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December 15, 2003

## **Via Electronic Filing**

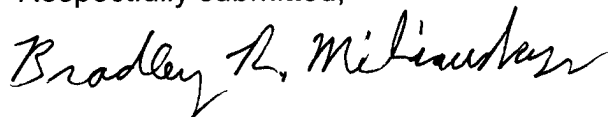
The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: California Independent System Operator Corporation  
Docket No. ER03-746-\_\_\_**

Dear Secretary Salas:

Please find attached the Request for Rehearing of the California Independent System Operator Corporation, filed today in the captioned proceeding. Please contact the undersigned with any questions concerning the filing.

Respectfully submitted,



J. Phillip Jordan  
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. ER03-746-\_\_\_\_  
Operator Corporation                        )**

**REQUEST FOR REHEARING OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Section 313(a) of the Federal Power Act (“FPA”), 16 U.S.C. § 825l(a) (1994), and Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2003), the California Independent System Operator Corporation (“ISO”)<sup>1</sup> respectfully submits this request for rehearing of the Commission’s Order on Rehearing and Compliance Filing issued on November 14, 2003 in the above-captioned docket, 105 FERC ¶ 61,203 (“November 14 Order”). The November 14 Order addressed issues raised in the proceeding on Amendment No. 51 to the ISO Tariff (“Amendment No. 51”), in which proceeding the ISO has filed, *inter alia*, a Tariff amendment (“April 15 Filing”), a compliance filing (“July 3 Compliance Filing”), an addendum to the July 3 Compliance Filing (“July 9 Addendum”), and a motion for leave to file an answer and answer to comments and protests (“August 8 Answer”).

**I. SUMMARY**

This request for rehearing concerns four issues: (1) the Commission’s rejection of the ISO’s proposed adjustments, in its preparatory re-runs, to rescind

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<sup>1</sup> Capitalized terms not otherwise defined herein are used in the sense given the Master Definitions Supplement, Appendix A to the ISO Tariff.

Ancillary Services capacity payments to suppliers that used that capacity to generate uninstructed Energy instead of keeping the capacity unloaded as reserves (“unavailable A/S”); (2) the Commission’s failure to authorize the ISO’s proposed preparatory re-run relating to the results of Good Faith Negotiations with Williams Power Company, Inc. (“the Williams GFN”); (3) the Commission’s directive that the ISO submit a compliance filing by January 30, 2004, concerning the ISO’s re-runs in this proceeding; and (4) the Commission’s conclusion that the ISO had not supported its statements that it must conduct its preparatory re-runs that are the subject of this proceeding prior to conducting the re-run in the California refund proceeding in Docket Nos. EL00-95, *et al.* (the “refund proceeding re-run”).

On the first issue, the ISO believes the Commission erred in making the Commission’s Show Cause proceedings the exclusive venue for addressing concerns about unavailable A/S (which the Commission would), because the ISO’s proposed adjustments cover significantly different ground from that covered in those proceedings. On the second issue, for the reasons the ISO has explained in an answer in support of a motion filed by Williams in this proceeding on November 25, 2003, the ISO believes the Commission erred in finding that the re-run relating to the Williams GFN should be deferred. On the third issue, the ISO believes the Commission erred because it is not possible to conduct the re-runs and prepare a compliance filing by the date directed by the Commission. On the final issue, the ISO believes the Commission erred because the ISO has explained that the preparatory re-runs are necessary in order for the refund

proceeding re-run to accurately determine “who owes what to whom” after application of the mitigated market clearing prices.

## **II. SPECIFICATION OF ERROR**

The ISO respectfully submits that the November 14 Order erred in the following respects:

1. The Commission erred in rejecting the proposed adjustments relating to unavailable A/S.

2. The Commission erred in finding that the proposed re-run relating to the Williams GFN should be deferred.

3. The Commission erred in finding that the ISO must submit a compliance filing concerning the preparatory re-runs by January 30, 2004.

4. The Commission erred in finding that the ISO has failed to show that the preparatory re-runs are imperative prerequisites for the refund proceeding re-run.

