

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

<b>PacifiCorp</b>	)	<b>Docket No. ER07-882-000</b>
	)	
<b>Pacific Gas and Electric Company</b>	)	<b>Docket No. ER07-967-000</b>

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO MOTION OF PACIFICORP TO STRIKE PORTIONS OF  
INITIAL BRIEF**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, the California Independent System Operator Corporation (“CAISO”) files its answer to the Motion of PacifiCorp to Strike Portions of the Initial Brief of the California Independent System Operator Corporation, filed by PacifiCorp in the captioned proceeding on September 28, 2007 (“Motion to Strike”).<sup>1</sup> As explained below, PacifiCorp’s Motion to Strike fails to meet the Commission’s requirements for granting motions to strike, in that the material that PacifiCorp seeks to strike was provided by the CAISO in conformance with the Commission order issued in this proceeding on September 11, 2007.<sup>2</sup> Also, the CAISO strongly believes that the Commission must address the issues discussed in the portions of the CAISO’s initial brief that are the subject of the Motion to Strike in order to resolve the reliability and operational

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings set forth in the CAISO’s current effective tariff, the tariff provisions that the Commission has approved to implement the CAISO’s Market Redesign and Technology Upgrade (“MRTU”) initiative, or the Owners’ Coordinated Operations Agreement, as dictated by the context.

<sup>2</sup> *PacifiCorp*, 120 FERC ¶ 61,231 (2007) (“September 11 Order”).

issues in this proceeding. Therefore, the Commission should deny the Motion to Strike.

## **I. Answer**

The Commission has explained that “a motion to strike is not favored and carries a heavy burden to be granted . . . material will not be struck ‘unless the matters sought to be omitted from the record have no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party.’”<sup>3</sup>

PacifiCorp falls far short of meeting its heavy burden to show that its Motion to Strike should be granted.

PacifiCorp argues that the Commission should strike (or at least should disregard, which amounts to the same thing) the material the CAISO included in its initial brief in this proceeding (“CAISO Initial Brief”) concerning the need for and the appropriate terms of a proposed operating agreement between the CAISO and PacifiCorp (“Operating Agreement”).<sup>4</sup> PacifiCorp contends that the material concerning the Operating Agreement falls outside the scope of the paper hearing in this proceeding as clarified by the Commission in the September 11 Order. However, in the September 11 Order, the Commission stated “that the paper hearing is not limited to the appropriate terms of a Coordinated Operation Agreement, and that the Commission intended for the

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<sup>3</sup> *Central Hudson Gas & Electric Corp.*, 92 FERC ¶ 63,004, at 65,008 (2000) (quoting *Power Mining Inc.*, 45 FERC ¶ 61,311, at 61,972 n.1 (1988)). *Accord San Diego Gas & Electric Co.*, 114 FERC ¶ 61,070, at P 20 n.47 (2006); *Boston Edison Co.*, 61 FERC ¶ 61,026, at 61,147 n.114 (1992).

<sup>4</sup> As discussed further below, the CAISO unilaterally filed the unexecuted, proposed Operating Agreement on September 14, 2007, in Docket No. ER07-1373-000. In its Initial Brief, the CAISO explained that it was going to submit this Operating Agreement.

parties to provide briefs only on operational, maintenance, and planning issues related directly to a Coordinated Operation Agreement.”<sup>5</sup> The material provided in the CAISO Initial Brief relates directly to the operational, maintenance, and planning issues implicated by the proposed Owners’ Coordinated Operations Agreement is therefore in conformance with these Commission directives.

As explained in further detail in the CAISO Initial Brief (including the portions of the CAISO Initial Brief that PacifiCorp seeks to strike), if the Agreement for Use of Transmission Capacity among Pacific Power & Light Company, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (“Capacity Agreement”) is permitted to terminate and if PacifiCorp becomes a party to the OCOA and the California-Oregon Intertie (“COI”) Path Operating Agreement, the CAISO will need an operating agreement with PacifiCorp to establish the legal relationships and procedures by which the CAISO will perform its obligations as Balancing Authority and COI path operator. Indeed, Section 8.2 of the OCOA requires each party to make arrangements with its Control Area Operator to ensure compliance with the OCOA and the COI Path Operating Agreement. Specifically, Section 8.2 of the OCOA requires the following:

Each party must make arrangements . . . for its facilities that are a part of the System to be operated within a NERC [North American Electric Reliability Corporation] certified Control Area and make reasonable efforts to require the Control Area Operator to operate such facilities in conformance with this Agreement. Such arrangements shall obligate the Party to provide compensation to the COI Control Area Operator for any sanctions incurred by the

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<sup>5</sup> September 11 Order at P 9. The full name of the Coordinated Operation Agreement is the Owners’ Coordinated Operations Agreement (“OCOA”).

latter arising from the WECC [Western Electricity Coordinating Council] Reliability Management System Agreement in relation to duties of the Path Operator for COI . . . due to the action or inaction of the Party for whom or on whose behalf the Control Area Operator acts in relation to the Path Operator for COI.

