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September 15, 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. ER04-835-002**

Dear Secretary Salas:

Enclosed please find the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Protest, submitted in the captioned docket.

Feel free to contact the undersigned with any questions. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas  
Bradley R. Miliauskas

Counsel for the California  
Independent System Operator  
Corporation

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

**California Independent System            )       Docket No. ER04-835-002  
Operator Corporation                    )**

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

**I.       INTRODUCTION**

On August 10, 2004, the California Independent System Operator Corporation (“ISO”) submitted a compliance filing (“Amendment No. 60 Compliance Filing”) in the captioned docket to comply with the Commission’s “Order on Tariff Amendment No. 60,” issued in the docket on July 8, 2004, 108 FERC ¶ 61,022 (“Amendment No. 60 Order”). Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (together, “Duke”) submitted a protest in response to the Amendment No. 60 Compliance Filing. 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 Duke’s protest in this proceeding.<sup>1</sup>

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<sup>1</sup> 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 Duke’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 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

## II. ANSWER

Duke argues that “[t]he Commission should not accept for filing the revised Tariff Sheets in Attachment C of the [Amendment No. 60 Compliance Filing] because they include language that was rejected by the Commission in its recent order on rehearing of Amendment No. 54 to the CAISO Tariff.” Protest at 1. The Commission should not take the action described in Duke’s protest because Duke confuses the compliance requirements of the Amendment No. 60 proceeding with the separate compliance requirements of the Amendment No. 54 proceeding.

The Amendment No. 60 Order required the ISO to submit compliance changes in response to directives in the Amendment No. 60 Order, and to do so within 30 days (i.e., by August 10, 2004). Amendment No. 60 Order at ordering paragraph (B) (“The CAISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order”) (emphasis added). The issue from the Amendment No. 54 proceeding that Duke mentions was not addressed at all in the Amendment No. 60 Order. Therefore, the ISO was not required to address that issue in the Amendment No. 60 Compliance Filing.

The order in the Amendment No. 54 proceeding that Duke references is the “Order on Rehearing and Compliance on Proposed Amendment No. 54,” 108 FERC ¶ 61,142 (“Amendment No. 54 Compliance Order”). That order required the ISO to submit a compliance filing within 30 days (i.e., by September 7, 2004) in response to the directives contained therein. See Amendment No. 54

Compliance Order at ordering paragraph (A). On September 7, the ISO submitting a filing to comply with the Amendment No. 54 Compliance Order.

The Amendment No. 54 and Amendment No. 60 proceedings take place in separate dockets and required separate compliance filings.<sup>2</sup> Thus, the ISO was not required to comply with a directive from the Amendment No. 54 Compliance Order in the Amendment No. 60 Compliance Filing. For this reason, the Commission should decline to take the action described in Duke's protest.

### III. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission not take the action described in Duke's protest.

Respectfully submitted,

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Date: September 15, 2004

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<sup>2</sup> See *Indiana-Michigan Power Company*, 87 FERC ¶ 61,278, at 62,128 (1999) ("As we have explained, there is no single 'post-license phase' in which to intervene; each compliance filing, such as the filing of a plan for Commission approval, is a separate proceeding requiring a separate intervention"). Similarly, separate proceedings also require separate compliance filings.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents 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, California, on this 15<sup>th</sup> day of September, 2004.

/s/ Anthony J. Ivancovich  
Anthony J. Ivancovich