## **III. ARGUMENT**

### **A. The Commission Should Permit the ISO to Include its Proposed Adjustments Concerning Unavailable A/S in the Preparatory Re-runs**

The Commission’s sole rationale for rejecting the ISO’s proposed adjustments relating to unavailable A/S was that, “[a]s the CAISO describes, this proposed adjustment concerns the ‘double billing’ issue set for hearing in the Enron strategy show cause proceedings.” November 14 Order at P 31. The Commission appeared to believe that the ISO’s adjustments for unavailable A/S

and the Commission's Show Cause proceedings on the double billing (*i.e.*, "Double Selling") issue cover the same ground, and therefore that the ISO's adjustments would be redundant. In fact, there is only a minor amount of overlap between the Commission's Show Cause proceedings and the ISO's proposed adjustments.

The ISO never suggested that the Show Cause proceedings can substitute for the adjustments it has proposed in this proceeding. To the contrary, *the ISO has made clear that its own adjustments are intended to address more transactions, more parties, and a much longer time period than the Commission's Show Cause proceedings.* July 9 Addendum at page 1 of Appendix 1 ("[T]he ISO believes the Double Selling that occurred prior to January 1, 2000 must also be corrected, and that all suppliers, not just the four suppliers identified in the Commission's order, ought to be subject to the settlement corrections that the ISO proposes"); *id.* at page 2 of Appendix 1 ("There are fundamental distinctions between the behavior for which the ISO intends to make the adjustments described in the instant filing, and the so-called 'Enron games' that have been the subject of debate and scrutiny over the last 2 years"). The Commission's proceedings will address certain transactions of four named parties for the time period from January 1, 2000 through September 9, 2000 (after which date, the ISO implemented its "No Pay" software). The ISO's adjustments, on the other hand, would cover additional parties for that same period, and would also cover transactions for various parties from 1998 until January 1, 2000, *i.e.*, prior to the period addressed by the Commission's Show

Cause proceedings. August 8 Answer at 30; July 9 Addendum at page 1 of Appendix 1. Moreover, the Commission's proceedings have a different theoretical basis than do the adjustments. The proceedings will involve an investigation of whether certain transactions entailed gaming behavior; the ISO's adjustments would be based on a finding that a supplier had failed to satisfy its obligation, under the ISO Tariff and principles expressed in the common law and the Uniform Commercial Code, to keep its Ancillary Services unloaded and available for Dispatch by the ISO. *Id.* at 26-28, 29-30.

Notably, in the settlement filed by Commission Trial Staff ("Staff") and Reliant in the Show Cause proceedings, addressing in part Double Selling, Staff and Reliant stipulated that the settlement "does not affect the proceeding commenced in Docket No. ER03-746 with respect to CAISO Amendment No. 51" except with regard to the offset of certain settlement payments. Stipulation and Agreement, Docket No. EL03-170-000 (filed Aug. 29, 2003) at ¶ 4.4. Reliant explained, in a subsequent filing concerning the settlement, that:

As Reliant's protest filed in Docket No. ER03-746 explains, and as the CAISO's answer to protests in that proceeding acknowledges, there are numerous issues of fact regarding instances of alleged double selling of ancillary services cited by the CAISO. These matters, however, are to be resolved in that proceeding . . . . Reliant and Trial Staff agreed to defer to that other proceeding the issue of "double selling" beyond the amount calculated based on the Cal Parties' original allegation, providing only that Reliant would receive a credit in that other proceeding for settlement amounts paid here.

Reliant's Reply Comments in Support of Settlement, Docket No. EL03-170-000 (filed Oct. 30, 2003), at 5. Thus, Trial Staff and Reliant appeared to acknowledge that at least some of the Double Selling issues applicable to Reliant should be

resolved in the Amendment No. 51 proceeding rather than in the Show Cause proceedings.

Significant adverse consequences will result if the Commission disallows the ISO's adjustments for unavailable A/S and addresses the issue of unavailable A/S solely under the rubric of Double Selling in the Show Cause proceedings. For example, the transactions of ten other entities that resulted in unavailable A/S will fall outside the ambit of those proceedings and therefore will not be addressed at all. According to the ISO's latest calculations (which are subject to revision), these transactions involve approximately \$17.8 million. If the ISO is permitted to make adjustments for unavailable A/S, all of the amounts involved will be subject to rescission.

The relatively minor overlap that does exist between the ISO's proposed adjustments and the Show Cause proceedings concerning Double Selling can easily be accommodated. As Staff's proposed settlement with Reliant shows, appropriate account can be taken in the proposed adjustments of any litigated resolutions of generic issues and of any resolutions of specific transactions in the Show Cause proceedings (through settlement or litigation) so that corrections of overpayments in the adjustments do not "double recover" payments that were already ordered to be disgorged under the Show Cause process. Therefore, the adjustments and the Show Cause proceedings would not interfere with one another, but rather would mesh seamlessly with one another. See August 8 Answer at 31-32. For this reason, no practical difficulties would be raised by

permitting the adjustments and the Show Cause proceedings to go forward on their respective tracks.

