

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

**Pacific Gas and Electric Company) Docket Nos. ER00-2360-000 and
ER00-2360-001**

**ANSWER OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION
TO MOTION FOR ISSUANCE OF SUBPOENA
OF THE
TRANSMISSION AGENCY OF NORTHERN CALIFORNIA**

To: The Honorable Bruce L. Birchman
 Presiding Administrative Law Judge

Pursuant to Rules 213 and 410 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.213 and 385.410 (2000), the California Independent System Operator Corporation (“ISO”) hereby submits its Answer to the Motion for Issuance of Subpoena (“Motion”) of the Transmission Agency of Northern California (“TANC”). The ISO requests that the Motion be denied. As evidenced by the prepared testimony, the witnesses for TANC and other participants have already garnered extensive information from the ISO and have relied upon that information to present factual testimony. The appearance of ISO witnesses to duplicate that testimony is unnecessary and would impose an excessive burden on the ISO during a critical period in its operations. TANC has not shown why any additional testimony is necessary. If TANC believes that it has not obtained the information it now says it requires – which the ISO believes it has – then the

fault is in TANC's discovery. The ISO should not now be burdened with that failure. In support of this Answer, the ISO states the following:

1. On December 21, 2000, TANC submitted the Motion in order to compel the attendance of Brian D. Theaker, Steven Mavis, and Kevin Graves, officials of the ISO, to give testimony at the hearing in the above-referenced dockets that is scheduled to commence on February 21, 2001 ("February 21 Hearing"). See Motion at 1.

2. As described below, TANC and the other participants in this proceeding have already engaged in extensive discovery of the ISO. The product of all of this discovery is available for TANC's witnesses and those of other parties to rely upon.

3. As TANC acknowledges, TANC already took the deposition testimony of the persons it wishes to subpoena, as well as four other ISO personnel at the Director level, over three days in September 1999. *Id.* at 2. The additional deponents were Jeffrey Miller, Regional Transmission Manager, Spence Gerber, Director of Settlements, Anjali Sheffrin, Director of Market Analysis, and Deborah A. Le Vine, Director of Contracts & Compliance and the ISO's witness in this proceeding.

4. The ISO has provided responses to hundreds of data requests from the parties in these proceedings. Specifically, the ISO provided over 50 responses to the data requests of TANC, and over 300 responses to the data requests of other parties.

5. As TANC notes, TANC “relied upon the deposition testimony of Messrs. Brian D. Theaker, Steven Mavis, and Kevin Graves in its Reformulated Answering testimony,” and attached portions of these persons’ deposition testimony to the Reformulated Answering testimony which TANC submitted on November 2, 2000. *See id.* at 3.

6. As the Presiding Judge has previously noted, numerous other parties have also relied upon the deposition testimony.

7. As can be seen from an examination of the Revised Joint Stipulation of Issues, which was submitted in the above-referenced proceedings on December 12, 2000, the vast majority of the parties’ positions on the issues, including the positions of the ISO and of TANC, are based on deposition testimony and responses to data requests.

8. TANC asserts that “Messrs. Theaker, Mavis and Graves, as indicated by their deposition testimony in this proceeding, are able to provide testimony that is necessary to determine the issues in the Revised Joint Stipulation of Issues.” *Id.* at 4. In the Motion, TANC lists the issues in the Revised Joint Stipulation of Issues on which TANC proposes to examine these three persons during the February 21 Hearing. *Id.*

9. TANC does not, however, identify any specific factual dispute that has not already been addressed through deposition or data request or regarding which additional information is necessary. In short, other than the blanket assertion described in paragraph 7 of this Answer, TANC does not explain why TANC does not already have all the information it needs. TANC has not shown

that the testimony of Messrs. Theaker, Mavis, and Graves would add anything new to the information that the ISO has already provided.

10. Moreover, TANC and other parties have been given, and taken full advantage of, an ample opportunity to conduct discovery. If this discovery has not been sufficient – and the ISO believes it has – then the fault lies with those seeking the discovery. The ISO should not be obligated to compensate now for any deficiency in TANC’s discovery efforts.

11. As the Presiding Judge is aware, California is in the midst of an energy crisis, which has consumed a considerable part of the ISO’s attention and resources. The Officers, Directors, and Managers of the ISO staff are fully engaged in addressing the many aspects of this crisis as well as conducting ongoing business activities. Because of their important contributions to the proper operation of the ISO, it would be a severe hardship to the ISO if Messrs. Theaker, Mavis, and Graves were required to testify at the February 21 Hearing. As Manager of Engineering Operations, Mr. Graves, in particular, is critical to day-to-day operations. The requested testimony would require that each be absent from their responsibilities for at least two, and most likely three or four days.

12. Therefore, the ISO requests that the Motion be quashed, and that none of these three persons be required to testify at the February 21 Hearing.

13. Should the Presiding Judge decide that additional testimony is necessary, the ISO requests, in the alternative, that only one of these three persons be required to testify at the February 21 Hearing, and that this person be

Mr. Theaker. As Manager of Reliability Contracts, Mr. Theaker is fully cognizant of all aspects of Reliability Must-Run operations, including planning, the selection of units, and operations. Further, the ISO would also specifically request that Mr. Graves not be required to testify. Mr. Graves, as noted above, is especially critical to the proper operation of the ISO. His absence from the ISO, given the current state of affairs in California, would cause inordinate disruption.

WHEREFORE, for the foregoing reasons, the ISO respectfully requests that the Presiding Judge deny TANC's Motion for Issuance of Subpoena submitted in the above-referenced proceedings on December 21, 2000, or, in the alternative, require only Brian D. Theaker, to testify during the hearing scheduled to commence on February 21, 2001.

Respectfully submitted,

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Dated: January 5, 2001