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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System) Docket Nos. ER98-997-000 and
Operator Corporation) ER98-1309-000
)

PREPARED DIRECT TESTIMONY OF
MICHAEL DOZIER
ON BEHALF OF THE
CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Michael Dozier and I am the Contracts Lead for the California Independent System Operator Corporation (ISO). My business address is 151 Blue Ravine Road, Folsom, California 95630.

Q. IN WHAT CAPACITY ARE YOU EMPLOYED?

A. As Contracts Lead, I am responsible for drafting, negotiating, and administering ISO contracts and providing support for special projects, including drafting amendments to the ISO Tariff to implement those projects.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS.

A. I have a degree in economics from Stanford University and J.D. and M.B.A. degrees from UCLA. I served as an attorney for Southern

1 California Edison Company for 10 years, advising and representing the
2 company in power plant licensing and power contracts matters, including
3 providing advice and negotiation support regarding contracts with
4 qualifying facilities (QFs). I subsequently spent over seven years with the
5 law firm of Marron, Reid & Sheehy, primarily advising and representing
6 QFs in power plant licensing and other electric regulatory matters. Two
7 years ago, I took a position as a consultant for Resource Management
8 International, primarily providing analysis to municipal utility clients
9 regarding the ongoing restructuring of the California electric industry,
10 including the impact of the creation of the ISO on their interests. I joined
11 the ISO about nine months ago in my current position.

12
13 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

14 A. No. I have not testified previously before either this Commission or any
15 State commissions.

16
17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 A. Previously in this proceeding, the ISO submitted the Direct Testimony of
19 Deborah A. Le Vine. The purpose of that testimony was to describe the
20 role of the ISO's Participating Generator Agreement (PGA) in the
21 restructuring of the electric utility industry in California and certain
22 significant aspects of the agreement as they relate to the restructuring and
23 the ISO Tariff. In addition, Ms. Le Vine's testimony indicated revisions the
24 ISO was willing to make to the pro forma PGA to accommodate concerns
25 expressed by certain of the other participants.

26
27 Of the numerous parties that have intervened in this proceeding, including
28 the California Electricity Oversight Board; the Public Utilities Commission

1 of the State of California; the Western Area Power Administration; the
2 Los Angeles Department of Water and Power; the Modesto Irrigation
3 District; the Transmission Agency of Northern California; SoCal Edison;
4 the City and County of San Francisco; the Metropolitan Water District of
5 Southern California; the Northern California Power Agency; PG&E;
6 El Segundo; SDG&E; Alta Power Generation, LLC; Ocean Vista Power
7 Generation, LLC; and Oeste Power Generation, LLC, all but one were
8 apparently satisfied with the revised pro forma agreements contained in
9 Exhibit No. ISO-4. The one participant to submit answering testimony was
10 the Cogeneration Association of California (CAC). CAC does not appear
11 to take issue with respect to the reasonableness of the revised PGA as
12 applied to “merchant plants”; however, CAC recommends that the
13 Commission order the ISO to develop a separate and independent pro
14 forma PGA “which takes into account the special circumstances of
15 Cogenerators.”

16
17 The two PGA dockets involving CAC members were severed from the
18 other PGA cases. The ISO has worked with CAC and other interested
19 stakeholders in an effort to produce a revised PGA that was acceptable to
20 all parties. I had a lead role for the ISO in that effort. Unfortunately, those
21 efforts have been unsuccessful to date and the litigation process had to be
22 re-started. The purpose of my Direct Testimony is to address the issues
23 raised by Mr. James A. Ross on behalf of CAC concerning the PGA.

24
25 **Q. WHAT CHANGES DOES MR. ROSS RECOMMEND MAKING TO THE**
26 **PRO FORMA PGA?**

27 A. Mr. Ross recommends that the PGA be changed in four ways. First, he
28 states that only the cogenerator’s output which is available to fully

1 participate “in the market” like a merchant plant should be subject to the
2 ISO’s tariffs and protocols. Second, Mr. Ross contends that a cogenerator
3 must be allowed greater flexibility in the scheduling of outages. Third, he
4 maintains that the ISO should not be permitted by amending its tariffs and
5 protocols to amend the PGA “unilaterally.” Fourth, Mr. Ross argues that
6 the cogenerator should be allowed to terminate its PGA without FERC
7 approval.
8

