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May 21, 2003

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

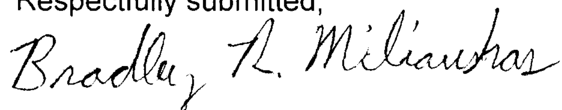
Re: California Independent System Operator Corporation
Docket No. ER03-746-000

Dear Secretary Salas:

Enclosed please find the original and 14 copies of the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Motions to Intervene, Comments, and Protests, submitted in the captioned docket.

Thank you for your attention in this matter.

Respectfully submitted,



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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	))	**Docket No. ER03-746-000**

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTIONS TO INTERVENE, COMMENTS, AND PROTESTS

I. INTRODUCTION AND SUMMARY

On April 15, 2003, the California Independent System Operator Corporation ("ISO")[1] filed Amendment No. 51 to the ISO Tariff in the above-captioned docket ("Amendment No. 51"). Amendment No. 51 would modify the provisions of the ISO Tariff in three respects. First, the ISO proposed that reruns, post closing adjustments, and the financial outcomes of dispute resolution be "walled off," i.e., be invoiced separately from monthly market activities. The ISO would provide a market notice at least 30 days prior to such invoicing identifying the components of the invoice. Second, the ISO proposed to delete the language in Section 11.6.3.3 of the Tariff since this provision has never been operable. Finally, the ISO proposed that the ISO Governing Board may order that the cost of a Settlement Statement rerun be borne by the Scheduling Coordinator requesting it, assuming that the rerun had not been done at the request of the ISO staff. The ISO requested that the modifications described above be made effective May 1, 2003. Expeditious Commission approval of Amendment No. 51 was sought to allow the ISO to commence work on the preparatory rerun of the ISO

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

billings that is a prerequisite to performing the significant rerun in the California Refund Proceeding (Docket Nos. EL00-95, *et al.*) ("Refund Proceeding").

A number of parties have moved to intervene in the present proceeding. Some of the motions to intervene include limited protests and protests concerning Amendment No. 51.[2] 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 hereby requests leave to file an answer, and files its answer, to the motions to intervene, comments, and protests submitted in this proceeding.[3] The ISO does not oppose the intervention of parties that have sought leave to intervene in the proceeding. However, as explained below, the ISO believes that Amendment No. 51 should be accepted by the Commission in its entirety since it is absolutely essential to provide for an orderly and timely completion of the preparatory rerun (i.e., the rerun needed to account for other outstanding adjustments prior to performing the rerun to establish the refunds ordered in the Refund Proceeding) and the subsequent large-scale rerun resulting from the Refund

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[2] Motions to intervene, comments, and protests were filed by the following entities: the California Electricity Oversight Board ("EOB"); Southern California Edison Company ("SCE"); The Metropolitan Water District of Southern California ("MWD"); the Transmission Agency of Northern California ("TANC"); Powerex Corp.; Modesto Irrigation District ("MID"); the City of Los Angeles Department of Water and Power ("LADWP"); the Northern California Power Agency ("NCPA"); the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency ("Cities/M-S-R"); the California Generators ("Generators"); Pacific Gas and Electric Company ("PG&E"); the California Power Exchange Corporation ("CalPX"); Sempra Energy Trading Corp.("Sempra"); Avista Energy, Inc.("Avista"); Puget Sound Energy, Inc. ("Puget"); California Department of Water Resources State Water Project ("State Water Project"); California Department of Water Resources – California Energy Resources Scheduling("CERS"); and Automated Power Exchange, Inc. ("APX"). In addition, PG&E filed a limited protest, and the California Public Utilities Commission ("CPUC") filed a notice of intervention.

