

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

California Independent System Operator)
Corporation) Docket No. ER03-942-001

**RESPONSE OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO COMMENTS AND LEAVE TO FILE ANSWER TO PROTEST
ON RESPONSE TO AMENDMENT NO. 53 DEFICIENCY LETTER**

On October 16, 2003, the California Independent System Operator Corporation (“ISO”)¹ filed with the Commission responses to questions presented in Commission Staff’s letter in the above-captioned docket, dated August 7, 2003, and as further information in support of its June 10, 2003, filing of Amendment No. 53 to the ISO Tariff (“Deficiency Letter Response”). Three parties, Pacific Gas & Electric Company (“PG&E”), Williams Energy Marketing and Trading (“Williams”), and Dynegy Power Marketing (“Dynegy”)² filed comments on the Deficiency Letter Response, while one party, Duke Energy North America, *et al.* (“Duke”) protested the Deficiency Letter Response.

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, the ISO hereby files its answer to comments, and requests leave to file an answer to Duke’s protest, in the above-referenced docket.³

¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² Williams and Dynegy filed their comments jointly in a single pleading.

³ There is no prohibition on the ISO’s responding to those pleadings styled as “comments.” To the extent that this Answer addresses points raised by Duke in its “protest,” the ISO requests waiver of Rule

I. BACKGROUND

On June 10, 2003, the ISO filed with the Commission proposed Amendment No. 53 to the ISO Tariff, in which the ISO proposed certain modifications to the ISO Tariff relating to the manner in which it makes market payments. In response to the Amendment No. 53 filing, several parties submitted comments and/or protests. On July 16, 2003, the ISO filed a motion for leave to file answer and answer to these comments and protests. On August 7, 2003, Commission Staff issued a letter in this docket (“Deficiency Letter”) indicating that portions of the Amendment No. 53 filing were incomplete, and directing the ISO to complete or provide explanations regarding seven discussion points.⁴ The ISO filed its response on October 16, 2003.

II. DISCUSSION

A. **The ISO’s explanation of the impact of Amendment No. 53 on the refund proceeding was not an attempt by the ISO to raise and resolve refund proceeding issues in the Amendment No. 53 Docket.**

In the Deficiency Letter, Commission Staff requested that the ISO “explain and demonstrate what impact the California refund proceeding will have on the proposed allocation process” set forth in Amendment No. 53, specifically in proposed sections 11.16.2 and 11.16.3 of the ISO Tariff. In response, the ISO explained that there would likely be no impact, because the ISO would distribute funds flowing from the refund

213 (18 C.F.R. § 385.213) to permit it to make this Answer. Good cause for this waiver exists here given the nature and complexity of this proceeding and the usefulness of this Answer in ensuring the development of a complete record. *See, e.g., Enron Corp.*, 78 FERC ¶ 61,179, at 61,733, 61,741 (1997); *El Paso Electric Co.*, 68 FERC ¶ 61,181, at 61,899 & n.57 (1994).

proceeding as specified by the Commission. The ISO also outlined how, absent the anticipated Commission guidance on this issue, amounts flowing as the result of the refund proceeding would be processed under the ISO Tariff, including proposed sections 11.16.2 and 11.16.3.

In response, both Duke and Williams/Dynegy maintain that the ISO, in providing the additional explanation of how amounts relating to the refund period would flow absent Commission guidance, is attempting to resolve issues that are reserved for decision in the refund proceeding, and therefore, that the Commission should limit the ISO's response by rejecting this additional explanation. Duke at 2-3; Williams/Dynegy at 3-4. Both of these parties base this argument on the Commission's statements in the refund proceeding, that the Commission will determine how cash will flow as a result of the adjustments made in the refund proceeding. Williams/Dynegy at 3; Duke at 2 (citing *San Diego Gas & Electric Co., et al.*, 97 FERC ¶ 61,275 (2001) at 62,223).

The ISO agrees that the issue of how cash will flow as a result of adjustments made in the refund proceeding is one that is properly addressed and decided in the refund proceeding. The ISO's additional explanation of how refund proceeding funds would flow absent Commission guidance is not, however, an attempt to resolve these issues in the Amendment No. 53 proceeding. Instead, the ISO was responding to a specific question posed by Commission Staff and, in order to best assist Staff in understanding the proposed Tariff provisions at issue, merely described how refund proceeding funds would naturally flow, assuming no Commission input, under the provisions of the ISO Tariff, including the provisions proposed in Amendment No. 53.

⁴ On August 14, 2003, ISO filed with the Commission a request for an extension of time until October 16, 2003 to file its response to the August 7 letter. The Commission granted this request in an

The ISO is fully aware that any payment procedures for amounts owed and owing as a result of the refund proceeding will ultimately be subject to Commission review in the refund proceeding. There is no need for the Commission to strike this explanation.

