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March 9, 2005

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 Nos. ER03-683-___

Dear Secretary Salas:

Enclosed please find the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Motion for Leave to File Answer and Answer of Coral Power, L.L.C., *et al.* and Response of *Termoeléctrica de Mexicali de R.L. de C.V.*, submitted in the captioned docket.

Feel free to contact the undersigned with any questions. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas
Kenneth G. Jaffe
Bradley R. Miliauskas

Counsel for the California
Independent System Operator
Corporation

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)** **)**	**Docket No. ER03-683-___**

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF CORAL POWER, L.L.C., *ET AL.* AND RESPONSE OF TERMOELÉCTRICA DE MEXICALI S. DE R.L. DE C.V.

On February 7, 2005, the California Independent System Operator Corporation ("ISO")[1] filed a Request for Rehearing and Motion for Clarification, and Motion for Stay ("ISO Request"), in the above-captioned proceeding. The ISO Request concerned the January 6, 2005 Order issued in the proceeding, 110 FERC ¶ 61,007 ("January 6, 2005 Order"). On February 22, 2005, Coral Power, L.L.C., Energia Azteca X, S. de R.L. de C.V., and Energia de Baja California, S. de R.L. de C.V. (collectively, "Coral Power") submitted a motion for leave to file answer and answer to the ISO Request ("Coral Power Answer"), and Termoeléctrica de Mexicali de R.L. de C.V. ("TDM") submitted a response to the ISO Request ("TMD Response"). Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213,

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

the ISO hereby respectfully requests leave to file an answer, and files its answer, to the Coral Power Answer and the TDM Response.[2]

The ISO recognizes that the Commission generally is not receptive to the filing of answers to answers. However, good cause exists in this instance to allow the ISO to submit an answer to Coral Power's and TDM's pleadings. In that regard, Coral Power raises new (and meritless) arguments that were not contained in the Commission's January 6, 2005 Order. Coral Power also (1) relies on "bad" law, (2) misrepresents prior Commission orders and the intent of prior ISO filings, and (3) espouses positions that are internally inconsistent.[3] Further, Coral Power and TDM raise new proposals that were not addressed in the January 6, 2005 Order. It is necessary that the ISO have an opportunity to address these claims in order to clear up the record and to avoid being prejudiced by such claims being allowed to remain in the record unrebutted. As explained below, the Coral Power Answer and the TDM Response are without merit and the Commission should deny the relief requested therein. Further, the ISO notes that although Coral Power challenges almost every argument raised in the ISO's Request for Rehearing, neither Coral Power nor TDM raises any issues concerning the section of the ISO Request describing how the ISO appropriately

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[2] The ISO requests waiver of Rule 213(a)(2) (18 C.F.R. § 385.213(a)(2)) to permit it to make an answer to the Coral Power Answer and the TDM Response. Good cause for this waiver exists here because this answer will aid the Commission in understanding the issues in the proceeding, assist the Commission in the decision-making process. *See, e.g.*, *Nevada Power Company*, 108 FERC ¶ 61,074, at P 23 (2004); *Michigan Electric Transmission Company*, 108 FERC ¶ 61,205, at P 21 (2004); *AEP Power Marketing, Inc.*, 109 FERC ¶ 61,276, at P 16 (2004); *Vector Pipeline L.P.*, 89 FERC ¶ 61,242, at 61,713 (1999).

[3] In that regard, as explained below, the case law that Coral Power cites as precluding the interpretative change implemented by Potomac Economics also would preclude the Commission from permitting Start-Up Costs to be recovered retroactively back to May 30, 2003.

removed the references to Adjustment Bids in Section 2.1 of Operating Procedure M-401 and does not need to provide any refunds. *See* ISO Request at 4-5, 6, 22-26. Therefore, the present filing does not address that subject.

I. ANSWER[4]

A. The ISO's Request for Rehearing of the January 6, 2005 Order was Timely.

Coral Power argues that the ISO's February 7, 2005 Request for Rehearing should be dismissed as an out-of-time request for rehearing of the April 16, 2004 Order. Coral Power Answer at 5. Coral Power's argument is based on the incorrect premise that, in the April 16, 2004 Order, the Commission directed the ISO to submit a filing pursuant to Section 205 of the Federal Power Act ("FPA"). *Id.* Coral Power claims that this is shown by the Commission's characterization of its action in the January 6, 2005 Order as clarifying rather than modifying its prior ruling. *Id.*

The Commission never ordered the ISO to make a Section 205 filing in its April 16, 2004 Order, and the January 6, 2005 Order *expressly* recognized – *in two places* – that the Commission had directed the ISO to make a compliance filing in its April 16, 2004 Order. Coral Power ignores this express language in the January 6, 2005 Order and instead attempts to "imply" that other language in the January 6, 2005 Order "suggests" that the Commission had directed the ISO to make a Section 205 filing in its April 16, 2004 Order.

[4] For convenience, the ISO will use in this Answer the same abbreviations for Commission orders and ISO filings that were defined in the ISO Request.

