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April 16, 2004

Via Electronic Filing

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

**Re: California Independent System Operator Corporation
Docket No. ER03-1046-003**

Dear Secretary Salas:

Enclosed please find the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to the Protest of the Bonneville Power Administration, submitted today in the above-captioned proceeding.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas
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Counsel for the California
Independent System Operator
Corporation

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

California Independent System) Docket No. ER03-1046-003
Operator Corporation)

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO THE
PROTEST OF THE BONNEVILLE POWER ADMINISTRATION**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the California Independent System Operator Corporation (“ISO”)¹ hereby requests leave to file an answer, and files its answer, to the “Motion to Intervene and Protest of the Bonneville Power Administration (BPA) On the CAISO Proposed Compliance Filing,” submitted in the above-captioned proceeding on April 1, 2004.² The ISO does not oppose BPA’s motion to intervene. As explained below, however, the Commission should deny the relief requested in BPA’s protest.

I. ANSWER

BPA was the only entity that submitted a protest in response to the ISO’s March 11, 2004 compliance filing in this proceeding. BPA argues that the proposed changes to Sections 11.2.4.2 and 11.2.4.2(a) of the ISO Tariff should

¹ Capitalized terms not otherwise defined herein have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² The ISO requests waiver of Rule 213(a)(2) (18 C.F.R. § 385.213(a)(2)) to permit it to make this answer to BPA’s protest. 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 the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at P 6 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,2551, at P 10 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

be rejected. It contends that these sections – as currently written in the ISO Tariff – require the ISO to pay resources that are dispatched for out-of-market (“OOM”) transactions the real-time interval price rather than the Hourly Ex Post Price which is comprised of the average of the ten-minute interval prices for that hour. As discussed below, BPA’s argument is without merit and the ISO’s compliance filing should be accepted without modification.

A. The ISO Is Required to Pay the Hourly Ex Post Price to Resources Dispatched Pursuant to Section 11.2.4.2 of the ISO Tariff

Section 11.2.4.2 of the ISO Tariff governs payment to Scheduling Coordinators for resources, including BPA, that are dispatched on an OOM basis to avoid an intervention in market operations, prevent or relieve a System Emergency, or satisfy a locational requirement.³ BPA asserts that Section 11.2.4.2 requires the ISO to pay those resources at the real-time interval price. BPA Protest at 4. This assertion is contrary to the express language of the section and Commission orders interpreting the section. As the Commission has recognized, under Section 11.2.4.2 “OOM payments are calculated by using either the hourly Ex Post Price or a price consisting of: (1) a capacity component based on certain market indices; (2) an energy component based on certain market indices; (3) verifiable start-up fuel costs; and (4) verifiable gas imbalances

³ BPA is a System Resource and an importer into the ISO. Section 11.2.4.2 applies to OOM payments made to such a resource. See *California Independent System Operator Corporation*, 92 FERC ¶ 61,004, at 61,007 (2000). Section 11.2.4.2 has remained virtually unchanged since modifications to the section were filed and approved in the proceeding on Amendment No. 23 to the ISO Tariff. See Amendment No. 23 to the ISO Tariff, Docket No. ER00-555-000 (filed Nov. 10, 1999), at Attachment 1; *California Independent System Operator Corporation*, 90 FERC ¶ 61,006, at 61,014-15 (2000).

charges (if any).⁴ In an order on a complaint brought by Dynegy Power Marketing, Inc. and others, the Commission rejected a proposal to create “a third payment option for OOM-required energy deliveries” under Section 11.2.4.2.⁵ Similarly, the Commission rejected El Segundo Power, LLC’s (“El Segundo’s”) proposed Non-Market Dispatch Service Tariff (“NDST”) (including a proposed rate for the service) that would have applied to OOM-type calls by the ISO. The Commission recognized that Section 11.2.4.2 of the ISO Tariff sets forth two payment options available to suppliers that receive an OOM call, including payment of the Hourly Ex Post Price.⁶ Thus, the Commission has expressly recognized on several occasions that the aforementioned two payment possibilities are the only ones that are available under Section 11.2.4.2.