Section 8.2 also sets forth minimum obligations that must be included in the arrangements, covering such matters as responses to emergencies, outage coordination, and scheduling.<sup>6</sup> Therefore, the need to enter into the Operating Agreement follows directly from the provisions of the OCOA. As a result, the material in the CAISO Initial Brief that addresses the need for and the appropriate terms of the Operating Agreement concerns “operational, maintenance, and planning issues related directly to a Coordinated Operation Agreement,” as required by the September 11 Order. Moreover, it would be impossible for the Commission to determine the “appropriate terms of a Coordinated Operation Agreement” without evaluating the need for and terms of the Operating Agreement that must be entered into pursuant to Section 8.2 of the Coordinated Operation Agreement. Because the material in the CAISO Initial Brief that PacifiCorp seeks to strike falls squarely within the directives of the September 11 Order, PacifiCorp comes nowhere near meeting its heavy burden of showing that the material concerning the Operating Agreement “ha[s] no possible relationship to the controversy, may confuse the issues, or otherwise prejudice[s] a party.”<sup>7</sup>

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<sup>6</sup> CAISO Initial Br. at 1-2, 14.

<sup>7</sup> See *supra* note 3 and accompanying text. Even if the material in the CAISO Initial Brief did not fall squarely within the directives in the September 11 Order, it would still assist the Commission in developing a complete record in this proceeding, which in itself would be a sufficient basis for the Commission to deny PacifiCorp’s Motion to Strike. See *Ameren Energy Generating Company and Union Electric Co. d/b/a AmerenUE*, 106 FERC ¶ 63,011, at P 9 n.4,

In fact, PacifiCorp seeks to omit from the record material that *does* relate to the controversy, thereby confusing the issues and prejudicing all of the other parties. In the September 11 Order, the Commission specifically directed the parties to file any agreements, in addition to the Coordinated Operation Agreement, that are “pertinent to the operation, maintenance, and planning of the COI and cannot be agreed-upon by the parties to such agreements.”<sup>8</sup> The Operating Agreement is pertinent to the operation, maintenance, and planning of the COI, and the CAISO and PacifiCorp have not agreed on its terms, so the CAISO unilaterally filed the unexecuted, proposed Operating Agreement in a new docket.<sup>9</sup>

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*aff'd in relevant part*, 108 FERC ¶ 61,081 (2004) (“In order to develop a complete record in this proceeding, Ameren's motion to strike is denied in its entirety.”). This is especially true given that the CAISO provided this material in its *Initial* Brief, which meant that all parties – including PacifiCorp – had an opportunity to respond to the material in their reply briefs. See *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 63,074, at P 3 (2006) (“Good cause has not been established for granting Dayton's motion. In the interest of developing a complete record, Section V of Green Mountain's initial brief shall not be stricken. Accordingly, Dayton's motion to strike is hereby denied. The parties will have an opportunity to respond to these issues in their reply briefs.”). PacifiCorp chose not to address the material concerning the Operating Agreement in its own reply brief, but several other parties did address it in theirs. See PacifiCorp Reply Br. at 4; Joint Reply Br. of Pacific Gas and Electric Company and San Diego Gas & Electric Company at 2-4; Reply Br. of Powerex Corp. at 7-12; Reply Br. of Sacramento Municipal Utility District at 9-10; Reply Br. of Transmission Agency of Northern California at 35-36. PacifiCorp instead addressed the material at length in the Motion to Intervene and Conditional Protest that it filed in Docket No. ER07-1373 on October 5, 2007.

<sup>8</sup> September 11 Order at P 9.

