in the column identified as "ISO PGA Provisions."

ISO-CAC-28 For each of the types of charges identified in lines 2-6 of Exhibit CAC-6, please state the amounts during each of calendar years 1999 and 2000 that ARCO's Scheduling Coordinators collected from ARCO or would have collected from ARCO in order to obtain payment for these charges under the assumptions used for the calculations in the column identified as "ISO PGA Provisions."

EXHIBIT F



ALCANTAR & ELSESSER

One Embarcadero Center, Suite 2420
San Francisco, CA 94111
Phone 415/421-4143
Fax 415/989-1263

January 11, 2001

Michael Kunselman
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K Street, NW, Suite 300
Washington, D.C. 20007-5116

Re: California ISO's Reformulated Data Requests

Dear Mr.Kunselman:

This letter is in response to your January 4, 2001, letter enclosing the California ISO's reformulated data requests ISO-CAC-22, ISO-CAC-25, and ISO-CAC-28.

As you are aware, CAC objected to these requests on December 7, 2000. The ISO made absolutely no attempt to meet and confer with regards to these objections and in accordance with FERC rules, due to the subsequent lapse of time, has now lost its opportunity to further pursue these requests. In any event, these requests seek information that is neither relevant nor necessary to the proper adjudication of the above-captioned proceeding. Moreover, the information sought is commercially sensitive, proprietary, and otherwise confidential. Lastly, it would cause the individual clients whose confidential information is sought irreparable harm and injury to provide this information.

Sincerely,

Linda Y. Sherif

EXHIBIT G

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116

TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
(212) 973-0111 FAX (212) 891-9598

January 12, 2001

Linda Sherif, Esq.
Alcantar & Elsesser
One Embarcadero Center, Suite 2420
San Francisco, CA 94111

Dear Linda:

I am writing in response to your letter of January 11 to Michael Kunselman of our office, in which you object to the ISO's reformulated Data Requests ISO-CAC-22, ISO-CAC-25, and ISO-CAC-28.

You assert first that the ISO, by failing to meet and confer with you regarding your objections to the original formulation of these requests "in accordance with FERC rules, due to the subsequent lapse of time, has now lost its opportunity to further pursue these requests." I would first refer you to your letter of December 8, 2000, in which you raised your objections. You stated:

Please clarify the intended meaning of ISO-CAC-22, ISO-CAC-25, and ISO-CAC-28. It is not clear what the ISO intends by "amount for line 6" or the assumptions underlying "billed or would have billed." As such CAC is unable to respond to these requests.

A reasonable reading of your statement is that it simply requests a reformulation and resubmittal of the request. Even if this were to be characterized as an objection, however, there is no FERC regulation setting a time deadline for the ISO if, under those circumstances, it chooses to abide by your request and clarify the question rather than seek a motion to compel. Moreover, I am unaware of any regulation or precedent to the effect that the proponent of an objectionable data request, if he or she chooses not to seek a motion to compel, is precluded at anytime prior to the deadline for discovery from reformulating the question and resubmitting it in unobjectionable form. Because the reformulated requests were submitted prior to the deadline for discovery, they are timely.

Letter to Linda Sherif, Esq.
January 12, 2001
Page 2

You also assert that the information requested is irrelevant, proprietary, and confidential. I would note that you did not raise these objections in your letter of December 8. I do not, however, contend that you have in any manner waived your right to raise these objections to the reformulated requests.

I have previously discussed with you, in connection with ISO-CAC-13, ISO-CAC-20, ISO-CAC-23, and ISO-CAC-26, why we believe this type of QF-specific information is relevant. I am prepared to make the same arguments, if necessary, in response to your current objections. It is my understanding, however, that you have agreed to provide responses to ISO-CAC-13, ISO-CAC-22, ISO-CAC-23, and ISO-CAC-26 subject to a protective order, which we are currently negotiating, and that we have therefore refrained from filing a motion to compel. We would certainly be willing to accommodate your concerns in the same manner regarding ISO-CAC-22, ISO-CAC-25, and ISO-CAC-28.

I look forward to hearing from you on this matter.

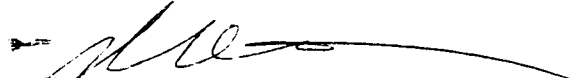
Yours truly,

Michael E. Ward

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 Washington, D.C., this 19th day of January, 2001.


Michael Kunselman