

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

City of Vernon, California)
)
v.) Docket No. EL01-14-000
)
California Independent System)
Operator Corporation)
)

**ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO THE COMPLAINT OF
THE CITY OF VERNON, CALIFORNIA**

Pursuant to Rules 206 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 and 385.213 (2000) and the notices of filing issued November 14, 2000 and November 21, 2000, the California Independent System Operator Corporation ("ISO") submits this answer to the Complaint Requesting Fast Track Processing of the City of Vernon, California ("Vernon").

INTRODUCTION AND SUMMARY OF ANSWER

On November 9, 2000 as amended on November 17, 2000, Vernon filed a complaint requesting that the Commission require the ISO: (1) to approve Vernon's application to become a Participating Transmission Owner ("Participating TO"); (2) to accept Vernon's proposed "clarifications" to the Transmission Control Agreement ("TCA"); (3) to determine that Vernon's Scheduling Coordinator status is sufficient for Vernon to become a Participating TO; (4) to find that Vernon has met the requirements of Section 3.1 of the ISO Tariff to become a Participating TO; (5) to instruct the ISO to seek a

waiver of the timing requirements of Section 3.1.1 of the ISO Tariff; and (6) to take whatever other actions are necessary for Vernon to become a Participating TO by January 1, 2001.¹

As explained below, Vernon's allegations are unfounded and its requests for relief unnecessary. The ISO is currently working expeditiously to facilitate Vernon's goal of joining the ISO as a Participating TO effective January 1, 2001. This is an objective the ISO fully supports. It is reasonable that the ISO has sought to achieve this outcome through negotiation both with Vernon and the Original Participating TOs, rather than by litigation, as Vernon proposes. Moreover, Vernon's allegations of delay are without merit. Contrary to Vernon's assertions, an objective review of the recent events demonstrates:

- 1) that the ISO has continued to process Vernon's application to become a Participating TO expeditiously despite: (a) Vernon's missing the October deadline for completing certain agreements in order to be eligible to join the ISO by January 1, 2000 and (b) the incredible current workload on the ISO staff and management;
- 2) that it is reasonable for the ISO to seek the agreement of the Original Participating TOs as to the TCA revisions sought by Vernon in conjunction with its execution of that agreement;
- 3) that Vernon's position on the Alternative Dispute Resolution ("ADR") provisions of the TCA is without merit;
- 4) that Vernon's own actions have resulted in a delay in the submission of the TCA amendment regarding all issues other than the dispute over the ADR provisions;

¹ Complaint at 1. Capitalized terms not otherwise defined are used in the sense given in the Master Definitions Supplement, ISO Tariff Appendix A.

- 5) that Vernon failed to comply with the Commission's order to negotiate a revision to its proposed Transmission Owner Tariff;² and
- 6) that, nevertheless, ISO management is seeking authorization of its Governing Board to accept Vernon's Participating TO application as modified by the ISO at the meeting on November 30, 2000.³

In its order on the ISO's proposed transmission Access Charge amendment, the Commission recognized the need for the "treatment of all Participating TOs on the same basis." *California Independent System Operator*, 91 FERC ¶ 61,205, 61,722 (2000) ("May 2000 Order"). To implement this principle, it is generally appropriate, where clarifications to the TCA are identified as desirable in the course of considering an application, to implement those changes through TCA modifications applicable to all Participating TOs. It is also reasonable and appropriate to apply the previously accepted ADR provisions of the TCA uniformly to all Participating TOs. The Commission should reject Vernon's attempt to exempt itself from those ADR provisions. The ISO believes that Vernon should become a Participating TO as soon as possible. However, Vernon's Participating TO status should be based on an amendment to the TCA and a Transmission Owner Tariff ("TO Tariff") that ensures Vernon's participation is on a comparable basis to that of the Original Participating TOs. Therefore, for the reasons discussed more fully below, the ISO respectfully requests that the Commission deny the complaint.

² The ISO will identify certain significant concerns with Vernon's compliance filing in Section D below. Given Vernon's failure to engage in negotiations, the ISO will file a protest regarding the compliance filing in Docket No. EL00-105-001 by December 8, 2000.

³ Given the timing of this pleading, the ISO will inform the Commission of the outcome of the Board vote as soon as possible under separate cover.