9 **DIVISION BETWEEN MARKET AND NON-MARKET CAPABILITY**

10 **Q. WHAT DOES MR. ROSS CONTEND SHOULD BE THE**
11 **CHARACTERISTICS OF A COGENERATOR PGA?**

12 A. According to Mr. Ross, a cogenerator PGA should allow the ISO to
13 exercise dispatch authority over any electrical energy that “fully
14 participates in the market” while protecting from “undue ISO interference”
15 the electrical energy needed to serve on-site electrical load, electrical
16 energy sold pursuant to a power purchase agreement, and the steam
17 obligations of the cogenerator. Mr. Ross divides the cogenerator’s output
18 into market available capability, non-market capability, process capability
19 and a total unit capability. It would be the responsibility of the cogenerator
20 to participate fully in the market only with respect to the market available
21 capability.
22

23 **Q. DO YOU AGREE THAT THE PGA SHOULD INCLUDE SEPARATE**
24 **DESIGNATIONS FOR MARKET AVAILABLE CAPABILITY, NON-**
25 **MARKET CAPABILITY, PROCESS CAPABILITY, AND A TOTAL UNIT**
26 **CAPABILITY?**

27 A. No. It is an entirely artificial distinction to attempt to divide up any
28 Generating Unit into such discrete categories, particularly for the purposes

1 of the PGA. The PGA is an agreement that addresses both a Generating
2 Unit's participation in the ISO's markets and its role in the ISO's operation
3 of the ISO Control Area in a safe and reliable manner in accordance with
4 Good Utility Practice and applicable standards for control area operation.
5 For the latter purpose, the respective rights and responsibilities of the ISO
6 and the Generator must be specified with respect to the Generating Unit
7 as a whole, rather than divided into the Generating Unit's "market
8 available capability," "non-market capability," and "process capability."
9

10 With regard to the more limited matter of a Generating Unit's participation
11 in the ISO's markets, the ISO Tariff offers a market structure by which any
12 Generator, including a cogenerator, may identify to the ISO the distinction
13 between its "market available capability" and any "non-market capability"
14 or "process capability" that it does not want to participate in the ISO's
15 markets. The primary mechanism for identifying that distinction is through
16 the submittal of schedules and bids to the ISO through a Scheduling
17 Coordinator. .
18

19 It is incumbent on all Scheduling Coordinators, whether submitting
20 schedules and bids on behalf of a cogenerator or on behalf of any other
21 type of Generating Unit that may be subject to some type of operating
22 limitations, to protect the interests of that Generating Unit through the
23 energy schedules that it submits to the ISO and the quantities and prices
24 that it bids into the ISO's Ancillary Services, Adjustment Bids, and
25 Supplemental Energy markets. Because the ISO's markets are conducted
26 on an hourly basis, a cogenerator or other Generator has the ability to
27 specify a different set of capability options for its unit from hour to hour.
28 That type of flexibility is far superior to establishing an artificially fixed

1 limitation attempting to distinguish different “capabilities” of a Generating
2 Unit in advance – call it “non-market capability,” “process capability,” or by
3 any other name.

4
5 Mr. Ross’ testimony appears to be based particularly on a concern
6 regarding the potential application of the ISO’s Dispatch Protocol to the
7 so-called “non-market capability” of a cogenerator. It may help to clarify
8 that the ISO’s Dispatch Protocol provides the ISO with control of all self-
9 provided or bid quantities of Ancillary Services capacity and associated
10 energy, Adjustment Bid energy, and Supplemental Energy. The ISO’s
11 Dispatch Protocol also provides that ISO control over those amounts of
12 capacity and energy that are neither bid nor self-provided in ISO markets
13 (e.g., generation supporting critical industrial processes) is limited to
14 emergency situations. Moreover, in an order issued October 30, 1997, 81
15 FERC ¶ 61,122, the Commission stated at page 61,456 that:

16
17 We find that the requirement that participants comply
18 with all ISO orders except those that would result in
19 impairment to public health and safety to be
20 reasonable. With regard to intervenor concerns about
21 potential damage to their facilities, we note that the
22 ISO will follow good utility practice in operating the
23 system and will comply with all NERC, WSCC and
24 other reliability criteria.
25

26 Thus, the concerns identified in Mr. Ross’ testimony may be substantially
27 overstated and do not support the imposition of his proposed remedy.

28
29 **Q. HOW CAN COGENERATORS PROTECT OUTPUT REQUIRED TO**
30 **SUPPORT THEIR INDUSTRIAL PROCESSES?**

31 A. As described in the foregoing answer, the primary tool available to a
32 cogenerator to protect the output of the facility to support industrial

1 processes is the submittal of schedules and bids to the ISO through its
2 Scheduling Coordinator that identify to the ISO and the market the value it
3 places on the continued operation at a specified capability. If the
4 cogenerator would be exposed to a substantial loss or other risk from
5 curtailing (or having to increase) power production, it should submit bids
6 that place a very high cost to the market for changing its output in that
7 range.

