

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

**California Independent System            )       Docket No. ER03-1102-\_\_\_\_  
Operator Corporation                    )**

**REQUEST FOR REHEARING AND REQUEST FOR STAY 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 Rules 212 and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212, 385.713 (2004), the California Independent System Operator Corporation (“ISO”)<sup>1</sup> respectfully submits this request for rehearing and request for stay concerning the Commission’s Order Accepting Compliance Filing, Subject to Modification, Instituting Section 206 Proceeding, and Establishing Technical Conference, issued on October 28, 2004 in the above-captioned docket, 109 FERC ¶ 61,087 (“October 28 Order”). The October 28 Order addressed issues raised in the proceeding on Amendment No. 55 to the ISO Tariff (“Amendment No. 55”).

**I.       SUMMARY**

This filing concerns the Commission’s directive that the ISO electronically file a revised tariff with the Commission as part of the compliance filing required by the October 28 Order. The Commission stated that Order No. 614 requires a

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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.

public utility that revises or modifies its tariff to file with the Commission "a complete revised tariff with a new designation." October 28 Order at P 110. The ISO believes the Commission erred in directing the ISO to electronically file a complete revised tariff, purportedly in accordance with Order No. 614. Based on the clear text of Order No. 614, that order does not require the ISO to file such a revised tariff. Further, to the best of the ISO's knowledge, the Commission has never directed any public utility that has an Order No. 614-compliant tariff to file a complete revised tariff as part of a filing to comply with a Commission order approving modifications to discrete tariff sections. Further, the Commission currently has no mechanism in place to enable the ISO to submit a revised tariff electronically, and therefore it is impossible for the ISO to do so. For these reasons, the ISO respectfully requests that the Commission grant a stay of its directive for the ISO to file electronically a complete revised tariff, and grant rehearing of that directive.

## **II. SPECIFICATION OF ERROR**

The ISO respectfully submits that the October 28 Order erred in requiring the ISO to electronically file a revised tariff as part of the compliance filing required by the October 28 Order.

### III. REQUEST FOR REHEARING

#### A. **Contrary to the October 28 Order, Order No. 614 Does Not Require the ISO to File a Complete Revised Tariff Along with the Filing to Comply with the October 28 Order**

##### 1. **The Text of Order No. 614 Does not Support the Commission's Interpretation of that Order**

In the October 28 Order, the Commission stated that

under Order No. 614, if a public utility revises or modifies its tariff, it must file with the Commission a complete revised tariff with a new designation. Thus, we also direct the CAISO to electronically file a revised tariff with the Commission, within thirty days of the date of this order, reflecting the modifications discussed above.

October 28 Order at P 110 (citing Order No. 614 generally, but not citing any specific page or pages in Order No. 614). Also, in ordering paragraph (B) of the October 28 Order, the Commission stated that the “modifications discussed above” are the various changes to the ISO Tariff required by the October 28 Order, which required the ISO to submit a compliance filing within 30 days.

The ISO respectfully suggests that the Commission incorrectly interpreted Order No. 614. Order No. 614 stated as follows:

[t]he Commission believes that the transition from the existing designation procedure to that embodied by this rule will occur in an efficient manner if currently effective and paginated/designated tariff sheets remain as filed. However, if a change is proposed in an existing tariff or rate schedule, the entire tariff or rate schedule must be re-filed according to the new system. In this way, as tariff sheets are replaced over time, the old designations will disappear and the new system will be implemented in an orderly and efficient manner. Further, changes would be prospective only, alleviating any need to retroactively alter, modify, or re-file the tariff sheets currently on file.

*Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096, at 31,502 (2000). Read in context, the second sentence quoted

above clearly means that the requirement to re-file the entire tariff or rate schedule is a one-time transitional mechanism by which public utilities must convert their pre-Order No. 614 tariffs and rate schedules to the Order No. 614 system of tariff sheet designation, the first time changes are proposed to those tariffs and rate schedules. In 2000, the ISO complied with the requirement to re-file its entire tariff pursuant to Order No. 614, and in 2001 the Commission accepted that tariff. See ISO Filing, Docket Nos. EC96-19-055 and ER96-1663-058 (filed Oct. 13, 2000); *California Independent System Operator Corporation*, 95 FERC ¶ 61,390 (2001).