A. VERNON'S COMPLAINT THAT THE ISO HAS NOT PROCESSED VERNON'S APPLICATION TO BECOME A PARTICIPATING TRANSMISSION OWNER IN A TIMELY MANNER IS UNFOUNDED.

The TCA is the contract between the ISO and the owners of transmission facilities, providing for the transfer of Operational Control to the ISO for operation of such transmission lines and associated facilities under the ISO Tariff.⁴ The TCA is a single integrated agreement between the ISO and all Participating TOs -- both the Original Participating TOs (Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E") and any new Participating TO that satisfies the criteria in Section 2 of the TCA. *Id.* The Commission recognized that the TCA was a "joint agreement," found that it was appropriate for there to be a TCA separate from the ISO Tariff, and noted that the TCA,

establishes the rights, obligations, and extent of ISO operational control over the physical assets that have been transferred to the ISO and the rights of the ISO to utilize certain Entitlements.

Pacific Gas & Electric Company, et al., 81 FERC ¶ 61,122, 61,566 (1997).

In Amendment No. 27 to the ISO Tariff, the ISO clarified that in order to join the ISO the prospective Participating TO must: (1) execute the TCA; (2) convert its Existing Rights in accordance with Section 2.4.4.2 of the ISO Tariff, and (3) turn over Operational Control of all transmission facilities and Entitlements that satisfy the Commission criteria for determining transmission facilities. See ISO Tariff Section 3.1. Under Section 3.1.1 of the ISO Tariff, the prospective Participating TO is to declare its intent in writing to become a New Participating TO by January 1 or July 1. Applicable agreements had to be

⁴ Executive Summary of the ISO filing in Docket No. EC96-19-000, March 31, 1997 at 20.

negotiated by April 1 or October 1 for the New Participating TO to be effective the following July 1 or January 1, respectively.

1. The ISO Has Worked Diligently on Vernon's Application Even Though Vernon Missed the Deadline Under the ISO Tariff For Becoming a Participating TO in January 2001.

Vernon admits that it did not even complete the process of providing its proposed modifications to the ISO until October 5, 2000. Complaint at 7. Under the timelines specified in section 3.1.1 of the ISO Tariff, Vernon would not be eligible to join the ISO until July 2001. The ISO, however, is fully cognizant of the benefits of expanding membership in regional transmission organizations. Accordingly, it has made every effort to continue to work towards having Vernon join the ISO by January 2001.

That it has taken longer than first envisioned to complete the application process is understandable. As Vernon itself recognizes (Complaint at 4, note 4), this is the first request to join the ISO as a Participating TO since the commencement of ISO operations. There was no model of the procedures and practices to follow, and the ISO and other participants recognize the importance of the precedent being established for future applications.

In addition, the ISO has been forced to devote significant resources to the numerous critical issues affecting the restructured California electric industry. A partial list of these activities includes: (1) responding to the federal and state investigations of recent prices and bidding activities; (2) preparing testimony and comments on the Commission's proposed remedies for California; (3) preparing and negotiating agreements for Summer 2001 peaking generation; (4) preparing a response to Order No. 2000 and seeking ways to enhance the broadest participation possible in a Western RTO; (5) developing tariff amendments to address significant issues such as new generator interconnections, long-term

grid planning, distributed generation, and compliance with WSCC reliability criteria; (6) submitting an unbundled Grid Management Charge; (7) participating in negotiations regarding the amendment to the transmission Access Charge; and (8) supporting numerous other ongoing federal and state proceedings.

Despite all the issues currently confronting its management and staff, the ISO has devoted significant efforts to facilitate Vernon's application. A partial list of these activities is presented in Attachment A. It is important to recognize that the ISO's efforts have not just involved Vernon. In accordance with the new Access Charge methodology approved by the Commission in its May 2000 Order, the execution of the TCA by a New Participating TO triggers the Transition Date -- the start of a process under which the High Voltage Transmission Revenue Requirements of the Participating TOs are blended into a single ISO-wide rate. As Access Charges (other than the Wheeling Access Charge) are currently not collected by the ISO but instead by each of the Original Participating TOs on a utility-specific basis, implementation of the new methodology will require significant modifications to the ISO's settlement systems. The ISO has also had to coordinate filings with the Original Participating TOs to differentiate their respective High and Low Voltage Transmission Revenue Requirements and to establish operating protocols with the entities that operate the transmission facilities in which Vernon has ownership interests.