In the April 16, 2004 Order, the Commission merely: (a) "direct[ed] the CAISO to incorporate the new test [for competitive periods] in section 7.2.6.1.1 of its tariff," and (b) directed the ISO to submit a compliance filing within 30 days. April 16, 2004 Order at P 62 and ordering paragraph (B). The order contained no directive anywhere for the ISO to submit a Section 205 filing.

In the January 6, 2005 Order, the Commission *explicitly recognized* that, in the April 16, 2004 Order, "the CAISO was directed to submit a *compliance filing* to incorporate the test into section 7.2.6.1.1 of the CAISO's tariff." January 6, 2005 Order at P 25 (emphasis added). The January 6, 2005 Order (at P 30) also acknowledged in another place that the April 16, 2004 Order had directed the ISO to submit a compliance filing:

> Accordingly, [in the April 16, 2004 Order] we directed the CAISO to incorporate the new test into section 7.2.6.1.1 of its tariff. This new test would establish additional criteria, in the context of decremental reference bid calculations, governing when an offer would be deemed to have been accepted in competitive periods.[15]
>
> _____
>
> [15] *Id.* [Previous footnote (footnote 14) cited to April 16, 2004 Order at ordering paragraph (B).]

Therefore, Coral Power's claim that the Commission directed the ISO to submit a Section 205 filing in the April 16, 2004 Order is baseless and is belied by the Commission's own statements.[5] The first and only order in which the ISO was directed to submit a Section 205 filing was the January 6, 2005 Order. *See*

[5] The only support Coral Power musters for its claim is that the Commission characterized its action in the January 6, 2005 Order as "'clarify[ing]' its prior ruling, not modifying it." Coral Power Answer at 5 (quoting January 6, 2005 Order at P 31). Coral Power is engaging in a pointless semantic exercise given that in the same order the Commission expressly recognizes that it directed the ISO to make a compliance filing.

January 6, 2005 Order at P 31. As explained in the ISO Request, that directive was inconsistent with the Commission's prior statements. Because the ISO sought rehearing of this directive within 30 days of the issuance of the January 6, 2005 Order, the ISO's Request for Rehearing was timely.[6]

B. Potomac's Standard is a "Related Necessary Change" that Can Be Implemented in a Compliance Filing.

Coral Power concedes that the Commission has recognized that "related necessary changes" in a compliance filing can become effective on the date that the underlying rates went into effect. Coral Power Answer at 9 (citing *New York Independent System Operator, Inc.*, 99 FERC ¶ 61,125, 61,536 (2002)). However, Coral Power argues that Potomac's standard can only be implemented pursuant to a Section 205 filing because Potomac's standard is not a "related necessary change" that can be implemented in a compliance filing. Coral Power Answer at 9-10. Coral Power is incorrect.

The Potomac standard clearly constitutes a "related necessary change" to the decremental reference bid mechanism filed in the July 17, 2003 Addendum. The Commission said as much in both the April 16, 2004 Order and the January 6, 2005 Order, finding that the Potomac mechanism is "necessary to correct a fundamental flaw in the proposed decremental reference bid methodology" that was contained in the July 17, 2003 Addendum. April 16, 2004 Order at P 62; January 6, 2005 Order at P 30. And the Potomac standard is unquestionably related to the decremental reference bid methodology because it specifies how a

[6] The 30-day period technically ended on February 5, but since that date was a Saturday, the period actually ended on the next business day, February 7.

phrase in the tariff language implementing that methodology (a phrase that the Commission approved in an order in this proceeding) – "competitive periods" – will be implemented.[7]

Coral Power also seems to suggest (at 10) that the Commission cannot accept the Potomac standard in a compliance filing because it constitutes an entirely different rate. That is an absurd proposition which, if taken to its logical conclusion, would mean that the Commission could never modify rates proposed by a public utility and order the modified rates to be submitted in a compliance filing. Obviously, that flies in the face of Commission practice under the Federal Power Act for the past 70 years.

Importantly, Coral Power's position with respect to the Potomac standard is flatly inconsistent with its advocacy of the recovery of Start-Up Costs for Generating Units and the implementation of that recovery on a retroactive basis, through a compliance filing. Based on an application of the principles Coral

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[7] *See, e.g.*, *PJM Interconnection, LLC*, 109 FERC ¶ 61,067, at P 53 (2004) ("PJM's compliance filing does not specify the source or sink used in determining the value of DFAX in the above formula. We direct PJM to revise its Operating Agreement to clarify, in a compliance filing filed with us within 30 days, the source and sink intended to be used in determining the value for DFAX."); *PJM Interconnection, LLC*, 105 FERC ¶ 61,123, at P 66 (2003) (finding that tariff language spelling out the details of an economic expansion (upgrade) process – including thresholds and criteria – were properly included in a compliance filing); *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,291, at P 41 (2003) (accepting compliance filing changes of "unusual breadth" pertaining to revised market power mitigation measures); *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,319, at 62,064 ("[T]he Commission finds the sanctions provision regarding ICAP suppliers engaged in external transactions ambiguous. . . . Therefore, we require the NYISO to clarify in its compliance filing how generators subject to sanctions and involved in export transactions will be compensated for their recall energy."). The ISO Tariff changes reflecting the Potomac standard are comparable in scope to the aforementioned tariff provisions (and numerous other ISO Tariff provisions implementing new rates, new thresholds and detailed criteria) that the Commission has accepted in a compliance filing. In particular, the tariff language further describes how the decremental reference price methodology approved by the Commission in this proceeding will be implemented. That is clearly appropriate in a compliance filing. Indeed, the Commission has directed the inclusion of thresholds, specified criteria, and detailed explanations in compliance tariff filings on countless occasions. There is no basis to deviate from that practice here.

Power champions with respect to the Potomac standard, the recovery of Start-Up Costs could not be considered a "related necessary change" that could be made retroactively, because the recovery of Start-Up Costs (1) was a concept that was first proposed by the ISO in a compliance filing,[8] (2) was a brand-new concept that required completely new tariff language that did not merely interpret or clarify language approved in the Amendment No. 50 proceeding,[9] and (3) imposed a new rate or rate increase. The Commission approved the recovery of Start-Up Costs retroactively pursuant to a compliance filing under these circumstances. There is no legitimate basis whatsoever to treat the Potomac standard differently.

In fact, the Potomac standard fits far more easily into the "related necessary change" standard than the recovery of Start-Up Costs.[10] *See* ISO Request at 20-22. Both of these changes required by the Commission were

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[8] The ISO first proposed to permit the recovery of Start-Up Costs in the May 17, 2004 Compliance Filing. The ISO proposed identical changes to permit the recovery of Start-Up Costs in the February 14, 2005 Compliance Filing.

[9] In the April 16, 2004 Order, the Commission addressed the issue of the recovery of Start-Up Costs Commission not due to tariff changes the ISO had proposed, but in acknowledgement of concerns raised by intervenors and the ISO that Generating Units that are shut down by the ISO due to Intra-Zonal Congestion should have to opportunity to be paid their Start-Up Costs. *See* April 16, 2004 Order at PP 38, 41. The very reason the intervenors and the ISO raised these concerns was that the ISO Tariff did not provide for the recovery of Start-Up Costs.

[10] On a number of occasions in the past, the ISO has submitted compliance filings containing new rates or charges, or changes to existing rates or charges, and the Commission has accepted those compliance filings. For example, in the proceeding concerning Amendment No. 55 to the ISO Tariff, the Commission approved penalties on Market Participants the ISO proposed in a compliance filing for violations of specified rules of conduct. *California Independent System Operator Corporation*, 109 FERC ¶ 61,087 (2004). And in the proceeding concerning Amendment No. 51 to the ISO Tariff, the Commission approved settlement system reruns the ISO proposed in a compliance filing that would result in adjustments having cost impacts on Scheduling Coordinators. *California Independent System Operator Corporation*, 105 FERC ¶ 61,203 (2003), *order on reh'g*, 106 FERC ¶ 61,099 (2004). There is no reason for the Commission to treat the Potomac standard, which was proposed in the May 17, 2004 Compliance Filing, any differently.

appropriately presented in compliance filings and both should be given retroactive effect.

Coral Power is inconsistent in its interpretation of the Commission's filing requirements in other respects. In that regard, Coral Power asserts that the Potomac standard must be submitted pursuant to a Section 205 filing on the grounds that it "establishes new rates" and "will have a significant impact on price," but Coral Power makes no such demand that generators' recovery of Start-Up Costs similarly be delayed until a Section 205 filing is submitted and accepted, even though that change mandated in the January 6, 2005 Order clearly "establishes new rates" and "will have a significant impact on price." Coral Power Answer at 8 & n.12. In fact, the provision for the recovery of Start-Up Costs has a far more direct impact on prices than the Potomac standard because the former both establishes a right to cost recovery on the part of generators and will require the ISO to increase its charges to other Market Participants to enable it to pay Start-Up Costs. Coral Power points to no reason why the Commission should preclude the Potomac standard from becoming effective on a retroactive basis through a compliance filing, in the same way the Commission directed the ISO to permit the recovery of Start-Up Costs on a retroactive basis pursuant to a compliance filing.

C. Coral Power's Arguments Concerning the Provision of Refunds

1. Coral Power is Incorrect in Arguing that the ISO Should Provide Refunds Related to the Implementation of the Potomac Standard.

Coral Power argues that the ISO should be required to provide refunds related to the implementation of the Potomac standard, starting from the date that the Potomac standard was implemented, January 20, 2004. The basis for Coral Power's argument is the erroneous assertion that the Potomac standard was not "on file with the Commission." Coral Power Answer at 10-11.

As an initial matter, Coral ignores the fact that the Potomac standard was included in compliance tariff language filed on May 17, 2004. At a minimum, the Commission must make the Potomac standard effective on the date that the Commission found such standard to be "necessary" – on April 16, 2004.

However, the ISO believes that the Potomac standard appropriately should be made effective on January 20, 2004. As explained in the ISO Request (at 9), months before the ISO implemented the Potomac standard on January 20, 2004, the ISO had filed tariff language in the July 18, 2003 Addendum setting forth the mechanism through which decremental reference prices would be established, including the bids submitted during "competitive periods," as identified by Potomac. Notwithstanding the Commission's subsequent ruling that the standard to which Potomac identifies "competitive periods" should be added to the ISO Tariff, the ISO acted reasonably in beginning to implement the standard on January 20, 2004, after issuing a market notice to all Market Participants. At the time, the ISO was under the obligation imposed by the May

30, 2003 Order to use decremental reference prices to manage Intra-Zonal Congestion. The ISO had filed with the Commission the tariff provisions setting forth the mechanism through which it would so, in compliance with the May 30, 2003 Order, and those provisions were subsequently accepted, subject only to the incorporation of the standard for identifying competitive periods (and other minor changes). April 16, 2004 Order at PP 44-46, 58-62, and ordering paragraphs (A) and (B). Moreover, as explained above, at the time the standard was implemented on January 20, 2004, Section 7.2.6.1.1 already contained language concerning "competitive periods" that was just as specific as the similar, Commission-approved language used by the NYISO and MISO and by Potomac with respect to AMP. Therefore, contrary to Coral Power's erroneous belief, the ISO was implementing the "rate on file" when it began to employ the Potomac standard on January 20, 2004.

It also should be noted that this represents another instance in which, if Coral Power's argument were to be applied to the recovery of Start-Up Costs for Generating Units, it would preclude the implementation of that recovery on a retroactive basis through a compliance filing. In that regard, the ISO did not file tariff language for the recovery of Start-Up Costs until that language was included in the May 17, 2004 Compliance Filing. Applying Coral's logic, the Commission would be unable to approve the recovery of Start-Up Costs retroactively to May 30, 2003 because there was no tariff language on file for such mechanism until May 17, 2004 (and such proposal constitutes a new rate and/or a rate increase). In any event, it would be inconsistent to permit Start-Up

Costs to be recovered retroactively, but to prohibit the Potomac standard – which was also included in the May 17, 2004 Compliance Filing – from being applied retroactively.

2. Coral Power Relies on "Bad" Law in Claiming that the Potomac Standard Cannot be Made Effective on the Date the Commission Found the Standard to be Necessary.

In the ISO's Request for Rehearing, the ISO argued in the alternative that, if the Commission does not agree that the Potomac standard should be made effective retroactively back to January 20, 2004, as a related necessary change, it should be made effective on the date it was found to be necessary by the Commission (April 16, 2004) and on which the Commission directed the ISO to include the standard in its tariff. ISO Request at 18-20. The ISO explained that a later effective date would be inconsistent with the only conceivable legal basis for the Commission's requirement that the Potomac standard should be included in the ISO Tariff: Section 206 of the FPA.[11] When the Commission acts pursuant to Section 206, it must establish a "refund effective date" between sixty days and seven months after a complaint is filed. 16 U.S.C. § 824e(b). Treating the February 2, 2004 supplemental protest that raised this issue as the equivalent of a complaint, the date of the April 16, 2004 Order is within the permissible period

[11] 16 U.S.C. § 824e. The Commission acted based on arguments presented in a supplemental protest, comments, and an answer, rather than any proposal contained in a compliance filing or a filing pursuant to Section 205 of the FPA. *See* April 16, 2004 Order at PP 50-62. In the April 16, 2004 Order, the Commission found that "the changes proposed by Potomac Economics were necessary to correct a fundamental flaw in the proposed decremental reference bid methodology . . . . We will . . . direct the CAISO to incorporate the new test into section 7.2.6.1.1 of its tariff." April 16, 2004 Order at P 62. Since Section 206 provides the only potential authority for this Commission action, this statement appears to be equivalent to a finding that the decremental reference bid methodology is unjust and unreasonable if the test were to not be used.

for a refund effective date.[12] The ISO also explained that it would be unfair to consumers to require an effective date for Potomac's standard after April 16, 2004, since the ISO justifiably relied on the Commission's directive in the April 16, 2004 Order to make a compliance filing, and did so on May 17, 2004. If the Commission does not grant rehearing to undo the reversal of this directive in the January 6, 2005 Order, the ISO could be required to make millions of dollars of refunds to suppliers (which dollars would come from the pockets of ratepayers). This expenditure could have been avoided if the Commission had stated clearly in the April 16, 2004 Order that the Potomac standard's addition to the ISO Tariff – but none of the other changes required in the order – could only be implemented through a stand-alone Section 205 filing.

Coral Power opposes this alternative request, citing the *Electrical District* decision as support for the proposition that "tariff changes implemented through [a] compliance filing can be made effective only after the compliance filing is accepted by the Commission." Therefore, according to Coral Power, "unless and until the Commission's accepts the ISO's May 17, 2004 compliance filing, which it has yet to do, the rates that will be derived under that filing will not be 'fixed' within the meaning of the Federal Power Act, will not be on file until then, and cannot be observed for any prior period." Coral Power Answer at 11-12 (citing *Electrical District No. 1 v. FERC*, 774 F.2d 490, 493 (D.C. Cir. 1985)).

[12] Another way to view this situation is to consider the Commission's findings in its April 16, 2004 Order – that the Potomac standard was "necessary to correct a fundamental flaw in the proposed decremental reference bid methodology" – to be a finding under Section 206 of the FPA and the ISO's May 17, 2004 filing to be a filing in compliance with such finding. Under such circumstances, the Potomac standard could go into effect on April 16, 2004.

The *Electrical District* case is inapposite to the present situation. That case concerned fixed-rate tariff changes. *See Electrical District*, 774 F.2d at 492-93. In contrast, the present situation does not concern a fixed-rate tariff provision, but rather a rate formula – the Potomac standard. In approving the Potomac standard, the Commission approved a rate formula; it did not fix a rate. *See* April 16, 2004 Order at P 62 (approving Potomac standard). Therefore, the case relevant to the present situation is not *Electrical District* but *Transwestern Pipeline Company v. FERC*, 897 F.2d 570 (D.C. Cir. 1990). In *Transwestern*, the District of Columbia Circuit distinguished between a situation involving a fixed rate (as in *Electrical District*) and a situation involving a rate formula:

> The Commission need not confine rates to specific, absolute numbers but may approve a tariff containing a rate "formula" or a rate "rule" . . .; it may not, however, simply announce some formula and *later* reveal that the formula was to govern from the date of announcement (as it had done in *Electrical District*). . . . [W]e think that where the Commission explicitly adopts a formula and indicates when it will take effect, courts may not (without invading the Commission's province) say that such a formula may never qualify as a "rate" . . . .

Transwestern, 897 F.2d at 578 (emphasis in original). Thus, the court found that a rate formula may become effective when the Commission adopts the formula. In the present case, the Commission approved the Potomac standard, *i.e.*, the rate formula, in the April 16, 2004 Order. Therefore, if it is not given retroactive effect, it should be permitted to become effective, at the latest, on April 16, 2004.[13]

[13] In the paragraph of the April 16, 2004 Order in which the Commission found the Potomac standard to be "necessary," the Commission also expressly recognized that such finding did not preclude Market Participants from discussing "prospective changes" to the Potomac standard with the ISO. April 16, 2004 Order at P 62. Thus, in its April 16, 2004 Order, the Commission

The Commission must recognize that if it were to accept Coral Power's argument that the *Electrical District* case is the relevant precedent, and thus were to find that tariff changes implemented through a compliance filing can be made effective only after the compliance filing is accepted by the Commission, that same logic would preclude the retroactive recovery of Start-Up Costs. In that regard, the tariff provision permitting the retroactive recovery of Start-Up Costs was a rate change that the ISO first proposed in the May 17, 2004 Compliance Filing (which was the same date on which and the same filing in which the Potomac standard was submitted). The Commission never specified a formula for the recovery of Start-Up Costs in any of its orders in the Amendment No. 50 proceeding and did not expressly approve the recovery of Start-Up Costs until January 6, 2005 (*see* January 6, 2005 Order at P 20). Moreover, the Commission has not yet accepted tariff language for the recovery of Start-Up Costs, and Coral Power disputes what the substance of such tariff provisions ought to be.[14] Indeed, if the Commission accepts Coral Power's argument, Start-Up Costs should not even be paid now, because the Commission has never specified a particular formula to be used for the recovery of Start-Up Costs.

The ISO does not believe Coral Power desires or intends that result, but that is the necessary result of Coral Power's argument. Accordingly, the Commission must reject Coral Power's contention that the holding of the *Electrical District* case is applicable to *any* of the changes required by the

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clearly intended that the Potomac standard would be effective at that time and not on a prospective basis after a Section 205 filing.

Commission's orders in this docket, including both the recovery of Start-Up Costs and the implementation of the Potomac standard. Importantly, to the extent that the Commission finds that Start-Up Costs can be recovered retroactively pursuant to a compliance filing even though there is no Commission-approved tariff language with respect to such recovery, the Commission necessarily must allow the Potomac standard to be implemented retroactively pursuant to a compliance filing, especially given that the Commission has already found the specific methodology to be "necessary."

D. There is No Reason to Treat the Recovery of Start-Up Costs and the Potomac Standard Differently from one Another.

Coral Power argues that the recovery of Start-Up Costs and the Potomac Standard should be treated differently for purposes of determining whether a Section 205 filing is necessary. Coral Power Answer at 12-13. As explained in the discussions above, there is no legitimate basis for Coral Power's position. The ISO proposed both the recovery of Start-Up Costs and the Potomac standard in a compliance filing – indeed, the very same compliance filing – rather than a Section 205 filing. Further, the recovery of Start-Up Costs was an entirely new concept requiring new tariff language; prior to the submission of that tariff language in the May 17, 2004 Compliance Filing, there was no language providing for the recovery of Start-Up Costs submitted in the Amendment No. 50 proceeding. Moreover, Start-Up Cost recovery tariff language is not necessary to clarify any other tariff language approved by the Commission in the Amendment

[14] As explained in note 8, above, in the February 14, 2005 Compliance Filing the ISO proposed identical changes to permit the recovery of Start-Up Costs.

No. 50 proceeding and does not flesh out details of a concept approved by the Commission in a prior order in this proceeding. The Potomac standard, on the other hand, clarified and interpreted the language in Section 7.2.6.1.1(a)(1) that the ISO had provided in the July 18, 2003 Addendum.

In addition, as described in Section I.B, above, the recovery of Start-Up Costs imposed a new rate. The Commission should not treat that new rate any differently than the new rate that Coral Power states the Potomac standard imposed. *See* Coral Power Answer at 13. If anything, the Commission should have required the entirely new concept of the recovery of Start-Up Costs (which was not explicitly found to be appropriate by the Commission until January 6, 2005) to be included in a Section 205 filing, not the Potomac standard, which simply provided a definition of a phrase included in existing tariff language and was found to be "necessary" in the April 16, 2004 Order.

Coral Power claims that "there has never been any question that recovery of start-up costs was always an integral feature of the intra-zonal congestion scheme approved as part of Amendment No. 50." Coral Power Answer at 13. That is a flatly incorrect statement. The ISO did not propose tariff provisions for the recovery of Start-Up Costs until it submitted the May 17, 2004 Compliance Filing – more than one year after the ISO submitted Amendment No. 50. Even in the May 17, 2004 Compliance Filing, the ISO noted that the Commission, in the April 16, 2004 Order, did not appear to direct the ISO expressly to modify its tariff to provide for the recovery of Start-Up Costs, but that it appeared to be the Commission's intention to require such a modification. Transmittal Letter for May

17, 2004 Compliance Filing at 3-4. Moreover, the Commission did not explicitly find it appropriate for the ISO to permit the recovery of Start-Up Costs until it issued the January 6, 2005 Order. *See* January 6, 2005 Order at P 20. Under these circumstances, it is preposterous to contend that the recovery of Start-Up Costs was not an integral feature of Amendment No. 50 from the beginning.

Even assuming *arguendo* that Coral Power's claim were true, such claim would not prove Coral Power's point. If anything, as of the July 18, 2003 Addendum, the use of recent "competitive periods" to establish decremental reference bids in some circumstances was an integral part of the Amendment No. 50 approach to Intra-Zonal Congestion Management. Coral Power's attempt to distinguish the two compliance changes on this ground falls flat.

E. The Numerous Additional Costs Proposed by Coral Power and TDM Should Not Be Included in the Recovery of Start-Up Costs.

Coral Power argues that the ISO's proposal for the recovery of Start-Up Costs, contained in the May 17, 2004 Compliance Filing and described in the Motion for Clarification portion of the ISO Request (at 26-27), is deficient because it did not provide for payment of "numerous other costs" that Coral Power asserts should be paid to Generating Units that are shut down and re-started. TDM makes a similar assertion. Coral Power Answer at 14; TDM Response at 3.[15] These arguments should be rejected on both procedural and substantive grounds.

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[15] According to Coral Power, these numerous other costs include:

> (i) accruals toward turbine major maintenance costs (*e.g.*, as incurred under a Long Term Service Agreement, or "LTSA"), (ii) costs associated with tripping

Coral Power's and TDM's contentions are untimely and inappropriate in connection with the ISO's compliance filing. The only question that is relevant to a compliance filing is whether the ISO complied with the wishes of the Commission. The ISO did so, by submitting tariff changes in the May 17, 2004 Compliance Filing to provide for the recovery of Start-Up Costs.[16] In particular, the ISO provided for recovery of the same Start-Up Costs that the Commission has approved for Must-Offer Generators. Moreover, Coral Power and TDM are untimely in failing to raise their issues in a request for rehearing of the January 6, 2005 Order. In that Order, the Commission directed the ISO to submit tariff revisions providing for the recovery of Start-Up Costs, and referenced a filing in which Coral Power argued that the numerous other costs should be included in Start-Up Costs, but the Commission did not direct that the Start-Up Costs should include anything like the numerous other costs. *See* January 6, 2005 Order at

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> during the startup (*e.g.*, replacement energy and imbalance costs resulting from failure to meet schedule commitments, trip costs incurred under an LTSA, etc.), (iii) costs associated with thermal cycling and other wear-and-tear on balance of plant equipment, (iv) additional fuel consumed during the startup, (v) no-load or minimum output fuel costs prior to actual market operation and payment for delivered energy, and (vi) calling in additional personnel to carry out the startup.

Coral Power Answer at 15-16. TDM asserts that Generating Units should be paid for costs that include the following:

> "balance of plant" consumables such as chemicals, water, etc.; fuel burned to move from initial synchronization to minimum load, net of the value of MWH produced; the cost of a failed restart (i.e., lost spark spread plus any penalty resulting from schedule deviations) multiplied by the probability of a failed restart; and wear-and-tear on turbines, boilers, "balance of plant," etc.

TDM Response at 3.

[16] The May 17, 2004 Compliance Filing was submitted to comply with the April 16, 2004 Order, which Order did not require the ISO to include the numerous other costs in Start-Up Costs. *See* April 16, 2004 Order at PP 38, 41.

P 20.[17] Despite the fact that the Commission did not find that those costs should be included, neither Coral Power nor TDM sought rehearing of the January 6, 2005 Order. Therefore, their arguments in response to the May 17, 2004 Compliance Filing and the ISO Request are untimely.

As to the substantive grounds, Coral Power and TDM request changes that go beyond the scope of the ISO Tariff and beyond what the Commission directed in the Amendment No. 50 proceeding. As TDM correctly points out (TDM Response at 2), the ISO Tariff currently provides that the only Start-Up Costs the ISO will pay are fuel and auxiliary power costs. ISO Tariff, §§ 2.5.23.3.7.1, 2.5.23.3.7.6; ISO Tariff, Appendix A, definition of "Start-Up Costs." These are the only costs that the ISO pays to Must-Offer Generators that are started up. ISO Tariff, §§ 2.5.23.3.7.1, 2.5.23.3.7.6.[18] They do not include the numerous other costs that Coral Power and TDM advocate. In the Amendment No. 50 proceeding, the Commission gave no indication that it was requiring the ISO to pay Start-Up Costs to Generating Units that were shut down to manage Intra-Zonal Congestion, that were different from the Start-Up Costs the ISO paid

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[17] If the Commission believed that the numerous other costs should be included in Start-Up Costs, it presumably would have said so in the January 6, 2005 Order. The list of other costs that Coral Power proposes were presented to the Commission in Coral Power's request for rehearing of the May 17, 2004 Order, but the Commission did not find in the January 6, 2005 Order that those other costs should be included. *See* Coral Power Answer at 15-16; January 6, 2005 Order at PP 19-20.

[18] The ISO first proposed tariff changes to permit the recovery of auxiliary power costs in Amendment No. 60 to the ISO Tariff ("Amendment No. 60"). *See* Amendment No. 60, Docket No. ER04-835-000 (filed May 11, 2004), at pages 2, 4, and 15 of Attachment B1 (showing black-lined tariff changes); *California Independent System Operator Corporation*, 108 FERC ¶ 61,022, at P 77, 81 (2004) (order approving the ISO's proposal to include the payment of auxiliary power costs). Those changes became effective July 11, 2004. *California Independent System Operator Corporation*, 108 FERC at ordering paragraph (A).

to Must-Offer Generators. *See* April 16, 2004 Order at PP 38, 41; January 6, 2005 Order at P 20.[19]

Coral Power and TDM provide no reason why the ISO should pay different Start-Up Costs depending on whether the payment was to Generating Units that had been shut down or to Must-Offer Generators. It would not make sense to provide payment differently in those two cases, because the steps taken to start up a unit are the same in both. Further, Coral Power and TDM fail to provide any explanation as to how the ISO would even be able to verify all of the numerous other costs that those entities assert should be included in the payment of Start-Up Costs. Further, they do not make any showing that these costs are even appropriate for recovery as Start-Up Costs. If Coral Power and TDM desire the recovery of specific costs such as these, they should seek to do so through a bilateral contract or should file for cost-based rates.[20]

Coral Power's argument that the ISO should have included provision for the payment of the numerous other costs in its compliance filing is also at odds with the very argument that Coral Power made earlier in its Answer as to why the Potomac standard should be implemented prospectively only pursuant to a Section 205 filing. In that regard, Coral Power argued that a tariff provision that "establishes new rates" or "will have a significant impact on price" should be

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[19] Moreover, in its orders concerning the payment of Start-Up Costs to Must-Offer Generators, the Commission rejected proposals by parties that the ISO be required to pay a variety of additional cost items to Must-Offer Generators. *San Diego Gas & Electric Co., et al.*, 93 FERC ¶ 62,369 (2001), *order on reh'g*, 99 FERC ¶ 61,159, at 61,642 (2002); *San Diego Gas & Electric Co., et al.*, 97 FERC ¶ 61,275, at 62,212-13 (2001).