The conclusion that Order No. 614 does not require the ISO to re-file a complete revised tariff every time it amends discrete portions of its tariff is confirmed in another section of Order No. 614 where the Commission stated:

Consumers seems to believe that this rule will require the refiling of its entire tariff. That will not be required. While it is the Commission's intent to eventually update utilities' tariffs, this rule will require only incremental adjustments. As changes are made to a portion of a tariff or rate schedule (including service agreements), the Commission will require the redesignation of only that individual tariff or rate schedule (including service agreements). Because the Commission is not requiring utilities to refile their entire tariffs, and because the Commission has attempted to reduce the problems associated with this transition, we do not believe it is necessary to afford additional time, beyond – June 1, 2000, to adapt to the new designation procedures.

Order No. 614 at 31,507 (footnote omitted). This is further support for the position that Order No. 614 only contemplated that each public utility would file a complete redesignated tariff the first time it modified a portion of that tariff and then, on an ongoing basis, would only file those portions of the tariff that were being changed, not the complete tariff.

Contrary to the position in the October 28 Order, Order No. 614 *does not* require that a public utility file an entire revised tariff *every time* it makes a change to a discrete portion of a tariff that already complies with Order No. 614 (such as the ISO Tariff). A public utility whose tariff has been accepted by the Commission as being in compliance with Order No. 614 has already made the transition to the “new system” described in the language from Order No. 614 quoted above. To be sure, whenever such a public utility subsequently revises its tariff, it must submit revised versions of the tariff sheets that are being modified. See Order No. 614 at Appendix (listing guidelines and examples concerning filing of individual revised tariff sheets). That is entirely different, however, than a requirement that a public utility file a complete revised tariff every time it submits a tariff revision.<sup>2</sup> Therefore, although the ISO is required to submit revised versions of the tariff sheets that are being modified in its filing to comply with the October 28 Order, the ISO is not required by Order No. 614 to re-file its entire tariff, yet again, when it submits its compliance filing.

**2. The Commission’s Interpretation of Order No. 614 Runs Contrary to the Commission’s Directives in Other Orders Concerning Public Utilities’ Compliance Filings and to Universal Industry Practice Since the Issuance of Order No. 614**

The Commission’s interpretation of Order No. 614 in the October 28 Order is belied by numerous other orders the Commission has issued since Order No. 614 went into effect. To the best of the ISO’s knowledge, the Commission has

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<sup>2</sup> It is true that every time a *service agreement* is amended, the entire amended service agreement must be filed. Order No. 614 at 31,504. A tariff, however, is not a service agreement. Rather, a tariff is a compilation of “rate schedules,” which receive different treatment than service agreements. See 18 C.F.R. § 35.2(b) & n.1; Order No. 614 at Appendix.

never before asserted that Order No. 614 requires a public utility with a tariff that is already Order No. 614 compliant to file a complete revised tariff with a new designation every time it revises or modifies that tariff.

A review of the orders concerning the tariff amendments the ISO has submitted since the issuance of Order No. 614 (other than the October 28 Order) demonstrates that the directive in the October 28 Order is a novel one. Stated differently, the Commission has not required the ISO to submit a complete revised tariff pursuant to Order No. 614, in (1) the numerous orders the Commission has issued accepting amendments to the ISO Tariff in full or in part, (2) the orders requiring the ISO to submit compliance filings, or (3) the orders accepting compliance filings submitted by the ISO. See, e.g., *California Independent System Operator Corporation*, 103 FERC ¶ 61,340 (2003) (order accepting Amendment No. 52 to the ISO Tariff); *California Independent System Operator Corporation*, 107 FERC ¶ 61,329 (2004) (order accepting Amendment No. 59 to the ISO Tariff, subject to compliance filing); *California Independent System Operator Corporation*, Letter Order, Docket No. ER04-793-001 (Sept. 15, 2004) (letter order accepting Amendment No. 59 compliance filing). If Order No. 614 required the ISO to file a complete revised tariff every time the Commission accepted new tariff language, it seems the Commission would have required the ISO to submit a complete revised tariff on a number of occasions before now.