Vernon's joining the ISO and implementation of the new transmission Access Charge will require Commission action on the following filings:

- (1) Approval of the ISO's Section 203 application for the ISO to assume operational control over Vernon's interests in the specified facilities.⁵
- (2) Approval of the filings by SCE and SDG&E to split their transmission revenue requirements between high and low voltage components.
- (3) Approval of the proposed amendments to the TCA; and
- (4) Approval of the ISO's filing to make certain clarifying tariff amendments to facilitate implementation of the new methodology and to indicate, the result of the application of the ISO Tariff's High Voltage Access Charge formula rate to the high voltage revenue requirements of Vernon, PG&E, SCE, and SDG&E.

Vernon's protestation of delays, and its attempt to lay blame at the doorstep of the ISO, are unfounded. The ISO has been working diligently and cooperatively to have Vernon join the ISO and to implement the new Access Charge methodology.

2. The Proposed December Date for the ISO's Section 205 Filing Implementing the New Access Charge Is the Earliest Possible Time for the Submission.

In its complaint, Vernon notes that the proposed deadlines for several filings have slipped from planned November dates to December. Complaint at 6. The original schedule was based on the desire to have all the required filings completed without the need to ask for waiver of the Commission's 60-day notice requirement. Given the amount of work to be accomplished this became impossible to achieve.

⁵ The ISO made this filing on November 1, 2000 in Docket No. EC01-14-000.

There are several reasons for these delays. First, as described below, the ISO is continuing to work with both Vernon and the Original Participating TOs on modifications to the TCA upon which *Vernon* insisted. Second, the ability of the ISO to get Vernon and the Original Participating TOs together to discuss amendments to the TCA. Third, the ISO needed to await the Commission's decision on PG&E's fifth rate filing regarding its TO Tariff.

In order to implement the new transmission Access Charge rate methodology, the ISO needed the High Voltage Transmission Revenue Requirements of the Original Participating TOs and Vernon. On October 6, 2000, PG&E filed for an increase in its transmission revenue requirement in Docket No. ER01-66-000. The ISO needed to await the Commission's consideration of that filing to know whether or not the proposed rate would be suspended for five months in which case the new Access Charge would be based on the previously-accepted settlement rates from PG&E's fourth TO Tariff case ("TO4"). On November 22, 2000, the Commission issued its order suspending PG&E's proposal for five months. *Pacific Gas & Electric Company*, 93 FERC 61,207 (2000). Thus, the ISO is in the process of preparing its filing of the Access Charge rate effective January 1, 2001 based on the data provided by Vernon, SCE, and SDG&E as well as PG&E's TO4 settlement.

B. THE TRANSMISSION CONTROL AGREEMENT REQUIRES THE UNANIMOUS CONSENT OF THE ISO AND ORIGINAL PARTICIPATING TOs FOR ANY AMENDMENT.

Vernon expresses its concern that the ISO "may be giving existing PTOs a veto right over Vernon's becoming a PTO by requiring that all existing PTOs sign a TCA that incorporates Vernon as a party." Complaint at 3.

The TCA was always intended to be a multi-party *pro forma* agreement, ensuring that the three original and any additional Participating TOs would be

offering the use of their respective transmission facilities to the ISO on comparable terms. For example, Section 2.1.2 of the TCA states,

After this Agreement takes effect, any other owner of or holder of Entitlements to transmission lines and facilities connected to the ISO Controlled Grid may apply to the ISO under Section 2.2 to become a Participating TO and become a Party to *this Agreement*.

(emphasis added).

The ISO notes that the numerous comments considered by the Commission in its October 30, 1997 order clearly contemplated that there would be a single TCA. *Pacific Gas & Electric Company, et al.*, 81 FERC at 61,560-67. For example, the Commission agreed with Southern Cities that Section 2.2.3 of the TCA should be revised to provide that an entity could become a Participating TO “pending the outcome of an ADR procedure regarding eligibility.” *Id.* at 61,566-67.

