

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

<b>California Independent System Operator Corporation</b>	) ) ) )	<b>Docket No. ER98-3760-000</b>
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<b>California Independent System Operator Corporation</b>	) ) ) )	<b>Docket Nos. ER98-19-000, and ER96-1663-000</b>
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**[Not Consolidated]**

**OFFER OF SETTLEMENT**

**Introduction**

Pursuant to Rule 602 of the Federal Energy Regulatory Commission's (the "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.602 (1999), the California Independent System Operator Corporation ("ISO") hereby submits this Offer of Settlement. In support of this Offer of Settlement, the ISO states as follows:

On October 30, 1997, the Commission issued an order conditionally authorizing limited operation of the ISO. Pacific Gas & Electric Company et al., 81 FERC ¶ 61,122 (1997). In an order issued on December 17, 1997, the Commission conditionally accepted certain of the ISO's proposed tariff changes and pro forma agreements. Pacific Gas & Electric Company et al., 81 FERC ¶ 61,320 (1997). The Commission also noted that the ISO would be making a compliance filing sixty days from the commencement of operations and stated that interested parties would be permitted to pursue at that time issues not previously resolved by the Commission.<sup>1</sup>Id. at 62,476. The Commission also required the ISO to file its protocols under Section 205 of the Federal Power Act in that same compliance filing, specifying that “[a]t that time, we will afford the parties an opportunity to file comments.” Id. at 62,471. See also, California Independent System Operator Corporation, 82 FERC ¶ 61,327 at 61,294 (1998). The ISO made its “Compliance Filing” on June 1, 1998.

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<sup>1</sup> The Commission stated:

At that time, the Commission will afford the parties an adequate opportunity to address the filings in view of actual ISO and PX operational experience. All issues raised by these filings, including, but not limited to ISO and PX issues regarding Tariff amendments not addressed in this order, will be the subject of a future order.

On July 15, 1998, the ISO submitted amendments to the ISO Tariff in Docket No. ER98-3760-000 to correct and clarify a variety of non-substantive matters (the "Clarification Filing"). As part of this Clarification Filing, the ISO submitted a procedural proposal for addressing issues previously raised in Docket Nos. EC96-19 and ER96-1663, but not resolved in prior Commission orders in those proceedings (the "WEPEX" proceedings). The ISO also included in the Clarification Filing a matrix of 230 issues that intervenors in the WEPEX proceedings had previously raised and which the ISO believed had not yet been resolved by the Commission. Under the ISO's proposal, these outstanding issues would be addressed in a comprehensive process through which all stakeholders, including the ISO and the intervenors in the WEPEX proceedings and this docket, would endeavor through negotiations to resolve as many of these issues as possible. The parties would identify the issues that could not be resolved through negotiation and propose procedures for the resolution of those remaining issues by the Commission.

In an order issued September 11, 1998, California Independent System Operator Corporation, 84 FERC ¶ 61,217 (1998) (the “September 11 Order”), the Commission modified and, as modified, adopted many of the procedures described in the ISO’s proposal. The Commission directed the ISO and the other participants in the WEPEX proceedings to develop a comprehensive list of the issues that remained active and in dispute, including issues pending on rehearing, using the issues matrix attached to the Clarification Filing as a starting point. California Independent System Operator Corporation, 84 FERC at 62,048. The Commission further directed its Trial Staff to participate in and facilitate negotiations involving the ISO and participants to resolve as many of these outstanding issues as possible through settlement. Id. Lastly, the Commission directed the ISO and participants to submit a report on the results of these negotiations within 120 days of the September 11 Order and indicated that this report should include a list of the outstanding issues that had been resolved through settlement and a list of those issues that remained for Commission resolution. Id.