[3] Some of the parties that have submitted filings concerning Amendment No. 51 request affirmative relief in pleadings styled as protests. There is no prohibition on the ISO's responding to the assertions in these pleadings. *Florida Power & Light*, 67 FERC ¶ 61,315 (1994). Additionally, to the extent that this Answer is deemed an answer to protests, the ISO request waiver of Rule 213 (18 C.F.R § 385.213) to permit it to make this Answer. 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 62,163 (2002); *Duke Energy Corporation*,

Proceeding.[4] In addition, as explained further below, if past period reruns are not invoiced separately or walled off from current market invoices, the current market will likely be "underpaid" due to bankruptcies and Scheduling Coordinators that participated during the rerun period, but are not present as functioning entities in the current ISO Market.

No intervenor objects to the concept of separating the rerun invoices from the current market invoices, and this is the core element of Amendment No. 51. As indicated in footnote five below, three intervenors affirmatively support the ISO's Amendment No. 51 filing. Six intervenors raise no substantive issues with the proposal. Seven intervenors ask only, or primarily, that the period for disputing the information on Settlement Statements (i.e., the dispute window) be extended during the rerun. As described in Section II.B of this Answer, the ISO agrees that the dispute window should be extended from the current eight business days under the ISO Tariff to 15 business days. The arguments of various intervenors are addressed further below.

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100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

[4] *See San Diego Gas & Electric Co., et al.*, 102 FERC ¶ 61,317, at P 155 (2003) ("March 26th Order").

II. ANSWER[5]

A. The Transactional Adjustments and the Preparatory Rerun Required by the ISO to Prepare for the Calculation of Refunds Should Not be Considered a Part of the Compliance Phase of the Refund Proceeding[6]

Both the Generators and NCPA raise procedural issues related primarily to how the preparatory rerun should be conducted.[7] In addition, the Generators, PG&E, and NCPA suggest that the amount of information associated with the preparatory rerun and the related transactional adjustments are such that they are not "normal" for the ISO to conduct, and therefore that extraordinary procedures must be invoked in order to maintain transparency and understandability by the market.[8] Moreover, the Generators, NCPA, and PG&E argue that the compliance phase of the Refund Proceeding begins with the transactional adjustments that the ISO Settlements department makes on an ongoing basis to various transactions that occurred during this time period, and that any reruns necessary to "re-baseline" the database prior to performing the Refund Proceeding rerun are a part of the compliance phase of the proceeding rather than ordinary Settlement adjustments by the ISO.[9] These contentions are inapposite.

Although the ISO understands the desire of Market Participants to fully understand the changes that will be made through the preparatory rerun and adjustment

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[5] Interventions supportive of Amendment No. 51 were filed by the CPUC, EOB, and SCE. Interventions containing no substantive comments were filed by Sempra, the State Water Project, CERS, MWD, Powerex, and TANC. Interventions by these entities will not be discussed further in this Answer. Interventions in which the primary issue raised was the length of the dispute window for filing disputes of Settlement data were submitted by the following entities: Puget, CalPX, Avista, Cities/M-S-R, LADWP, APX, and MID. As discussed below, the ISO is willing to agree to a 15 business day dispute window for the review of Settlement Statements and the filing of related disputes as a part of this proceeding, although the length of the dispute window was not put at issue by Amendment No. 51.

[6] A number of the intervenors' arguments refuted in this section are similar to arguments made by the Generators in the Refund Proceeding, which the ISO recently addressed in that proceeding. *See* Answer of the California Independent System Operator to Motions for Clarification/Requests for Rehearing of March 26 Order, Docket Nos. EL00-95, *et al.* (filed May 12, 2003), at 8-13.

[7] Generators at 9-11; NCPA at 4-5.