8
9 A cogenerator has two other tools potentially available in support of its
10 primary use of bidding strategies to protect its commitment to its industrial
11 processes. The first is its ability – as is available to any other Generator --
12 to specify in Schedule 1 of the current ISO pro forma PGA both a
13 “minimum operating limit” and any operating “limitations” applicable to the
14 Generating Unit. Those options allow a cogenerator to indicate, to ISO
15 operating personnel, any technical operating limitations on the ability of
16 the Generating Unit to deliver power to the ISO. However, both of those
17 options are intended to focus on identifying technical operating limitations
18 for purposes of the ISO’s safe and reliable operation of the ISO Control
19 Area, limitations that may or may not completely address the
20 cogenerator's economically-driven constraints. Such economically-driven
21 constraints can be set forth in schedules and bids submitted by the QF's
22 Scheduling Coordinator to the ISO in relation to the ISO's Day-Ahead,
23 Hour-Ahead, or Real Time markets.

24
25 Additionally, and in recognition of the fact that cogenerators and other QFs
26 have pre-existing contractual commitments under power purchase
27 agreements (PPAs) executed prior to the creation of the ISO, the ISO
28 Tariff also requires the ISO to honor the terms of those PPAs for

1 “Regulatory Must-Take Generation” identified as such by a Local
2 Regulatory Authority. It is my understanding that the relevant Local
3 Regulatory Authority, the Public Utilities Commission of the State of
4 California, has declared that such “Regulatory Must-Take Generation”
5 includes QFs with PPAs executed prior to December 20, 1995. Section
6 5.1.5 of the ISO Tariff requires the ISO to honor the terms of those
7 “existing PPAs” to the extent that the ISO is presented with “protocols or
8 other instructions” that describe the terms of those PPAs as they relate to
9 the technical operating limitations of the QF Generating Unit. Thus, a
10 cogenerator may also protect its commitment to its industrial process, by
11 describing its facility's operating constraints or limitations, through the
12 submission to the ISO of “instructions.” Such "instructions" are provided to
13 the ISO far in advance of a Trading Day (i.e., to allow proper coordination
14 between ISO and QF operating personnel), and in addition to the
15 schedules and bids provided by the QF's Scheduling Coordinator on a
16 day-to-day and hour-to-hour basis for each Trading Day.

17
18 The ISO also recognizes that a QF should be able to protect its output so
19 as not to be forced to violate federal law. Therefore, to the extent that an
20 action of the ISO would cause a QF to lose its QF status, the ISO is willing
21 to accept another category of “instructions” from a QF cogenerator or
22 other QF that indicate to the ISO the operating conditions that would
23 cause the QF to lose its QF status, so long as those conditions can be
24 quantified (i.e., in terms of magnitude and duration) and made available to
25 the ISO through such “instructions.”

26
27 **Q. IS THE NEED TO PROVIDE FACILITY-SPECIFIC CONSTRAINTS**
28 **UNIQUE TO COGENERATORS?**

1 A. No. For example, nuclear power plants are subject to restrictions on their
2 operations, hydroelectric power plants may have operating restrictions
3 related to water resource management, and fossil fuel power plants may
4 be subject to air quality permit restrictions. The ISO's current pro forma
5 PGA provides for a listing of those operating limitations in Schedule 1.

6

7 **Q. HAVE COGENERATORS OTHER THAN THE TWO PROJECTS**
8 **REPRESENTED BY CAC EXECUTED THE PRO FORMA PGA?**

9 A. Yes. Several other cogenerators have executed the ISO's pro forma
10 PGA, including Wheelabrator Martell, Inc., Martinez Refining Company,
11 Monsanto Company, Mt. Poso Cogeneration Company, Sierra Pacific
12 Industries, and Tosco Refining.

13

14 **Q. HAVE THESE COGENERATORS REQUESTED MODIFICATION OF**
15 **THE PGA?**

16 A. So far as I am aware, the other cogenerators cited above have not
17 submitted any requests for modification of the PGA.