The ISO and participants engaged in extensive efforts to address outstanding issues consistent with the procedures set forth in the September 11 Order. After consultation with the designated members of the Commission's Trial Staff, the ISO distributed matrices by letter dated October 2, 1998, to enable the participants to update and supplement the initial list of issues. In the following weeks, participants identified various additional issues for inclusion in the list of outstanding matters. Based on these submissions, the ISO developed a matrix of approximately 680 outstanding issues. This matrix included information on the participant(s) raising the issue, relevant Commission order citations, and participants' current positions on the issue. In addition, the ISO provided participants with a separate matrix organizing the issues by subject matter for use in the negotiation process. These matrices were distributed to all participants.

On November 5 and 6, 1998, the Commission Trial Staff, the ISO and other interested participants met in a settlement conference in Washington, D.C., to consider possible resolution of these unresolved issues. After substantial negotiations, a significant number of issues were resolved. In some cases, the participants agreed that an issue did not need to be pursued or could be combined with related issues for further consideration. In other cases, the ISO agreed to make changes to the ISO Tariff or Protocols to address the concern reflected in an issue. The participants agreed that a number of other matters could most effectively be pursued in one of the ongoing ISO stakeholder processes, including the efforts to redesign the ISO's Ancillary Services markets already being undertaken pursuant to the Commission's order in AES Redondo Beach, L.L.C., 85 FERC ¶ 61,123 (1998).

Further progress was made during a teleconference held on November 20, 1998. In the period between these conferences, the ISO, Commission Trial Staff, and various participants engaged in additional communications and negotiations to advance the resolution of the outstanding issues. Where those discussions produced a proposal to resolve one or more of the outstanding issues, it was presented to the other participants for their consideration. Another settlement conference was held at the ISO offices in Folsom, California on December 15 and 16, 1998. During these negotiations, the Commission Trial Staff, the ISO and the other participants agreed to resolutions of numerous additional issues.

Based on the progress that had been made in the settlement process to that time and the fact that the participants had committed to give further consideration to proposals made to address a number of the remaining issues, the participants attending the December settlement conference agreed unanimously to request the Commission to extend until March 11, 1999 the time for them to pursue settlement of outstanding issues in this proceeding and in the WEPEX dockets. The ISO filed a motion seeking the extension on January 4, 1999. A number of participants supported the motion. No participant filed an opposition. Additional settlement conferences were held on January 6 and 7, 1999 in Washington, D.C., and, following additional exchanges of positions, on February 10 and 11, 1999, in San Francisco, California. A draft of the report on unresolved issues was circulated to the participants on February 22, 1999 and discussed in a telephone conference held on February 26, 1999, which also included discussions of open issues.

On March 11, 1999, the ISO filed the Report on Outstanding Issues. Attachment C to the Report listed the issues as to which the ISO had agreed either to a modification of the ISO Tariff or on a commitment that resolves the concern. The ISO stated that the Tariff revisions and commitments were to be reflected in an Offer of Settlement filed with the Commission. This Offer of Settlement is the fulfilment of that commitment.

On March 22, 1999, the Commission issued a notice of filing. Responses to the Report on Outstanding Issues were to be filed by April 8, 1999. Motions to Intervene were filed by Southern Energy California, LLC; Southern Energy Potrero, LLC and Southern Energy Delta, LLC; Coral Power, LLC; and PSEG Resources. In addition, San Diego Gas & Electric Company ("SDG&E") and the Energy Producers and Users Coalition and the Cogeneration Association of California ("EPUC/CAC") filed motions to intervene out of time in Docket No. ER98-3760-000. Comments supporting the March 11, 1999 filing were filed by Modesto Irrigation District; the City of Vernon, California; the City of Redding, California; the City of Santa Clara, California; the Transmission Agency of Northern California; the M-S-R Public Power Agency; and SDG&E.

EPUC/CAC protested the disposition of seventeen issues as identified in the Attachments to the March 11, 1999 Report. On April 12, 1999 the ISO filed an Answer to EPUC/CAC's Comments. On April 28, 1999, the Commission issued an Order Accepting for Filing Report on Outstanding Issues and Establishing Further Procedures. California Independent System Operator Corporation, et al., 87 FERC ¶ 61,102. In this order, the Commission accepted for filing the March 11, 1999 Report, established procedures to incorporate the issues that had been resolved by the parties into a settlement, and established further procedures to address the remaining issues. The Commission required the ISO to file an updated Unresolved Issues report and a Joint Statement of Issues identifying the issues to be briefed to the Commission two weeks after the initial comments on this Offer of Settlement are filed.<sup>2</sup>Id., Slip op. at 10.