[8] *See* NCPA at 4; PG&E at 1; Generators at 2, 10.

process, and is willing to accommodate this desire as described below, the recommendation that the preparatory rerun and adjustment process should be incorporated into the compliance phase of the Refund Proceeding is unwarranted. The Commission and the Market Participants have long been aware that the ISO would be required to make adjustments to its production Settlements database in order to create a final pre-mitigation "snapshot" against which the mitigated prices would be applied in order to calculate the refund amounts and finally determine "who owes what to whom."[10] The preparatory rerun, however, concerns issues unrelated to those litigated in the Refund Proceeding and their consolidation would complicate the scope of the already complex set of issues in the Refund Proceeding related to correcting the market power abuses experienced during the California energy crisis. Neither the Commission in its March 26th Order nor the Presiding Judge in his Proposed Findings of Fact[11] even suggest that the preparatory rerun and the transactional adjustments necessary to arrive at the final pre-mitigation "snapshot" should be conducted as part of the compliance procedures in the Refund Proceeding.[12] Instead, the discussion of the compliance process in the March 26th Order and the Proposed Finding of Fact related solely to the rerunning of the ISO's Settlement and billing system to determine the amounts to be refunded and the amounts owed and owing between Scheduling Coordinators.

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9 Generators at 8-9, 11-12; NCPA at 4-5; PG&E at 6.

10 *See, e.g.*, Exh. ISO-37 (submitted in Docket Nos. EL00-95, *et al.* on July 26, 2002), at 10:2-20.

11 *San Diego Gas & Electric Co., et al.*, 101 FERC ¶ 63,026 (Dec. 12, 2002).

12 Additionally, the Generators themselves assert that the Commission, in an order issued in the Refund Proceeding on December 19, 2001, "plainly intended that *final* re-runs relating to the refund period be undertaken in the Refund Proceeding." Generators at 8 (citing *San Diego Gas & Electric Co., et al.*, 97 FERC ¶ 61,275, at 62,223-24 (2001)) (emphasis added). The preparatory rerun proposed by the ISO is not a final rerun; instead, the preparatory rerun must be completed before the ISO can conduct the final

In addition, the proposals of the Generators, NCPA, and PG&E are clearly inconsistent with the Commission's desire to complete the Refund Proceeding in a timely fashion. This desire is evidenced, *inter alia*, by the statement in the March 26th Order that it expected that the Refund Proceeding refunds could be distributed by the end of the summer."[13] Because of the scope and complexity of the calculations required to achieve this goal, however, the ISO, in its request for rehearing and/or clarification of that order, estimated time intervals for each step of the rerun process (which includes the preparatory rerun described in Amendment No. 51) and determined that the completion of the entire rerun process could be completed early in 2004, assuming that the preparatory rerun would commence in May, 2003.[14] As noted in the Amendment No. 51 filing, the ISO will not put the preparatory rerun into production until the Commission rules on Amendment No. 51.[15] If the Commission adopts the evidentiary procedures described by the Generators[16] and implicitly condoned by NCPA and PG&E, those timeframes may be lengthened considerably. Allowing such a delay to occur would be completely at odds with the Commission's goal of benefiting Scheduling Coordinators, and presumably retail customers, by making refunds available as soon as practicable.

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rerun in the Refund Proceeding. Transmittal Letter for Amendment No. 51 at 2. Thus, the Commission did not intend for the procedures in the Refund Proceeding to apply to the preparatory rerun.

[13] March 26th Order at P 1.

[14] Request for Rehearing and/or Clarification of the California Independent System Operator Corporation, Docket Nos. EL00-95, *et al.* (filed Apr. 25, 2003), at 16-19, 46-47 ("ISO Request for Rehearing").

[15] Additionally, the issues raised in the ISO Request for Rehearing concerning the ISO's reruns must be resolved by the Commission in order to provide guidance on how the reruns should be performed.

[16] Generators at 9-11.