Duke also argues that the ISO's additional explanation is in conflict with the Commission's orders in the refund proceeding because it proposes to treat refunds as separate amounts owing rather than as offsets to unpaid amounts owed to Market Participants. Duke at 2-3. Duke misunderstands the ISO's proposal. The source of this misunderstanding appears to be the use of the terms "refund amounts" and "refund invoices" in the ISO's response. The ISO used these terms to mean all amounts that would flow through the ISO as a result of adjustments made in the refund proceeding, not just refunds owed by suppliers relating to transactions made above the just and reasonable rate as prescribed by the Commission. Nevertheless, the ISO recognizes and agrees that all issues relating to disbursement of refund proceeding amounts will be litigated and decided in that proceeding rather than the present proceeding.

B. Interest collected from CERS on obligations relating to the IOUs net-short load will not be treated as Excess Funds pursuant to proposed Section 11.16.4 of the ISO Tariff

In their comments, Williams/Dynegy state that they "remain concerned" that interest received from CERS in 2001 could be redistributed as Excess Funds pursuant to proposed Section of 11.16.4 of the ISO Tariff.⁵ Williams/Dynegy at 4.

order issued on August 18, 2003.

⁵ This interest was collected from CERS for obligations due from CERS relating to the net-short load of the California IOUs, and was originally disbursed by the ISO to pay outstanding market invoices for the period November 1, 2000 through October 2001. The Commission rejected this disbursement methodology, and ordered the ISO to distribute those interest amounts as interest to suppliers pro rata in relation to amounts past due for the period January 2001 through August 2001. California Independent

Dynegy/Williams' concerns are misplaced. The interest amounts charged and collected from CERS as part of its obligation to pay for the net-short load of the California IOUs (as opposed to the interest that accrued on the amounts that CERS paid to the ISO pending the ISO's determination of how those funds should be disbursed)⁶ do not meet the definition of Excess Funds, and therefore, will not be disbursed as such pursuant to proposed Section 11.16.4. The interest billed and collected from CERS is, pursuant to the Commission's CERS Interest Order, attributable to a specific set of Market Participants for a specific time period, and thus, does not constitute Excess Funds. More significantly, interest during the refund period, which includes the time frame for which the CERS interest applies, must be recalculated in accordance with the Commission's orders in the refund proceeding. See, e.g., *San Diego Gas & Electric Co, et al.*, 96 FERC ¶ 61,120 (2001) at 61,519. All such interest amounts will be due from or payable to specific Market Participants, and therefore, no Excess Funds will be created as a result. There is, therefore, no reason for the Commission to delay resolution on Amendment No. 53 because of the issue of interest collected from CERS.

System Operator Corp., 99 FERC 61,253 (2002) ("CERS Interest Order"). The ISO filed a compliance filing in response to this order on July 3, 2002 in order to implement the redistribution of the CERS interest amounts. The Commission has yet to rule on that compliance filing.

⁶ In the ISO's response to Question 4 in the Deficiency Letter, the ISO explained that amounts owed by CERS (including interest) relating to net-short load of the California IOUs accrued approximately \$400,000 in interest in the ISO Reserve Fund while the ISO determined how to distribute those amounts, and that this amount could constitute Excess Funds after all other ISO Creditors are paid in full. Deficiency Letter Response at 17. This interest is different from the interest that the ISO charged and collected from CERS based on the amounts that CERS owed for power purchased to satisfy the net-short load of the California IOUs, and which was the subject of the Commission's CERS Interest Order.

C. The ISO will notify Market Participants prior to the distribution of any amounts that relate to the Refund Period.

In its comments on the Deficiency Letter Response, PG&E requests that the Commission require the ISO to defer the distribution of any funds relating to the period May 2000 through June 2001, under Amendment No. 53 or under the ISO's current tariff mechanisms, until after calculations in the refund proceeding are complete and "actual debtors and creditors during the Refund Period are identified." PG&E at 3-4. PG&E maintains that this treatment is warranted in order to "avoid the potential for multiple adjustments and invoices that might otherwise be required" and to "prevent disbursement of funds based on preliminary adjustments to noncreditworthy parties who may be unable to reimburse the ISO as necessary when the final adjustments and invoices are prepared." *Id.* at 4.

There is nothing in the ISO Tariff that prohibits the ISO from making these disbursements. **[How do people feel about this first sentence – does it come off as a subtle way of saying that PG&E is wrong?]** Nevertheless, recognizing that this is a legitimate issue for Commission interpretation, the ISO commits to provide all Market Participants fifteen (15) business-days notice prior to disbursing any amounts that relate to the period identified by PG&E (*i.e.* May 2000 through June 2001) in order that any parties that object to such disbursement can file with the Commission an appropriate pleading requesting that the Commission indicate that the ISO should not make the disbursement. The ISO will commit to providing such notice until such time as the Commission rules on PG&E's request, or the calculations relating to cash flow in the refund proceeding are complete, whichever occurs first.

III. CONCLUSION

Wherefore, for the reasons discussed herein, the ISO respectfully requests that the Commission accept the ISO's Deficiency Letter Response in its entirety, and approve the Tariff modifications proposed in Amendment No. 53 without additional delay.

Respectfully submitted,

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Dated: November 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Folsom, CA, this 21st day of November, 2003.

/s/ Gene Waas
Gene Waas