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<sup>2</sup> If the initial comments to the settlement reveal any significant issues that need to be resolved by the Commission, these are to be removed from the list of resolved issues and included in either the Joint Statement of Issues for resolution by the Commission, or in one of the other categories in the updated Outstanding Issues Report. To the extent that the parties cannot agree to the categorization of an issue, it should be included in the Joint Statement of Issues for Resolution by the Commission.



## **ARTICLE I**

### **Amendments to the ISO Tariff**

- 1.1 The revised Tariff pages in Appendix A to this Offer of Settlement are intended to resolve the following Issues listed in Attachment C to the March 11, 1999 Report on Outstanding Issues: 6, 7, 11, 14, 17, 21, 22, 24 (in part), 26, 34, 35, 41, 43, 45, 46, 47, 57, 58, 67, 89 (in part), 95, 99, 106, 112, 128, 131, 134, 159, 163, 169, 174, 176, 217, 253, 277, 279, 280, 281, 282, 288, 293, 299, 300, 302, 303, 306, 307, 308, 310, 316, 323, 325, 330, 334, 342, 343, 346, 375, 378, 405, 411, 412, 420, 438, 440, 442, 452, 454, 455, 456, 462, 464, 465, 466, 468, 470, 508, 511, 512, 513, 515, 517, 521, 524, 525, 527, 528, 529, 532, 580, 587, 602, 620, 622, 657, and 667. The revised Tariff pages in Appendix A to this Offer of Settlement are also intended to resolve Issue Nos. 498 and 278 listed in Attachment D to the March 11, 1999 Report and Issue Nos. 56, 530, 656 and 658 listed in Attachment H to the March 11, 1999 Report.
  
- 1.2 The ISO and the other parties that indicate in their comments (or by failing to submit comments) that they support or do not oppose this settlement (hereinafter, the "Parties") do not oppose the disposition of issues as identified in Attachments D, E, and F of the March 11, 1999 Report on Outstanding Issues with the following changes: Issue Nos. 97, 275, 477, 482, 497, 544, and 603 listed in Attachment H in the March 11, 1999 Report should be incorporated into Attachment D; Issue Nos. 115, 132, 161, 581, 590, 604, and 625 listed in Attachment G of the March 11, 1999 Report should be incorporated into Attachment D; and Issue No. 661 listed in Attachment G of the March 11, 1999 Report should be incorporated into Attachment E. Issue Nos. 40, 53, 96, 189, 252, 253, 283, 319, 326, 356,

379, 399, 505, 516, 519, 541, 586, 618, 635, 641, and 642 listed in Attachment C to the March 11, 1999 Report should be incorporated into Attachment G. Issue Nos. 80, 204, 208, 229, 248, 254, 266, 267, 296, 304, 347, 383, 403, 404, 409, 488, 489, and 535 listed in Attachment H to the March 11, 1999 Report and Issue Nos. 543, 631 and 670 listed in Attachment D to the March 11, 1999 Report should also be incorporated into Attachment G.

- 1.3 Appendix B to this Offer of Settlement contains a redline showing the changes being made to the ISO Tariff (including protocols) by the revised sheets in Appendix A. As will be set forth in the Joint Statement of Issues to be filed in accordance with the Commission's April 28, 1999 Order, there may be remaining unresolved issues with respect to certain language in the revised Tariff pages in Appendix A. This Offer of Settlement is not meant to prejudice the future disposition of those issues.
- 1.4 The ISO and the Parties believe the changes reflected in Appendix A are fair and reasonable and in the public interest.