**B. The Commission Should Approve the Proposed Re-run Related to the Williams GFN**

The Commission deferred a decision on the re-run relating to the Williams GFN until after it had assessed a settlement agreement (the "Williams Settlement") that Williams has not yet filed. November 14 Order at P 27. On this issue, the ISO incorporates by reference the discussion in the answer it submitted in these proceedings on November 26, 2003 ("November 26 Filing"), in support of Williams's Motion for Expedited Clarification, or, in the Alternative, Request for Rehearing concerning the November 14 Order. As the ISO explained, the Commission should allow the ISO to include the results of the Williams GFN in the preparatory re-run process, regardless of when the Williams Settlement is filed and acted on by the Commission. Moreover, expedited action on this issue is necessary to avoid delay in the preparatory re-run process. See November 26 Filing at 4-6.

**C. The Commission Should Rescind its Directive that the ISO Submit a Compliance Filing in this Proceeding by January 30, 2004**

The Commission directed the ISO to submit a compliance filing by January 30, 2004 that contains the "results, explanations and details" of the ISO's preparatory re-runs. November 14 Order at P 20. As the ISO explained in the Request for Clarification and/or Rehearing it submitted in Docket Nos. EL00-95, *et al.* on November 17, 2003 ("November 17 Filing"), it is working as fast as possible, consistent with ensuring accuracy, to complete its re-runs. However,



even the ISO's best-case schedule will not allow it to complete the preparatory re-runs. November 17 Filing at 18, 19.<sup>2</sup>

As explained in the attached market notice issued December 9, 2003, the ISO plans to begin publishing Settlement Statements for October 2000 on December 18, 2003. The "hold-points" in the re-run process described in the market notice may render the ISO unable to adhere to the best-case schedule for completing the re-runs. For example, as the ISO explained in greater detail in the November 26 Filing, if the Commission does not issue a clarification or rehearing order concerning the re-run relating to the Williams GFN by late December 2003 or the first week of January 2004, it would be most efficient to suspend all preparatory re-run activity concerning the remaining months to be re-run (December 2000 through June 2001) until the Commission issues such an order; the ISO's only other alternative would be to go ahead with the re-run activity but risk having to conduct another complete re-run of the months impacted by the Williams GFN, which would entail at least six weeks of additional effort on the part of ISO staff. November 26 Filing at 5-6. The suspension of re-run activity, although the most efficient alternative, would further prolong the ISO's schedule. Moreover, in the November 17 Filing, the ISO explained that it would begin the preparatory re-run process on the assumption that the Commission would grant the ISO's request for clarification that the ISO need not change its settlements data base with respect to the treatment of CERS. If the Commission orders otherwise, there will be a significant delay in the re-run

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<sup>2</sup> The ISO also explained in the November 17 Filing that it was not possible to meet the Commission's five-month deadline for completing the refund proceeding re-run. November 17

process. November 17 Filing at 20. (The ISO will be making another filing in the refund docket this week to further explain the potential delay related to the treatment of CERS transactions.) For these reasons, the ISO requests that the Commission not require the ISO to submit its compliance filing by January 30, but instead allow the ISO to submit the compliance filing as soon as practicable.

**D. The Commission Should Reverse its Finding that the ISO Has Failed to Show that the Preparatory Re-runs are Imperative Prerequisites for the Refund Proceeding Re-run**

The Commission found that the ISO has not shown that its preparatory re-runs “are ‘imperative prerequisites’ that must be completed before the California refund settlements and billing process can begin,” and that “[f]or this reason, although we will approve or deny the CAISO’s proposed revisions in this proceeding, we expect that the settlements and billing process in the CAISO California refund proceeding will not be delayed as a result of the CAISO establishing new baseline data in this proceeding.” November 14 Order at P 20. The ISO is perplexed by the Commission’s statements. The ISO has explained in this proceeding that the preparatory re-runs are necessary to obtain an accurate baseline data set against which to conduct the refund proceeding re-run. The more accurately the ISO calculates the baseline data, the more accurate the results of the refund proceeding re-run will be. See transmittal letter for April 15 Filing at 2; August 8 Answer at 5-7. Moreover, to the extent the preparatory re-runs are not conducted, the results of the refund proceeding re-run will contain known errors (i.e., improper reflections of the entities responsible for certain costs) that will render incorrect the conclusion subsequently reached

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Filing at 18-19.

in the refund proceeding as to “who owes what to whom.” November 17 Filing at 19.