BPA now argues that it should receive a third, different type of payment, i.e., the real-time interval price. However, the ISO has never proposed – and the Commission has never ruled – that OOM payments under Section 11.4.2 should be made at the real-time interval price. BPA’s argument appears to be based on the view that two cross-references in Section 11.2.4.2 to Section 11.2.4.1 of the ISO Tariff, which cross-references are erroneously contained in Section 11.2.4.2,

⁴ *San Diego Gas & Electric Company, et al.*, 97 FERC ¶ 61,275, at 62,234 n.377 (2001) (emphasis in original). See also *California Independent System Operator Corporation*, 90 FERC at 61,014 (describing the two payment possibilities under Section 11.2.4.2); *California Independent System Operator Corporation*, 91 FERC ¶ 61,026, at 61,086 (2000) (recognizing that there are two OOM payment options, including the Hourly Ex Post Price method); *California Independent System Operator Corporation*, 92 FERC at 61,007 (noting the ISO’s February 11, 2000 market notice describing the procedures for Scheduling Coordinators to choose between the two payment options). BPA does not mention in its protest the price consisting of a capacity component, energy component, fuel costs, and gas imbalance charges, nor does the ISO contend that BPA is entitled to receive that price.

⁵ *Dynegy Power Marketing, Inc., et al. v. California Independent System Operator Corporation*, 101 FERC ¶ 61,369, at PP 5, 20 (2002).

⁶ *El Segundo Power, LLC*, 91 FERC ¶ 61,110, at 61,390-91 (2000), *reh’g denied*, 95 FERC ¶ 61,159, at 61,516-17 (2001).

compel the ISO to pay BPA the real-time interval price for OOM energy. Such an interpretation ignores the explicit direction in Section 11.2.4.2(a) regarding use of “the Hourly Ex Post Price.” The ISO’s compliance filing corrects the erroneous cross-references to Section 11.2.4.1.⁷

In any event, the Commission’s order on Amendment No. 54 to the ISO Tariff directed the ISO “to correct any inconsistencies and invalid references” in the Tariff.⁸ Precluding the ISO from correcting erroneous cross-references to the wrong Tariff section and requiring the ISO to adhere to such incorrect cross-references would not only violate the Commission’s directive and the express language of several prior Commission orders, it would lead to conflicting results. Absent the ISO’s proposed corrections, Section 11.2.4.2(a) would contain a cross-reference to Section 11.2.4.1 immediately followed by a contradictory direction “i.e., using the Hourly Ex Post Price.” There is no logical way to apply both of those mutually exclusive directives.⁹ Thus, the ISO’s proposed Tariff corrections are both necessary and appropriate. Further, as explained above, they are consistent with the Commission’s prior rulings regarding the OOM payment options under Section 11.2.4.2.

⁷ In the compliance filing, the ISO proposes to change the cross-references so that they correctly refer instead to Section 2.5.23.2.2, which is the section that explains how the Hourly Ex Post Price is calculated. See Compliance Filing at page 21 of Attachment A. The cross-references should have been revised when, in Amendment No. 29 to the ISO Tariff, the ISO revised Section 11.2.4.1 to provide that payment under that section was based on the real-time interval price rather than the Hourly Ex Post Price. See Amendment No. 29 to the ISO Tariff, Docket No. ER00-2383-000 (filed May 2, 2000), at Attachment B. They have remained uncorrected until the ISO’s submission of its compliance filing in the present proceeding.

⁸ *California Independent System Operator Corporation*, 105 FERC ¶ 61,091, at P 126 (2003) (“Amendment No. 54 Order”).

⁹ A similar difficulty would arise with regard to the second cross-reference to Section 11.2.4.1, given the problematic equivalence between that section and the Hourly Ex Post Price already established by the use of “i.e.” in Section 11.2.4.2(a).

A similar example can be found in Section 3.26 of Appendix D of the Settlement and Billing Protocol (“SABP”), which provides that one component of a particular charge – the Unaccounted For Energy Charge – is determined in part by adjusting for Transmission Losses “calculated in accordance with ISO Tariff Section 7.4.3.” However, Section 7.4.3 of the ISO Tariff does not define how Transmission Losses are to be calculated. Rather, Section 7.4.2, titled “Determination of Transmission Losses,” is the section that is used to calculate Transmission Losses.¹⁰ For this reason, the ISO’s compliance filing changed the cross-reference in the SABP to refer to Section 7.4.2.¹¹ If the ISO were required to maintain the erroneous cross-reference to Section 7.4.3, and to adhere to that cross-reference, the ISO would apparently have no way of calculating the Unaccounted For Energy Charge, let alone calculating it correctly. For similar reasons, the Commission should permit the ISO to make the proposed corrections to Section 11.2.4.2.