The same is true with regard to the filings submitted by other independent system operators. To the best of the ISO's knowledge, the Commission has never asserted that other independent system operators are required to submit

complete revised tariffs pursuant to Order No. 614 along with revisions or modifications to their Order No. 614-compliant tariffs. See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,129 (2004); *PJM Interconnection, LLC*, 108 FERC ¶ 61,318 (2004); *ISO New England, Inc.*, 108 FERC ¶ 61,272 (2004); 106 FERC ¶ 61,095 (2004). If the Commission believed that an independent system operator (or any other public utility) were required to submit a complete revised tariff whenever it revised or modified discrete portions of its tariff, the Commission surely would have said so in its prior orders. The Commission's prior silence on this subject suggests that there is no such requirement under Order No. 614.

Moreover, the Commission's interpretation of Order No. 614 is contrary to universal industry practice since the issuance of Order No. 614. A review of compliance filings containing tariff changes that were submitted by independent system operators in response to Commission orders reveals that those independent system operators did not submit complete revised tariffs and made no statements in their compliance filings indicating that they believed they were required by Order No. 614 to submit complete revised tariffs. See, e.g., NYISO Compliance Filing, Docket No. ER04-294-001 (filed Mar. 3, 2004); PJM Compliance Filing, Docket Nos. ER04-1068-003 and ER04-1074-002 (filed Oct. 28, 2004). Just as notably, the Commission accepted the independent system operators' compliance filings without indicating in any way that the compliance filings were deficient because they did not include complete revised tariffs. See, e.g., *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,213 (2004); *New York*

*Independent System Operator, Inc.*, Letter Order, Docket Nos. ER04-615-000, *et al.* (Apr. 22, 2004).

In sum, the Commission's orders and industry practice since the issuance of Order No. 614 show that the October 28 Order was incorrect in stating that the ISO is required by Order No. 614 to file a complete revised tariff along with its compliance filing.

**B. It is Impossible for the ISO to Electronically File a Revised Tariff**

The October 28 Order directed the ISO to "electronically file a revised tariff with the Commission." October 28 Order at P 110. It is currently impossible, however, for any jurisdictional entity to electronically file a tariff, because the Commission's proposed program for allowing the electronic filing of tariffs, tariff revisions, and rate change applications (*i.e.*, the Commission's "eTariff" proposal) is still in the developmental stage. See Notice of Proposed Rulemaking, Prototype Testing, and Technical Conference, *Electronic Tariff Filings*, 69 Fed. Reg. 43929 (July 23, 2004), FERC Stats. & Regs. ¶ 32,575 (2004) (describing the eTariff proposal and stating that comments on the proposal are due October 4, 2004); Notice of Availability of Prototype Electronic Tariff Filing Software, Docket No. RM01-5-000 (Aug. 10, 2004) (stating that a prototype of the computer software to be used for submitting filings pursuant to the eTariff proposal "is still in development, and is being made available so that interested parties may view the software to submit comments on the proposed rule"); Notice of Extension of Comment Deadline, Docket No. RM01-5-000 (Sept. 17, 2004) (extending the October 4, 2004 deadline for comments on the eTariff proposal to a date to be



provided in a future Commission notice not yet issued); <http://www.ferc.gov/docs-filing/etariff.asp> (Commission website providing description of the eTariff proposal and electronic links to documents related to the proposal, which website indicates that the proposal is still under development).

Moreover, Order No. 614 itself provides no support for the Commission's assertion that it requires the ISO to electronically file a revised tariff. Order No. 614 noted that the Commission has not yet established standards or a format for the electronic filing of tariffs. Order No. 614 at 31,501, 31,507. As of today, these standards and format have yet to be established.

#### **IV. REQUEST FOR STAY**

The ISO respectfully requests that the Commission grant a stay of its directive to the ISO to file a complete revised tariff. As explained in Section III, above, Order No. 614 does not require the ISO to file a revised tariff along with its compliance filing nor is it possible for the ISO to electronically file a revised tariff as directed in the October 28 Order. For these reasons, the ISO believes that a stay is appropriate.

**V. CONCLUSION**

WHEREFORE, for the above-stated reasons, the ISO respectfully requests that the Commission grant rehearing and a stay of its October 28 Order, and that the Commission further find, determine, and order as described above.

Respectfully submitted,

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Dated: November 29, 2004

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the 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 29<sup>th</sup> day of November, 2004.

/s/ Anthony J. Ivancovich  
Anthony J. Ivancovich