## **ARTICLE II**

### **Additional Commitments**

- 2.1 As part of the resolution of certain issues identified below, the ISO and the Parties have agreed to or do not oppose the additional commitments as set forth in this Article II.
- 2.2 In resolution of Issue No. 56, the ISO confirms that, in accordance with sections 2.5.1 and 2.5.20.2 of the ISO Tariff, when a Scheduling

Coordinator self-provides Operating Reserves to meet its obligation, the ISO recognizes that the Scheduling Coordinator’s demand is covered when the ISO determines the amount of Operating Reserves it must procure.

2.3 In resolution of Issue No. 78 concerning Section 7.2.2 of the Scheduling Protocol of the ISO Tariff, the ISO agrees that the use of such rules to automate scheduling of Existing Contracts does not implicate the just and reasonable allocation of ISO costs to rightholders under Existing Contracts.

2.4 In resolution of Issue No. 135, the ISO will initiate a competitive procurement process for Voltage Support services and Black Start capability as part of the Local Area Reliability Service (LARS 2000) initiative with a goal of implementing competitive procurement of these services by January 2000, or as soon as reasonably practicable thereafter. The ISO commits to make any necessary Tariff changes prior to this implementation date.

2.5 In resolution of Issue No. 220 concerning the temporary sections of the ISO Tariff, the ISO’s current estimate of the expected duration of the provisions is as follows:

Current Temporary Section	Expected Duration
23 - Temporary Changes to the Real-Time Market for Imbalance Energy	Permanent

24 - Temporary Changes Respecting Physical Constraints on Schedules	Permanent <sup>3</sup>
26 - Temporary Changes to Ancillary Services Penalties	Next quarterly tariff filing
27 - Temporary Rule Limiting Adjustment Bids Applicable to Dispatchable Loads and Exports	Next quarterly tariff filing
28 - Temporary Rule Disqualifying Certain Energy Bids	When price caps are lifted.
29 - Temporary Changes to Payments for Regulation	Next quarterly tariff filing

2.6 In resolution of Issue No. 243, the ISO will undertake a review of what actions can be undertaken to reduce the neutrality charge. The ISO will publish the results of its review and provide interested parties with the opportunity to comment on the report. The ISO anticipates that the report will be prepared by January 31, 2000.

2.7 The Bonneville Power Administration (“BPA”) has questioned the authority of the ISO to impose penalties and sanctions on BPA. In resolution of Issue No. 276, the ISO and BPA have agreed that, insofar as BPA is concerned, further consideration of this issue can be deferred until such time as the ISO makes a separate filing pursuant to Section 205 of the Federal Power Act seeking Commission authorization to impose specific penalties and sanctions. At that time, BPA can pursue the issue of the ISO’s authority in this area.

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<sup>3</sup> The ISO notes that further litigation of Issue No. 197 may affect this provision.

- 2.8 In resolution of Issue No. 361, the ISO commits in accordance with Section 2.3.2.6 of the ISO Tariff to consult with Market Participants in setting or relying upon new or revised load protective settings or Remedial Action Schemes not covered under Existing Contracts.
- 2.9 In resolution of Issue No. 548 concerning Section 20.7 of the ISO Tariff, the ISO confirms that this provision relates to venue and does not confer jurisdiction where it does not otherwise exist.
- 2.10 In resolution of Issue No. 594 concerning Section 7.2.6.3 of the ISO Tariff, the ISO confirms that this provision does not modify the terms and conditions of Reliability Must Run Contracts.
- 2.11 In resolution of Issue No. 619 concerning the sanctions to be developed in accordance with Section 9.5.2 of the Dispatch Protocol of the ISO Tariff, the ISO confirms that such sanctions would only be imposed after they have been filed with and accepted by the Commission.
- 2.12 In its December 1, 1997 rehearing request of the October 30, 1997 Order, the ISO noted: (1) that the ISO did not intend to mitigate constraints between Active and Inactive Zones as part of the Inter-Zonal congestion management process (if congestion appears at an interface with an Inactive Zone, the ISO would convert it into an Active Zone and classify the path as an Inter-Zonal Interface), and (2) that it could not provide certain specified information on Intra-zonal Congestion until the necessary software was in place to permit the ISO to perform Inter-Zonal Congestion and Intra-Zonal Congestion Management in the Day-Ahead Market and