B. The Commission Should Not Direct the ISO to Pay the Real-Time Interval Price to Resources Dispatched Pursuant to Section 11.2.4.2 of the ISO Tariff

BPA argues that it is inequitable for OOM payments under Section 11.2.4.2 to be based on the Hourly Ex Post Price rather than the real-time interval price. It urges the Commission to “require the CAISO to make any necessary revisions to the ISO Tariff and Protocols to provide for payment for

¹⁰ Section 7.4.2 provides that one component of the Transmission Losses calculation is “the Ex Post Generation Meter Multiplier [GMM] calculated by the ISO in the hour for that Generator location except in accordance with Section 7.4.3.” Section 7.4.3 states that “[i]n the event that the Power Flow Model fails to determine Ex Post GMMs, . . . the ISO will use Default GMMs in their place.” Thus, Section 7.4.3 only describes one component of the Transmission Losses calculation, and one that only applies if the Power Flow Model fails to determine Ex Post GMMs.

¹¹ See Compliance Filing at page 51 of Attachment A.

real-time energy at real-time interval prices.” BPA Protest at 2-3, 5-6. The Commission should deny this request. The ISO Tariff currently provides BPA with numerous ways to achieve exactly the result it seeks.

First and foremost, BPA (and any other Market Participant) can always decide to bid its Energy into the ISO’s real-time Imbalance Energy market at whatever price it wishes consistent with any market power mitigation measures approved by the Commission.¹² The simplest way to avoid OOM pricing is to have valid bids in the market.

Second, as an out-of-state resource not directly subject to the ISO’s dispatch authority, BPA does not have to subject itself to the payment provisions of Section 11.2.4.2. Instead, BPA can pursue any of a number of alternatives that would allow it to receive a price other than the Hourly Ex Post Price for energy BPA voluntarily agrees to furnish. For example, BPA can establish a standing price for emergency energy and provide standing instructions to its operators to specify that price to the ISO’s operators at the time BPA agrees to provide such energy to the ISO. To put it another way, as an out-of-state resource, BPA can negotiate an individual price. To avoid the need for operators to discuss prices in these circumstances, the agreement can be reached in advance. In addition, under Phase 1B of the ISO’s comprehensive market redesign, System Resources that are dispatched and deliver hourly pre-

¹² See *California Independent System Operator Corporation*, 103 FERC ¶ 61,340 (2003) (approving Amendment No. 52 to the ISO Tariff, which eliminated the “zero-bid requirement” for System Resources that bid into the ISO’s real-time energy market). While the Commission has directed that System Resources be “price-takers” (see *id.* at P 2), eliminating the zero-bid requirement allows the ISO to dispatch System Resources only when the ISO expects the Imbalance Energy price will be greater than the System Resource’s bid price.

dispatched Instructed Imbalance Energy will receive the higher of their bid price or the Market Clearing Price.¹³

Given these alternatives, there is no need as BPA suggests to modify Section 11.2.4.2 to provide for payment of the real-time interval price. Paying the real-time interval price could create an incentive to “game” the ISO Market by simply withholding resources until they were dispatched under the OOM provisions, in order to receive the real-time price; providing superior compensation when a resource is dispatched outside the market to when it is dispatched through the market creates such an incentive to withhold from the ISO Market. Indeed, the Commission, in the order rejecting El Segundo’s proposal to implement an NDST applicable to OOM-type transactions, noted the concern of interveners that such a proposal would allow El Segundo “to withhold capacity from the market through uncompetitively high bids when it knows it will receive an OOM call and can collect the higher rate.”¹⁴ The interveners also noted – and the ISO agrees – that such “pricing and bidding behavior is identical to prior Reliability Must Run (RMR) type A contracts which were discarded for this very reason.”¹⁵ For similar reasons, the Commission should reject BPA’s proposal regarding the pricing of OOM calls.

The ISO appreciates the emergency energy BPA has provided, but does not believe it is prudent to establish pricing rules that could discourage participation in the ISO Market. The ISO notes that it has been paying Market

¹³ See Amendment No. 54 Order at PP 122-23.

¹⁴ *El Segundo Power, LLC*, 91 FERC at 61,390.

¹⁵ *Id.*

Participants the Hourly Ex Post Price for energy supplied under Section 11.2.4.2 since the March 31, 1998 ISO Operations Date.¹⁶

In light of the considerations described above, the requested modification to Section 11.2.4.2 is not warranted. Moreover, even if it had merit, it would be outside the scope of the ISO's compliance filing, which merely followed the direction of the Commission to correct any inconsistencies and invalid references in the ISO Tariff.

II. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission grant the ISO's motion for leave to file this answer and decline to grant the relief requested in BPA's protest.

Respectfully submitted,

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Date: April 16, 2004

¹⁶ See Transmittal Letter for Amendment No. 23 at 3.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 16th day of April, 2004.

/s/ Anthony J. Ivancovich
Anthony J. Ivancovich