18

19 **OUTAGE SCHEDULING**

20 **Q. DO YOU AGREE WITH MR. ROSS THAT CERTAIN PROVISIONS OF**
21 **THE OUTAGE COORDINATION PROTOCOL ARE UNREASONABLE**
22 **AS APPLIED TO COGENERATORS?**

23 A. My understanding is that CAC did not challenge the provisions of the
24 Outage Coordination Protocol (OCP) when the protocol was filed for
25 Commission acceptance in another proceeding. If CAC believed that the
26 OCP was unjust or unreasonable as applied to the specific circumstances
27 of cogenerators, it could have raised those concerns in proceedings
28 involving the OCP directly. This would be a better approach than raising

1 the issues in this docket because the Commission could consider the
2 issues raised by cogenerators with respect to outage scheduling balanced
3 against the needs of other ISO market participants.
4

5 In fact, the need for greater flexibility in scheduling outages has been a
6 concern voiced by market participants other than cogenerators. In
7 response, the ISO intends to file amendments to the ISO Tariff and the
8 OCP. Subject to consideration by the stakeholders and the ISO's
9 stakeholder Board of Governors, the current proposal is to limit the
10 requirement of ISO final approval on the day of an outage as set forth in
11 OCP 4.4.9 to outages scheduled or revised with less than seven days
12 notice to the ISO in advance of the outage and to emphasize the
13 distinction between outage coordination requirements applicable to
14 Reliability-Must-Run Generation (RMR) and the more limited requirements
15 applicable to all other Generating Units, including non-RMR cogenerators.
16 The ISO hopes to obtain approval from the stakeholder Board of
17 Governors in May for the proposed change.
18

19 I believe that the ISO's outage scheduling and coordination requirements
20 set forth in the OCP are otherwise reasonable and necessary for all non-
21 RMR Generating Units, including non-RMR cogenerators. The ISO must
22 retain the authority to review proposed outages for consideration and
23 coordination with all other facility outages to assure conformance with
24 Applicable Reliability Criteria and must retain the right to issue final
25 approval for outage or changes to scheduled outages for which the ISO
26 receives less than seven days advance notice. In all events, however, the
27 ISO is obligated to follow Good Utility Practice in coordinating the
28 scheduling of outages of cogenerators and all other Generating Units.

1
2 The ISO is obligated by the ISO Tariff (see, e.g., Section 5.1.5) to honor
3 the terms of existing PPAs for which the ISO has received appropriate
4 “instructions.” Moreover, the ISO’s Dispatch Protocol includes an express
5 provision requiring the ISO to follow instructions provided by the parties to
6 a QF PPA entered into prior to March 31, 1997 regarding the provisions of
7 the PPA “in the performance of its functions relating to Outage
8 Coordination” Accordingly, to the extent that specific procedures
9 concerning outages are set forth in a cogenerator’s existing PPA, the ISO
10 would follow those procedures if they are identified in “instructions” to the
11 ISO and to the extent they are inconsistent with the terms of the OCP.
12

13 **RELATIONSHIP OF THE PGA TO THE ISO TARIFF**

14 **Q. WHAT DOES MR. ROSS STATE WITH RESPECT TO THE**
15 **RELATIONSHIP BETWEEN THE PGA AND THE ISO TARIFF.**

16 **A.** Mr. Ross maintains that the “ISO could single-handedly nullify negotiated
17 contractual terms by filing amendments to its tariff.”
18

19 **Q. PLEASE COMMENT ON THIS ASSERTION.**

20 **A.** First, it is important to recognize that under the ISO Tariff the ISO has the
21 unilateral right to propose amendments. Such a proposal, however, is not
22 a single-handed nullification. CAC, as well as all other interested parties,
23 would have the right to intervene and protest the submission. Only if the
24 Commission accepts the proposal would it become effective.
25

26 Such unilateral rights are not uncommon in agreements concerning
27 Commission-jurisdictional transmission service. Indeed, Section 9 of the
28 Commission’s pro forma open access transmission tariff states:

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Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the right of the Transmission Provider to unilaterally make application to the Commission for a change in rates, terms and conditions, charges, classification of service, Service Agreement, rule or regulation under Section 205 of the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

Second, with respect to the specific circumstances of the ISO, it is especially important that the unilateral right to submit amendments be preserved. The ISO is a new organization with less than a full year of operational experience. It is administering three new types of markets: a real-time imbalance energy market; day-ahead and hour-ahead Ancillary Services markets with separate procurement of Regulation, Spinning Reserve, Non-Spinning Reserve, and Replacement Reserves; as well as Day-Ahead and Hour-Ahead congestion management markets. Moreover, California is implementing a program of retail customer choice of electricity providers.