For example, the ISO estimates that the re-run concerning energy exchange transactions will have an impact of between \$100 million and \$200 million on the amounts that various Market Participants must pay. See Attachment A to July 3 Compliance Filing at 1. If these many millions of dollars are not properly apportioned among Market Participants in the baseline data set prior to the refund proceeding re-run, the dollars will continue to be misallocated among Market Participants after the refund proceeding re-run. As a result, the determination of who owes what to whom will be incorrect, in a cumulative amount of the estimated \$100 to \$200 million – and there will be no way to determine specifically which Market Participants are affected and in what amounts, individually. Therefore, if the Commission wants an accurate accounting of who owes what to whom in the refund proceeding, it is necessary to include the results of the preparatory re-run concerning energy exchange transactions in the settlements data base before the refund proceeding re-run is conducted.

Another example is the correction of the mis-logging of out-of-sequence (“OOS”) transactions addressed in an order issued in the refund proceeding on October 16, 2003. See *San Diego Gas & Electric Co., et al.*, 105 FERC ¶ 61,066, at PP 128-32 (2003). See also Attachment A to July 3 Compliance Filing at 2, 7-8. It is important to properly reclassify these transactions (almost 70,000 in number) in the data base during the preparatory re-run before the mitigated

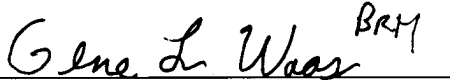
prices are applied during the refund proceeding re-run. The ISO continues to believe that it is the Commission's intent that the refund proceeding re-run would solely adjust the prices to the lower of historical or mitigated prices. The large dollar amount involved in the refund proceeding re-run suggests that various issues not be combined, or else the verification process by the ISO and Market Participants becomes extremely difficult.

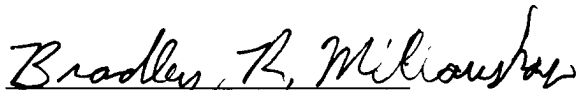
Yet another example is the revision of meter data submitted by several Scheduling Coordinators for the preparatory re-run. See Attachment A to July 3 Compliance Filing at 1, 2-3. The revision involves a high volume of corrections, which implies that improper cost allocation to other Scheduling Coordinators is reflected in historical Settlement Statements. This type of correction is imperative to maintain an accurate data base of volumes going into the refund proceeding re-run.

#### IV. CONCLUSION

WHEREFORE, for the above-stated reasons, the ISO respectfully requests that the Commission grant rehearing of its November 14, 2003 Order on Rehearing and Compliance Filing, and that the Commission further find, determine, and order as described above.

Respectfully submitted,

  
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Dated: December 15, 2003

**ATTACHMENT**

**From:** CRCCommunications [CRCCommunications@caiso.com]  
**Sent:** Tuesday, December 09, 2003 7:53 PM  
**To:** ISO Market Participants  
**Subject:** CAISO Notice - Rerun Update #3



Prep Rerun  
Schedule December 2  
Market Notice  
December 9, 2003  
Re-run Update #3

**Market Participants:**

This notice is a status update on the Preparatory and FERC re-run activity. As part of the Preparatory re-run, the ISO plans to begin publishing Settlement Statements for October, 2000 on December 18, 2003. Scheduling Coordinators will receive the following:

**Settlement Detail Files** - The ISO will ship to each Scheduling Coordinator a CD containing the Preparatory re-run Settlement Detail files consolidated for all SCs, with the goal that SCs will receive these files before the specific trade dates are published.

**Settlement Summary** - Prior trade date Summary charges associated with the Preparatory re-run (typically 5 trade days per day) will appear on Preliminary Statements ONLY and will be published beginning December 18th. Please see attached tentative Preparatory re-run Schedule for December 2003.

<<Prep Rerun Schedule December 2003.xls>>

**Dispute Timeline** - The dispute timeline for the Preparatory re-run requires SCs to dispute charges within 30 business days from the publishing of the last day of a Trade Month. According to the tentative schedule attached, SCs will have until February 17, 2004 to dispute October 2000 trade dates. However, the ISO encourages SCs to file any disputes as soon as possible to expedite consideration and resolution.

**Invoices** - The dollars associated with the prior re-run trade dates will not appear on current market invoices. Financial Settlement of Preparatory re-run data will be handled at the time of the FERC Compliance Refund re-run.

Only 5 issues are identified for re-run during October 2000. Referring to Attachment A of the July 3, 2003 filing in FERC Docket No. ER03-746, they are: Issues 1-4 (correcting meter data submittal errors) and Issue 13 (regarding CT 1030 allocations). Many of the remaining issues were identified for the months of November 2000 through January 2001. The ISO will be notifying Scheduling Coordinators, via email, as the remaining issues become applicable.

There are some potential re-run "hold-points" along the way. Two key items are:

\* Whether the Williams GFN should be included in the re-run - In its November 26, 2003 filing to FERC, the ISO noted that this issue must be decided by FERC prior to the Preparatory re-run date of December 3, 2000 in order for the re-run to proceed as scheduled.

\* The Treatment of CERS transactions in the re-run - In its request for rehearing of the FERC refund order dated October 16, 2003, 105 FERC ¶ 61, 066 (2003), the ISO noted difficulties regarding implementation of the language in the Order that would convert CERS sales to the ISO to balanced schedules serving the IOU net short load. This rehearing issue must be decided prior to the Preparatory re-run date of January 17, 2001.

Once the ISO has started the re-run and gained some experience with the publishing logistics, a more detailed schedule will be published. The ISO plans to issue weekly

updates as we proceed through the re-run activity.

Client Relations Communications.0725  
CRCommunications@caiso.com



PROPOSED RERUN SCHEDULE

	Mon	Tues	Wed	Thurs	Frid
<b>DAY:</b>	<b>15-Dec-03</b>	<b>16-Dec-03</b>	<b>17-Dec-03</b>	<b>18-Dec-03</b>	<b>19-Dec-03</b>
<b>Preparatory Rerun Dates:</b>				<b>Oct 02 - 06, 2000</b>	<b>Oct 7 - 11, 2000</b>
<b>End of Review for Prior Trade Date</b>				<b>17-Feb-04</b>	<b>17-Feb-04</b>
<b>Preliminary Statement:</b>	10/20	10/21	10/22	10/23	10/24 - 10/ 26
<b>DAY:</b>	<b>22-Dec-03</b>	<b>23-Dec-03</b>	<b>24-Dec-03</b>	<b>25-Dec-03</b>	<b>26-Dec-03</b>
<b>Preparatory Rerun Dates:</b>	<b>Oct 12 - 16, 2000</b>	<b>Oct 17 - 21, 2000</b>	<b>NO RERUN</b>	<b>Christmas</b>	<b>NO RERUN</b>
<b>End of Review for Prior Trade Date</b>	<b>17-Feb-04</b>	<b>17-Feb-04</b>			
<b>Preliminary Statement:</b>	10/27	10/28	10/29	Holiday	10/30
<b>DAY:</b>	<b>29-Dec-03</b>	<b>30-Dec-03</b>	<b>31-Dec-03</b>	<b>1-Jan-04</b>	<b>2-Jan-04</b>
<b>Preparatory Rerun Dates:</b>	<b>None Invoicing</b>	<b>Oct 22-26</b>	<b>NO RERUN</b>	<b>New Year</b>	<b>NO RERUN</b>
<b>End of Review for Prior Trade Date</b>	<b>17-Feb-04</b>	<b>17-Feb-04</b>		<b>Holiday</b>	
<b>Preliminary Statement:</b>	10/31 - 11/01	11/3			11/4
<b>DAY:</b>	<b>5-Jan-04</b>	<b>6-Jan-04</b>	<b>7-Jan-04</b>	<b>8-Jan-04</b>	<b>9-Jan-04</b>
<b>Preparatory Rerun Dates:</b>	<b>Oct 27-31</b>	<b>Nov 1-5</b>	<b>Nov 6-10</b>	<b>Nov 11-15</b>	<b>Nov 16-20</b>
<b>End of Review for Prior Trade Date</b>	<b>17-Feb-04</b>	<b>26-Feb-04</b>	<b>26-Feb-04</b>	<b>26-Feb-04</b>	<b>26-Feb-04</b>
<b>Preliminary Statement:</b>	11/5	11/6	11/7 - 11/9	11/10	11/11

## 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 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 December, 2003.

*Gene L. Waas* <sup>BRM</sup>  
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Gene L. Waas