The Generators, and to a lesser extent NCPA,[17] rely extensively on the notion that the transactional adjustments and the preparatory rerun are not in the "ordinary course of business." PG&E simply alleges that the proposal is inadequately supported and then goes on to list a series of very specific questions that could easily be answered in the course of the procedures the ISO proposes in Section II.B, below.[18] None of these contentions relate directly to the very limited changes proposed in Amendment No. 51. The modifications requested in Amendment No. 51 are limited to "walling off" the invoicing of charges related to the reruns in order that: (1) a Scheduling Coordinator debtor who incurred certain charges for the rerun period, but is no longer active in the Market, will not be assessed current charges, (2) new market entrants will not be exposed to charges incurred by incumbent firms in the Market during the Refund Period, and (3) Market Participants will be able to more readily comprehend the walled-off invoices that do not contain a mixture of current market and rerun charges.[19] Amendment No. 51 does not change the basic status of the ISO's Settlement and billing calculations. The ISO has conducted a number of significant reruns (each encompassing multiple issues) of the Settlement and billing system since its inception. These reruns were conducted through use of the same processes as will apply to the preparatory rerun referred to herein. None of those reruns involved anything like the compliance procedures the intervenors now propose. The difference between those earlier reruns and the preparatory rerun the ISO now proposes is that, with regard to the latter, the "wall-off" provisions of Amendment No. 51 are needed to protect current Market Participants from the consequences of events that occurred during periods when

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[17] Generators at 10; NCPA at 4.

[18] *See* PG&E at 7-11, 15-17.

they were not active in the ISO Market. However, the needed preparatory rerun *itself* will be conducted in the normal or ordinary course of the ISO's business as any of the other significant reruns have been. Indeed, the ISO would have to conduct the preparatory rerun to resolve the issues discussed in Amendment No. 51 even if the Refund Proceeding had never existed. Thus, there is no reason to treat the needed preparatory rerun and the associated transactional adjustments as part of the compliance portion of the Refund Proceeding.

B. In Order to Accommodate the Requests of Intervenors, the ISO Proposes that Certain Procedural Changes Be Made to Assist Market Participant Understanding of the Preparatory Production Rerun and Required Transactional Adjustments; However, These Changes are Not Necessitated by Amendment No. 51 Itself

As SCE notes, Amendment No. 51 concerns the walling off of the ISO's rerun process from the current market invoice process, *not* the merits of the rerun process itself.[20] Nevertheless, the ISO expects that Market Participants may be perplexed by the number and complexity of the adjustments that will have to be made through the manual adjustment and preparatory rerun process prior to commencement of the Commission-ordered Refund Proceeding rerun. Therefore, the ISO proposes the following procedures which, although they will entail some additional delay, will not have nearly the disruptive impact on the proceeding that would occur if the proposals of NCPA, the Generators, or PG&E were adopted. First, prior to the completion of the preparatory rerun, the ISO will provide all parties with a comprehensive list and explanation of each category of adjustment that is being made as a part of the preparatory rerun process, reasons for the adjustments, and the cost allocation

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[19] Transmittal Letter for Amendment No. 51 at 3.

[20] SCE at 2.

methodology.[21] Also at this time, the ISO will provide a proposed calendar for the rerun and invoicing activity, including dispute deadlines. To address additional questions from Scheduling Coordinators, the ISO also proposes to host a telephone conference with Scheduling Coordinators prior to commencement of the preparatory rerun followed by periodic update calls if needed. This process is similar to that approved by the Commission and utilized by the ISO in the initial stages of the Refund Proceeding in terms of verification of information.

During the preparatory production rerun process, as the ISO completes its adjustments for each month, the ISO will provide the Settlement detail files associated with each entity's Settlement Statements at the same time that it provides those Settlement Statements. However, the ISO does not believe it is appropriate to provide the Settlement detail files for all ISO Market Participants to all parties in this proceeding. Doing so would constitute a violation of the confidentiality provisions of the ISO Tariff[22] since the preparatory rerun will include data for periods outside the Refund period.

Finally, the ISO proposes to extend the window for Settlement Statement disputes relating to the preparatory rerun from the standard eight business days, as stated in the Tariff,[23] to fifteen business days after the end of each trade month.[24] For example, disputes for any interval in February, 2001 could be filed with the ISO up to 15

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[21] These materials will be subject to modification as needed.

[22] ISO Tariff, § 20.3.