The ISO has filed a number of significant revisions to the ISO Tariff. These changes have been in response to Commission orders and stakeholder concerns as well as based on ISO staff recommendations. Such changes are likely to continue for the immediate future as the ISO and market participants gain additional experience and implement certain features that were unavailable at the commencement of operations. It would be extraordinarily difficult for the ISO to administer all of its new markets and its extensive tariff rights and obligations based on different versions of the ISO Tariff dependent on the date of execution by any particular cogenerator of its PGA.

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TERMINATION

**Q. WHAT ARE THE TERMINATION PROVISIONS IN THE PRO FORMA
PGA?**

A. As revised in Exhibit No. ISO-4, the termination provision of the pro forma
PGA reads as follows:

3.2 Termination

3.2.1 Termination by ISO. Subject to Section 5.2, the ISO may terminate this Agreement by giving written notice of termination in the event that the Participating Generator commits any material default under this Agreement and/or the ISO Tariff which, if capable of being remedied, is not remedied within thirty (30) days after the ISO has given, to the Participating Generator, written notice of the default, unless excused by reason of Uncontrollable Forces in accordance with Article X of this Agreement. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC. The filing of the notice of termination by the ISO will be considered timely if: (1) the request to file a notice of termination is made after the preconditions for termination have been met, and (2) the ISO files the notice of termination within 30 days of receipt of such request. This Agreement shall terminate upon acceptance by FERC of such a notice of termination.

3.2.2 Termination by Participating Generator. In the event that the Participating Generator no longer wishes to schedule Energy or provide Ancillary Services through a Scheduling Coordinator over the ISO Controlled Grid, it may terminate this Agreement, on giving the ISO ninety (90) days written notice, provided, however, that in accordance with Section

1 4.1.3, the Participating Generator may modify
2 Schedule 1 to eliminate Generating Units which it no
3 longer owns and such modification shall be effective
4 upon receipt by the ISO. With respect to any notice of
5 termination given pursuant to this Section, the ISO
6 must file a timely notice of termination with FERC.
7 The filing of the notice of termination by the ISO will
8 be considered timely if: (1) the request to file a notice
9 of termination is made after the preconditions for
10 termination have been met, and (2) the ISO files the
11 notice of termination within 30 days of receipt of such
12 request. This Agreement shall terminate upon
13 acceptance by FERC of such a notice of termination.
14

15 **Q. WHAT DOES MR. ROSS RECOMMEND WITH RESPECT TO THE**
16 **TERMINATION PROVISIONS OF THE PGA?**

17 A. Mr. Ross recommends that if the cogenerator is no longer needed for the
18 industrial process it serves, it should be allowed to withdraw from the
19 market without obtaining the approval of the Commission.
20

21 **Q. DO YOU AGREE THAT IT IS UNREASONABLE TO HAVE THE ISO**
22 **FILE A NOTICE OF TERMINATION OF THE PGA WITH THE**
23 **COMMISSION?**

24 A. No. In effect, the ISO is only trying to comply with what we understand to
25 be the Commission's prior rulings on this issue. In an order issued
26 December 17, 1998, 81 FERC ¶ 61,320, the Commission stated at pages
27 62,473-74 that:

28
29 Certain parties raise concerns that the pro forma
30 Agreements would require non-public utilities to file a
31 notice of termination with the Commission. We clarify
32 that non-public utilities would not have to make a filing
33 with the Commission. Only the ISO, as a
34 jurisdictional entity that is party to the agreement,
35 would be required to timely file, under Section 205 of
36 the FPA, a notice of termination with the Commission.

1 The ISO is directed to clarify that it has the
2 responsibility to file a timely notice of termination with
3 the Commission.
4

5 The ISO believes that the termination provisions of the pro forma PGA are
6 a reasonable response to the Commission's order as applied to all non-
7 jurisdictional entities, including cogenerating QFs.
8

9 **Q. THANK YOU. I HAVE NO FURTHER QUESTIONS.**

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System) Docket Nos. ER98-997-000 and
Operator Corporation) ER98-1309-000
)

AFFIDAVIT

STATE OF)
) ss:
CALIFORNIA)

Michael D. Dozier, being duly sworn, deposes and says that he has read the foregoing questions and answers labeled as his testimony; that if asked the same questions his answers in response would be as shown; and that the facts contained in his answers are true to the best of his knowledge, information and belief.

Michael D. Dozier

Subscribed and sworn to before
me on this ____ day of March, 1999.

Notary Public

My Commission Expires: