UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)** **)** **)**	**Docket No. ER01-889-003**

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTIONS TO INTERVENE AND PROTESTS OF COMPLIANCE FILING

I. INTRODUCTION AND SUMMARY

On March 1, 2001, the California Independent System Operator Corporation ("ISO")[1] submitted a compliance filing in the above-identified docket as required by the Commission in its February 14, 2001 order on Amendment No. 36.[2] Subsequently, a number of parties filed with the Commission motions to intervene and protests concerning this compliance filing.[3] Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.213 (2000), the ISO hereby submits its Answer to these motions to intervene and protests.[4] For the reasons

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

[2] *California Independent System Operator Corp*. et al, 94 FERC ¶ 61,132 (2001), *reh'g pending*. ("February 14 Order").

[3] Protests to the ISO's compliance filing were submitted by Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC ("Mirant"), Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. ("Reliant"), Duke Energy, North American, LLC and Duke Energy Trading and Marketing, LLC ("Duke"), Enron Power Marketing, Inc. and Coral Power, LLC ("Enron") (collectively "Generators"), and Southern California Edison Company ("Edison"). Comments on the ISO's compliance filing were submitted by Pacific Gas and Electric Company ("PG&E) and the California Electricity Oversight Board ("EOB").

[4] Although answers to protests are normally prohibited under Rule 213 (18 C.F.R. § 385.213), the ISO requests waiver of Rule 213 to permit it to make this answer. Good cause for this waiver exists here given the usefulness of this answer in ensuring the development of a complete record.

described below, the Commission should reject these protests and allow the ISO's compliance filing to stand as originally submitted.

II. BACKGROUND

In late December and early January it became apparent to the ISO and others that for various reasons the financial well-being of Southern California Edison Company ("Edison") and Pacific Gas and Electric Company ("PG&E") was deteriorating rapidly. A downgrade in the credit rating of those companies, and of the California Power Exchange ("PX"), which depended on Edison and PG&E for the majority of its revenues, was inevitable. Under Section 2.2.3.2 of the ISO Tariff, however, such a downgrade would make those entities subject to the prohibition on scheduling transactions that is specified in Section 2.2.7.3 of the ISO Tariff, unless the entity in question first posted a specified level of financial security.[5] If such security were not posted, their loads would have to be served through real-time Imbalance Energy.

On January 5, 2001, the ISO, fearing that the inability of Edison and PG&E to schedule with the ISO would seriously threaten the reliability of the ISO Controlled Grid, filed with the Commission proposed Amendment No. 36 to the ISO Tariff. In that filing, the ISO proposed to waive, on a day-to-day basis to

---

See, e.g., Enron Corporation, 78 FERC ¶ 61,179, at 61,733, 61,741 (1997); *El Paso Electric Company*, 68 FERC ¶ 61,181, at 61,899 & n.57 (1994).

[5] Section 2.2.3.2 provides in relevant part that a Scheduling Coordinator, Utility Distribution Company, or Metered Subsystem that does not maintain an Approved Credit Rating "shall be subject to the limitations on trading set out in Section 2.2.7.3" of the ISO Tariff. Under Section 2.2.7.3, the only limitations on trading concern the inability of such entities to have their schedules accepted by the ISO.

continue no longer than March 3, 2001, the restrictions on the ISO's ability to receive forward schedules from Scheduling Coordinators that are temporarily unable to satisfy the creditworthiness provisions of its Tariff in order to allow Edison and PG&E to continue to schedule with the ISO. Specifically, Amendment No. 36 proposed modifying Section 2.2.3.2 of the ISO Tariff to provide on a day-to-day basis a temporary grace period following a downgrade in the credit rating of Scheduling Coordinators that are Original Participating Owners, or schedule on behalf of an Original Participating Transmission Owner, during which period such Scheduling Coordinators could continue to schedule transactions without providing one of the specified forms of security. Recognizing the potentially conflicting interests of Generators and consumers regarding the waiver of scheduling restrictions, the ISO asked the Commission for guidance regarding the appropriate mechanism for ensuring continued service to California consumers until the creditworthiness issues are resolved.

In its February 14 Order, the Commission conditionally accepted Amendment No. 36, subject to clarification and guidance. In particular, the Commission accepted Amendment No. 36 insofar as it allowed scheduling the loads of Edison and PG&E against their own generation to these entities, but rejected it insofar as it allowed scheduling of those loads against resources owned by third parties and bid into the ISO or PX markets. In response to the ISO's request for guidance going forward, the Commission stated that the relaxation on the scheduling restrictions with regard to third parties would be acceptable if combined with appropriate support from creditworthy

counterparties. The Commission ordered the ISO to file modifications to the ISO Tariff in compliance with the February 14 Order within 15 days.

On March 1, 2001, the ISO filed a compliance filing as directed by the Commission in the February 14 Order. Therein, the ISO submitted revised Tariff language allowing the ISO to accept schedules to serve the Load of a Utility Distribution Company ("UDC") that no longer meets the creditworthiness requirements of the Tariff if the Load is to be served from one of three types of resources: (1) a resource that the UDC owns; (2) a resource that the UDC has under contract to serve its Load; or (3) a resource from which another entity has purchased Energy or with regard to which another entity has provided assurance of payment for Energy on behalf of the UDC, if that entity has an Approved Credit Rating or has posted security pursuant to Section 2.2.7.3.

III. DISCUSSION

A. The February 14 Order Requires the ISO to Exempt Transactions Involving Resources Under Contract to Serve UDC Load from the ISO Tariff's Creditworthiness Requirements

In their protests to the ISO's compliance filing, Generators assert that the second and third exceptions to the creditworthiness requirements of the ISO Tariff included in the ISO's compliance filing are inconsistent with the February 14 Order. This argument is without merit. The second exception to the limitation on scheduling transactions is fully consistent with the Commission's February 14 Order. The Commission accepted Amendment No. 36 "to the extent the Amendment applies to [Edison's] and PG&E's ability to access their own

transmission facilities to deliver their *resources* to their load."[6] The Commission's reference to "resources" must be read in light of its earlier statement in the February 14 Order that "the creditworthiness requirements in the ISO tariff apply not only when a UDC is scheduling delivery of power purchased from a third party, but also when a UDC or its Scheduling Coordinator is scheduling its own generation and using its own transmission resources that are now controlled by the ISO."[7] That statement is accompanied by a footnote referring to the Commission's December 15, 2000 order in Docket Nos. EL00-95 *et al.*, wherein the Commission noted that the three UDCs in California own or control, under contract, approximately 25,000 MWs of resources.[8] Thus, the ISO understands the Commission's statement that Edison and PG&E are permitted to self-schedule "their resources" to refer not only to the resources directly owned by Edison or PG&E but also to those resources that Edison or PG&E control under contract. This latter category includes Qualifying Facility ("QF") resources and any other resources that Edison or PG&E have a right to "control" under contract.

Allowing Edison and PG&E to schedule such resources is consistent with the ISO's responsibilities. In such bilateral transactions, the ISO is not involved with settlement. The relationship between the supplier and Edison or PG&E, including the issues of creditworthiness and nonpayment, is governed by the terms of the contract. The ISO has no role, and should have no role, in

[6] 94 FERC at 61,510 (emphasis added).

[7] *Id.*

[8] *San Diego Gas & Electric Co.*, et al., 93 FERC ¶ 61,294 (2000) at 61,993 n.30.

interpreting or enforcing those contractual terms. Therefore, there is no reason to preclude the ISO from scheduling such resources.

B. Exempting Transactions Involving Resources from which Another Entity has Purchased Energy or with Regard to which Another Entity has Provided Assurance of Payment for Energy on Behalf of a UDC from the ISO Tariff's Creditworthiness Requirements is Consistent with the February 14 Order

Despite Generators' arguments to the contrary, the third exception to the ISO Tariff's creditworthiness provisions, as set forth in the ISO's compliance filing, is equally consistent with the Commission's February 14 Order. Therein, the Commission stated that relaxation of the creditworthiness requirements would be acceptable *"if combined with appropriate support from creditworthy counterparties."*[9] As a specific example, the Commission cited credit backing by a state agency for the purpose of backing the purchases of Edison and PG&E. The Commission also found that DWR's authority to *purchase on behalf of* Edison and PG&E was acceptable.[10] Duke's assertion that the issue before the Commission was and is whether the ISO may allow financially impaired UDCs to serve as Scheduling Coordinators for any load in excess of that met by their owned resources thus lacks any basis in the Commission's Order.

The third exception reflects the Commission's directions precisely. It allows Edison or PG&E to schedule transactions when a *creditworthy* entity has purchased the Energy on behalf of Edison or PG&E or has provided payment assurances. Under such circumstances, the supplier is as fully assured of

[9] 94 FERC at 61,511 (emphasis added).

[10] *See id.* (stating that "DWR's authority to purchase on behalf of the UDCs in acceptable")

payment as it would be if Edison or PG&E met the ISO's creditworthiness requirements.

Moreover, there is nothing in the Commission's language or intent to suggest that the third party guarantor must be the Scheduling Coordinator for Edison or PG&E, as Mirant and Reliant claim in their protests. Such a requirement would instead be inconsistent with the February 14 Order's authorization of the relaxation of creditworthiness requirements. If the creditworthy third party were the Scheduling Coordinator, it, not Edison or PG&E, would be scheduling the Load. Because that third party would meet the creditworthiness requirements of the ISO Tariff, no relaxation of those requirements would be necessary in order for it to schedule. Under such circumstances, the Commission's "relaxation of restrictions" when accompanied by third party assurances,[11] would be unnecessary and superfluous. The only logical reading of the February 14 Order, therefore, is that the Commission did not intend a requirement that the creditworthy third-party act as the Scheduling Coordinator for Edison and PG&E.

C. The February 14 Order Does not Address the Issue of Real-Time Energy Payments

Reliant explicitly relates its argument that third parties providing credit support must themselves be Scheduling Coordinators to a perceived requirement that creditworthy third parties assume responsibility for real-time Energy payments. As the ISO explained in its February 27, 2001 Answer to the Generators' request for an emergency order in this proceeding, however, neither

[11] *Id.*

Amendment No. 36 nor the Commission's February 14 Order were concerned with real-time Energy payments.[12] Amendment No. 36 addressed the right to schedule. By definition real-time Energy is not scheduled. The Commission explicitly noted that creditworthiness issues regarding the residual load served by Imbalance Energy remained "unresolved."[13] Although the Commission expressed the hope that its order would reduce the frequency with which the ISO must make emergency real-time Energy calls to meet unscheduled demand, it did not purport to eliminate this need or resolve associated payment concerns. As the ISO noted in its Answer to Generators' request for an emergency order, such a reading of the Commission's February 14 Order would destroy the ISO's ability to maintain the reliability of the California electricity system, based on the *possibility* that the Generators might not receive 100 cents on every dollar of the Market Clearing Price. The concerns noted in the ISO's Answer are no less true today. Indeed, the only significant change in circumstances is the compelling evidence, which the ISO recently submitted to the Commission, that the

---

[12] *Answer of the California Independent System Operator Corporation to Request of the "California Generators" for Emergency Order,* Docket Nos. ER01-889-000, et al. (Feb. 27, 2001). Indeed, in a recent filing before the United States Court of Appeals for the Ninth Circuit, the Commission told the court, "the Commission stated in its February 14 Order that it would address the applicability of the creditworthiness provisions to emergency dispatch orders in a future order, and the matter is currently under consideration by the Commission*." California Independent System Operator Corp., et al v. Reliant Energy Services, Inc.*, et al., Memorandum of Federal Energy Regulatory Commission in Response to April 3, 2000 Order, Case No. CV-01-00238-FCD (JFM).

[13] *California Independent System Operator Corp.*, 94 FERC ¶ 61,132 (2001) at 61,511.

Generators have inflated the Market Clearing price through the exercise of market power.[14]

D. The February 14 Order Does Not Release Edison From its Obligation to Pay for Real-Time Energy Used to Serve its Load

Edison's argument in its protest that the February 14 Order released it from its responsibility to pay for real-time Energy to serve its Load is unfounded. The Commission has not purported to, and cannot, relieve Edison of its obligation to serve its native Load. With the demise of the PX, Edison is the Scheduling Coordinator for that load. Although Edison no longer meets the ISO's creditworthiness requirements, the ISO has not terminated its Scheduling Coordinator Agreement with Edison (nor, for that matter, has Edison sought to terminate that agreement). Under Sections 2.5.23 and 11.2.4.1 of the ISO Tariff and Appendix D of the ISO Settlement and Billing Protocol, Scheduling Coordinators are responsible for the cost of Imbalance Energy to serve their Load. It is at least in part because Edison remains responsible for those costs that the complaints of the Generators are unfounded. If Edison wishes to be released from its obligation to serve, then it must seek such a release from the California legislature, not this Commission.

[14] *See Further Analyses of the Exercise and Cost Impacts of Market Power in California's Wholesale Energy Market*, filed in Docket No. EL00-95-012 (March 2001); *Empirical Evidence of*

III. CONCLUSION

For the reasons set forth in this response, the Commission should deny the protests to the ISO's compliance filing and accept that compliance filing as submitted.

Respectfully submitted,

Charles F. Robinson General Counsel Roger E. Smith Senior Regulatory Counsel The California Independent System Operator Corporation 151 Blue Ravine Road Folsom, CA 95630 Tel: (916) 608-7135 Fax: (916) 608-7296	Ed Berlin Kenneth G. Jaffe Michael E. Ward Michael Kunselman Swidler Berlin Shereff Friedman, LLP 3000 K Street, N.W., Suite 300 Washington, D.C. 20007 Tel: (202) 424-7500 Fax: (202) 424-7643

Dated: April 6, 2001

Strategic Bidding in California ISO's Real-time Market, filed in Docket No. EL00-95-012 (March 21, 2001).

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, DC this 6th day of April, 2001.

_____
Michael Kunselman

April 6, 2001

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: California Independent System Operator Corporation
Docket No. ER01-889-003

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Answer of the California Independent System Operator Corporation's to Motions to Intervene and Protests of Compliance Filing. Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,

Michael Kunselman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington D.C. 20007

Counsel for the California
Independent System Operator Corporation

Enclosures

cc: Service List