[23] *See* ISO Tariff, Settlement and Billing Protocol § 4.4.1.1. However, the Commission should reject the CalPX's proposal that the 15 business days should run from the time that a Scheduling Coordinator, such as the CalPX, transmits the month's statements to its participants. *See* CalPX at 7; *see also* PG&E at 14. It would be inappropriate for Scheduling Coordinators such as the CalPX to determine when the ISO's 15 business day dispute window begins. Moreover, adoption of the CalPX's proposal could unnecessarily delay the completion of the reruns by the ISO.

[24] This ISO offer alone appears to assuage the concerns of the seven intervenors that asserted the dispute window should be extended. This is the case even though the length of time that the dispute window is open is not at issue in the filing of Amendment No. 51. The requests of Cities/M-S-R (at 7) and

business days after the Settlement Statement for the last day of February, 2001 is published to Scheduling Coordinators. The ISO requests waiver of these Tariff provisions strictly for the purpose of extending the dispute window with regard to the preparatory rerun.

These procedures strike a reasonable balance between assuring that Market Participants understand the adjustments and calculations that are occurring to the pre-mitigation database, giving Market Participants an adequate opportunity to raise questions or disputes with the ISO, and minimizing the delay associated with completing the refund process.

C. The Arguments of Parties That Are Beyond the Scope of the Present Proceeding Should Be Given No Weight by the Commission

Because, as explained above, Amendment No. 51 concerns only the ISO's wall off proposal, not the merits of the preparatory adjustments and rerun, the inquiries and arguments of various intervenors concerning the preparatory adjustments and rerun are beyond the scope of this proceeding.[25] For example, PG&E argues that the ISO has not sufficiently explained the allocation methodology it would use for any adjustments made under Amendment No. 51. PG&E's belief that the ISO has not explained its allocation methodology stems from the mistaken premise that Amendment No. 51 contains an allocation methodology. It does not. It would merely allow the ISO to wall off or separate the invoicing for the refund and preparatory reruns from the current

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MID (at 7) that the dispute window be extended beyond 15 business days should, however, be rejected. Granting their requests could unnecessarily delay the completion of reruns by the ISO.

[25] Generators at 12-14; LADWP at 5; PG&E at 12-13. Nevertheless, as explained in Section II.B, above, the ISO is willing to provide Market Participants with further information concerning the preparatory adjustments and rerun.

market. The benefits of the ISO's proposal have been fully explained in Amendment No. 51 and in this Answer.[26]

Moreover, PG&E expresses dissatisfaction with the fact that the ISO does *not* propose to conduct certain reruns: it argues that over-reporting of Meter Data should be subject to adjustment by the ISO, just like under-reporting of Meter Data.[27] As described above, the merits of the ISO's preparatory rerun is not at issue in this proceeding, and thus PG&E's argument is inapposite. However, even if PG&E's argument were to be considered germane to the present proceeding, the Commission should reject it. PG&E ignores the critical differences between over-reporting of Meter Data and under-reporting of Meter Data. Under-reporting of Meter Data by a Scheduling Coordinator results in the Scheduling Coordinator being undercharged and the ISO Market being overcharged to an equal extent. Thus, Scheduling Coordinators that under-report hurt the ISO Market by not complying with the Meter Data reporting requirements. Further, in the case of under-reporting of Meter Data by a particular Scheduling Coordinator, all other Scheduling Coordinators are damaged financially but have no information to dispute the resulting charges. It is for this reason that the ISO believes it has a responsibility to include identified under-reporting of load in the preparatory rerun.[28] In contrast, over-reporting of Meter Data by a Scheduling Coordinator results in the Scheduling Coordinator – through its own inattentiveness concerning the Meter Data in its possession and the normal dispute window under the ISO Tariff – being overcharged and the ISO Market being undercharged to an equal

[26] The Generators take a view similar to PG&E's in that they contend that the ISO's simple wall off proposal requires some abstruse discussion and explanation that goes far beyond what has been provided. Again, the ISO has already supplied a description of its proposal and of its benefits.
[27] PG&E at 8-9.

extent. Thus, Scheduling Coordinators that over-report do not hurt the other ISO Market Participants, but rather harm only themselves, by failing to comply with the Meter Data reporting requirements. In addition, the ISO notes the reruns it has conducted in the past and in the ordinary course of the ISO's business have not been subject to the types of proposed modifications that intervenors in this proceeding suggest. Thus, there is no reason for the preparatory rerun to be subject to such proposed modifications.