[20] *See San Diego Gas & Electric Co., et al.*, 97 FERC at 62,212 (stating that generators are free to file for cost-based rates to the extent they believe they are unable to recover their actual costs); *San Diego Gas & Electric Co., et al.*, 99 FERC at 61,642 (same).

included in a Section 205 filing, and that the new rates "must be placed on file and accepted before they can be put into effect." *See* Coral Power Answer at 8 & n.12. Payment of the numerous other costs that Coral Power seeks to recover would establish new rates and have a significant impact on price. Further, the Commission has not heretofore in this proceeding approved the recovery of such specific costs. Therefore, following Coral Power's argument, those other charges could only be included in a Section 205 filing. In addition, consistent with both *Electrical District* and *Transwestern*, the Commission cannot approve the recovery of such costs retroactively because the Commission has not yet "fixed" such rate, has not accepted a compliance filing detailing the specific costs to be recovered, or issued an order approving the specific formula requested by Coral Power and TDM for Start-Up Cost recovery.

Moreover, Coral Power erroneously characterizes the significance of a proposal made by the ISO in the Amendment No. 61 proceeding. Coral Power Answer at 15. In the Amendment No. 61 proceeding, the ISO agreed in an answer to comments and protests that it was reasonable to pay the costs of keeping a unit operating (*i.e.*, keeping the unit "warm"), assuming that keeping the unit warm was less expensive than shutting it down and re-starting it.[21] The Commission agreed with the ISO that generators should be compensated "for the costs associated with keeping a unit warm if the unit is needed to meet the next day's schedule and it is economical to do so." *California Independent System*

[21] Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Comments and Protests, Docket No. ER04-938-000 (filed July 26, 2004), at 7.

Operator Corporation, 108 FERC ¶ 61,193, at P 16 (2004). To comply with the Commission's directive to provide for such compensation in the ISO Tariff, the ISO proposed the following changes to Section 7.2.6.1 (with the changed text appearing in bolded and underlined format):

> If a Generating Unit is instructed by the ISO to shut down to manage Intra-Zonal Congestion, and is subsequently re-started, the Owner of that Generating Unit may invoice the ISO for the **lesser of (1) the** Start-Up Costs incurred **and (2) the costs of keeping the Generating Unit warm to meet its Energy Schedules** as set forth in Section 2.5.23.3.7.6.

Amendment No. 61 Compliance Filing, Docket No. ER04-938-002 (filed Sept. 16, 2004), at Attachment C.[22] Thus, the ISO simply proposed to pay either the Start-Up Costs or the costs of keeping the unit warm, whichever was less. Coral Power is wrong in asserting that, in proposing the quoted provision, the ISO "necessarily recognizes that the Section 2.5.23.3.7.6 costs are less than the costs that a generator must receive to be compensated for its start-up costs." Coral Power Answer at 15. Indeed, the opposite is true. The ISO proposed to pay the costs of keeping a unit warm only to the extent such costs are less than Section 2.5.23.3.7.6 costs. *See* September 16, 2004 Compliance Filing in Docket No. ER04-938. The quoted provision simply requires a comparison between Start-Up Costs and the costs of keeping a Generating Unit warm. The ISO believes that the costs of keeping a Generating Unit warm will be smaller than Start-Up Costs in many cases, but the provision requires the comparison to

[22] The Commission has not yet issued an order on the Amendment No. 61 compliance filing.

be made anew in each case where a Generating Unit in instructed to shut down to manage Intra-Zonal Congestion and is subsequently re-started.

TDM requests clarification on the following issue: "whether a 'start-up' eligible for compensation under the CAISO Tariff is based on a unit start-up, versus a start-up for the entire generating facility. For example, the 600 MW TDM generating facility consists of two 170 MW combustion turbine-generators and one 260 MW steam turbine-generator." TDM Response at 2. The ISO notes that TDM does not place decremental bids for the generating facility in question. If TDM would like to recover the costs of bringing individual turbines on and off, TDM should provide decremental bids accordingly. The ISO is operating the generating facility in question in the Master File range of operation that TDM has provided. If the ISO instructs the facility to go off-line, it should be eligible for recovery of Start-Up Costs.

F. The Commission has Already Rejected the Arguments Presented by Coral Power Concerning the ISO's Motion for Stay.

Coral Power argues that the Commission should not grant the ISO's Motion for Stay, contained in the ISO Request, of the refund filing described in paragraph 32 and ordering paragraph (H) of the January 6, 2005 Order. Coral Power Answer at 16-19. Coral Power made the same argument in its February 22, 2005 answer to the ISO's motion for extension of time (filed on February 7, 2005) to submit the refund filing required by the January 6, 2005 Order after the Commission acted on the ISO Request. On March 2, 2005, the Commission issued a notice granting the ISO an extension of time to submit the refund filing

30 days after the Commission acted on the ISO Request. Therefore, the Commission has already rejected Coral Power's arguments concerning the ISO's Motion for Stay.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, the ISO respectfully requests that the Commission grant leave to file the present answer and deny the relief requested in the Coral Power Answer and the TDM Response.

Respectfully submitted,

/s/ Kenneth G. Jaffe

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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 9th day of March, 2005.

/s/ Anthony Ivancovich
Anthony Ivancovich