the Hour ahead market. ISO December 1, 1997 Rehearing Request at 6-

8. In resolution of Issue Nos. 481, 673, and 674, the ISO has agreed:

- (a) to prepare and post on its home page a procedure identifying how the ISO would convert the Inactive Zone into an Active Zone; and
- (b) that when the necessary software is in place, it will provide Scheduling Coordinators with information to discern the reason for rescheduling due to Inter-Zonal or Intra-Zonal Congestion and to understand their financial liability under schedules and to formulate revised schedules and bids.

Based on these commitments, the Parties either support or do not oppose these specific rehearing requests.

2.13 In resolution of Issue No. 656, the ISO clarifies that it intends the priority accorded to RMR Generating Units only applies when these units are dispatched pursuant to their RMR contract and not during their normal market transactions.

2.14 In resolution of Issue No. 24, the ISO commits that, when the ISO is able to publish on the ISO Home Page its estimate of the percentage the ISO will use to determine the quantity of Regulation it requires for each Hour-Ahead Market, the ISO will revise the ISO tariff to specify the times by which the ISO would normally publish this information.

## **Article III**

### **General Terms and Conditions**

- 3.1 Supporting or failing to oppose this Offer of Settlement by any party shall not be deemed in any respect to constitute an admission by such party that any allegation or contention made by any other party in these proceedings is true or valid. This Settlement represents a negotiated compromise for the sole purpose of settling specific issues in the captioned dockets. No signatory, participant, or affiliate of any party shall be deemed by virtue of this Offer of Settlement to have approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, ISO Tariff provisions, or the matters underlying or purported to underlie any of the resolutions of issues provided herein.
- 3.2 The Commission's acceptance of the Offer of Settlement shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding and shall not relieve the Commission or any party, or affiliate thereof, of the burden, under Section 205 or 206 of the Federal Power Act, to establish the justness and reasonableness of any aspect of any superseding amendment or agreement. Nothing herein shall affect any party's rights under Existing Contracts. No provision of this Offer of Settlement shall be deemed to waive the right of any party to protest, or challenge in any manner whether any action or proceeding is subject to the jurisdiction of the Federal Energy Regulatory Commission.

- 3.3 This Offer of Settlement is submitted with the strong desire that it be accepted by the Commission in its entirety. In the event that the Commission does not by order accept the Offer of Settlement, each party shall have thirty days to notify the Commission, the ISO, Commission Trial Staff, and the other parties that it objects to the modifications required by the Commission. If no such objection is made, the changes required by the Commission shall become part of this Offer of Settlement. If such an objection to the modification is made, this Offer of Settlement shall be deemed withdrawn and, upon such withdrawal, it shall not constitute any part of the record in this proceeding or be used for any purpose.
- 3.4 The discussions among the participants that have produced this Offer of Settlement have been conducted on the explicit understanding, pursuant to Rule 602(e) of the Commission's Rules of Practice and Procedure, that, unless approved by the Commission, all offers of settlement and any comments on offers are privileged and not admissible as evidence against any participant who objects to their admission and that any discussion of the participants with respect to offers of settlement is not subject to discovery or admissible in evidence.
- 3.5 In the event the Commission approves this Offer of Settlement without modification, the Settlement shall become effective when the order accepting it becomes final and nonappealable under the terms of the Federal Power Act. In the event the Commission approves the Settlement with modification and no objection is lodged as specified in Section 3.3, the Settlement shall become effective when the order accepting the



Settlement as modified becomes final and nonappealable under the terms of the Federal Power Act.

### **Conclusion**

The Offer of Settlement presents an acceptable resolution of these issues and should be accepted by the Commission.

Respectfully submitted,

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Kenneth G. Jaffe  
David B. Rubin  
Sean A. Atkins  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Washington, D.C. 20007  
(202) 424-7500

Counsel for the California Independent System Operator  
Corporation

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# Appendix A

## Appendix B