D. The ISO Properly Deleted the Final Sentence of Section 11.6.3.3 of the ISO Tariff

Several intervenors argue that the ISO has not sufficiently explained the deletion of the final sentence of Section 11.6.3.3 of the ISO Tariff.[29] This change merely corrects the Tariff since this language has never been operable. Thus, the arguments of intervenors concerning the section are without merit.

III. CONCLUSION

None of the intervenors has requested rejection of Amendment No. 51. In addition, no intervenor has truly objected to the concept of employing wall off procedures for the preparatory production rerun and Commission rerun invoices.[30] The filings ostensibly critical of Amendment No. 51 have actually centered on other procedures that intervenors believe are necessary as a part of the Refund Proceeding or questions that various intervenors have about the specific procedures and

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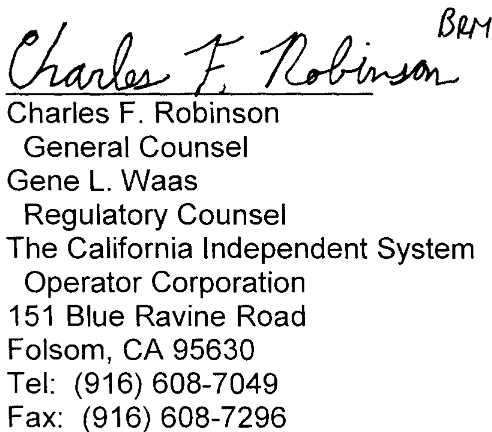
[28] *See* Transmittal Letter for Amendment No. 51 at 2.

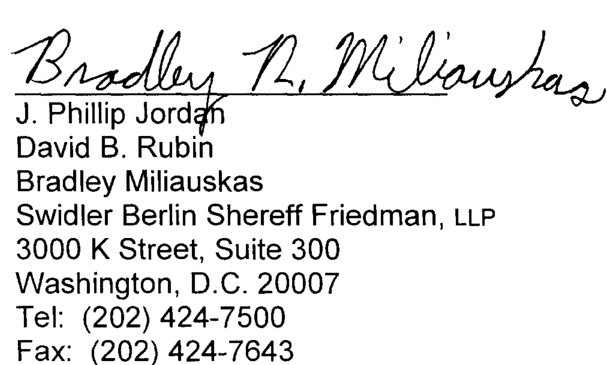
[29] LADWP at 6; PG&E at 13.

[30] APX states on page 1 of its filing that it believes that certain portions of Amendment No. 51 are not "just and reasonable," but then on page 3 of its filing states, "APX strongly supports the concept of 'walling off' any rerun settlements and invoices from current market activities. The ISO's intention and willingness to mitigate adverse impacts of the refunds on Market Participants and to eliminate "complexity

adjustments that will be required. In this Answer, the ISO has proposed a process that should address intervenors' concerns. For these reasons, and for the other reasons described herein, the Commission should approve Amendment No. 51 as filed and should grant waiver of the Tariff provisions concerning the dispute window as described above.

Respectfully submitted,





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Date: May 21, 2003

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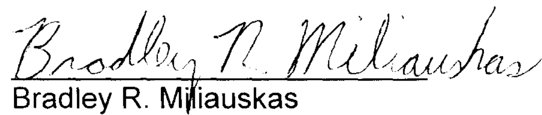
and confusion" (Amendment No. 51 at Attachment C, ¶ 7) are to be commended." In fact, this is all Amendment No. 51 does.

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., on this 21st day of May, 2003.



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