<sup>9</sup> See Operating Agreement Between California Independent System Operator Corporation and PacifiCorp, Docket No. ER07-1373-000, Transmittal Letter at 2 n.3 (Sept. 14, 2007). In the September 11 Order, the Commission drew an explicit distinction between the *briefing* of operational, maintenance, and planning issues related directly to the Coordinated Operation Agreement, and the *filing of additional agreements* that are pertinent to the operation, maintenance, and planning of the COI. See September 11 Order at P 9. The CAISO has acknowledged this distinction by addressing the need for and the appropriate terms of the Operating Agreement in its Initial Brief and by filing the proposed Operating Agreement in Docket No. ER07-1373. Throughout its Motion to Strike, PacifiCorp fails to properly recognize this distinction.

PacifiCorp argues that the terms of the Operating Agreement cannot be addressed in the paper hearing because the full Operating Agreement was not filed for Commission approval until September 14.<sup>10</sup> This argument ignores the fact that the CAISO has raised the issue of the need for an operating agreement between PacifiCorp and the CAISO from the earliest stages of this proceeding. In the CAISO's May 31, 2007 protest in Docket No. ER07-882 ("CAISO Protest"), the CAISO explained that, "In order to ensure that the proposed termination of the Capacity Agreement can be accomplished in a reliable manner that will not result in operational concerns or financial harm to customers, the CAISO has identified certain issues that must be resolved."<sup>11</sup> One of the issues identified in the CAISO Protest is the need to define "the scope of the CAISO's operating authority over the PACI after the proposed termination."<sup>12</sup> The CAISO explained that it was engaged in negotiations with PacifiCorp on the terms of an operating agreement to resolve the scope of the CAISO's authority over the PacifiCorp facilities in the CAISO Balancing Authority Area. The CAISO included in its list of "Issues That Must Be Resolved Before the Termination Can Become Effective" the need to finalize the terms of this operating agreement.<sup>13</sup> The Commission noted the CAISO's concerns in its July 30, 2007 order in this proceeding when the Commission directed that "all of the disputed issues on coordinated

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<sup>10</sup> Motion to Strike at 3.

<sup>11</sup> CAISO Protest at 2.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> *Id.* at 14.

operation, maintenance, and planning related to a Coordinated Operation Agreement are to be briefed with evidence in the paper hearing.”<sup>14</sup>

PacifiCorp’s Motion to Strike is particularly inappropriate in light of PacifiCorp’s efforts seeking to preclude the Commission from considering the Operating Agreement at all: PacifiCorp filed its Motion to Strike in the instant proceeding and also filed a motion to reject the proposed Operating Agreement filed by the CAISO in Docket No. ER07-1373. If the Commission were to grant both of these motions, as PacifiCorp requests, the Commission would be unable to consider the need for and the appropriate terms of the Operating Agreement, either in the captioned proceeding or in Docket No. ER07-1373. This would not only undermine the directive in the September 11 Order to file any additional agreements, but would also leave an enormous gap in the Commission’s consideration of the issues in these proceedings and thus would result in confusion and prejudice to the parties.

PacifiCorp suggests that the Commission need not consider the Operating Agreement in the same time frame as the issues in this proceeding because the main area of disagreement between the CAISO and PacifiCorp on the operating Agreement concerns congestion charges.<sup>15</sup> The Operating Agreement is critical, however, to providing the CAISO the authority to fulfill its role as the Path Operator for COI, as contemplated by the Coordinated Operation Agreement. Without an approved Operating Agreement with PacifiCorp, the CAISO has

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<sup>14</sup> *PacifiCorp*, 120 FERC ¶ 61,113, at PP 33, 35 (2007).

<sup>15</sup> Motion to Strike at 3.

serious reservations about its ability to perform effectively the role of the Path Operator for COI and to ensure the reliable operation of the COI. Thus, the CAISO believes the Commission must rule on the terms on the Operating Agreement at the same time that it addresses the other issues raised in this proceeding.

The CAISO has requested that the captioned proceeding and Docket No. ER07-1373 be consolidated.<sup>16</sup> However, even if the Commission declines to consolidate the proceedings, the Commission should not preclude consideration of the Operating Agreement entirely by granting PacifiCorp's motions.<sup>17</sup>

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<sup>16</sup> See *id.* at 16.

<sup>17</sup> The CAISO will separately file, in Docket No. ER07-1373, an answer to PacifiCorp's motion to reject the proposed Operating Agreement filed by the CAISO.



## II. Conclusion

For the reasons explained above, the Commission should deny PacifiCorp's Motion to Strike.

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Dated: October 12, 2007

## CERTIFICATE OF SERVICE

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

Dated at Folsom, California this 12<sup>th</sup> day of October, 2007.

/s/ John Anders  
John Anders