Under Section 26.11, the TCA may only be amended by: (1) mutual agreement of the Parties, subject to approval by FERC; (2) through the ISO ADR Procedure set forth in Section 13 of the ISO Tariff; or (3) upon issuance of an order by FERC. That the ISO would seek the agreement of the Original Participating TOs to the Amendment to the TCA to implement Vernon’s participation is in accordance with this provision.

C. THE IMPASSE REGARDING THE TCA AMENDMENT WAS CREATED BY VERNON’S OWN REFUSAL TO BE BOUND BY PRO FORMA PROVISIONS IT FAILED TO CONTEST WHEN THEY WERE ORIGINALLY FILED.

1. The Primary Dispute Involves Vernon’s Refusal To Engage In Alternative Dispute Procedures Prior To Filing a Complaint With the Commission.

As explained below, there is much less to the “impasse” of which Vernon complains than meets the eye. The primary substantive dispute between

Vernon and the ISO appears to involve whether or not Vernon is to be bound by the same alternative dispute resolution requirements applicable to the Original Participating TOs. Vernon's concerns with the ADR provisions fail to withstand scrutiny.

The Commission has a strong preference that disputes be resolved through ADR. *California Power Exchange Corporation*, 88 FERC ¶ 61,122, 61,319 (1999). Indeed, ISO Principle No. 11 from Order No. 888 requires an ISO to establish "an ADR process to resolve disputes in the first instance."⁶

In accordance with this requirement, the ISO filed its ADR procedures in Section 13 of the ISO Tariff. In its October 30, 1997 Order, the Commission found the ISO's proposed ADR procedure to be reasonable and in compliance with ISO Principle No. 11. *Pacific Gas & Electric Company et al.*, 81 FERC at 61,462. In particular, the Commission, rejected DWR's recommended changes to ISO Tariff Section 13.1.1.:

DWR recommends that the ADR provisions of the ISO and PX Tariffs specify the right of parties to file a petition with the Commission without resorting to the ISO or PX ADR Procedures. The Commission does not have the time or resources to address the myriad of potential issues that Parties may have. All Parties should utilize the ISO's and PX's ADR Procedures to resolve disputes before coming to the Commission. We also reject DWR's recommended changes to Section 13.4.1 and 13.4.2 of the ISO Tariff and Sections 7.4.1 and 7.4.2 of the PX Tariff. We find that the ISO/PX's proposed standard of review of an arbiters decision to be reasonable.

Id.

⁶ Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Service by Public Utilities; Recovery of Stranded Cost by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,732 (1996); *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

Section 15 of the TCA, filed at the same time as Section 13 of the ISO Tariff, provides,

In the event any dispute regarding the terms and conditions of this Agreement is not settled, the Parties shall follow the ISO ADR Procedure set forth in Section 13 of the ISO Tariff. The specific references in this Agreement to alternative dispute resolution procedures shall not be interpreted to limit the Parties' rights and obligations to invoke dispute resolution procedures pursuant to this Section 15.

Vernon did not protest either Section 13 of the ISO Tariff or Section 15 of the TCA when they were filed.

Vernon refers to the ISO tariff as requiring "binding arbitration." Complaint at 11; Amendment to the Complaint at 4. Vernon states that "it should not be deprived of the ability to seek Commission intervention". Complaint at 11. The ISO Tariff, however, does not preclude either a party's bringing a complaint before the Commission or Commission review of ADR determinations.⁷

In response to the ISO's continued informal efforts to explain to Vernon that Section 13 does not preclude seeking redress before the Commission, Vernon has amended its complaint to allege that in Section 13.4.2 of the ISO Tariff the Commission has ceded "away too much of its jurisdiction and ability to address crucial issues that may develop if the ISO proposed binding arbitration provisions are implemented in the TCA." Amendment to the Complaint at 5.

This challenge to Section 13.4.2, however, is groundless. That provision states that the Commission or court of competent jurisdiction should accord substantial deference to the *factual* findings of the arbitrator (emphasis added). In the October 30, 1997 Order, the Commission agreed with the ISO's concern

⁷ ISO Tariff Section 13.4. The ISO notes that certain issues including whether the rates and charges set for in the ISO Tariff are just and reasonable are exempt from the ADR process. ISO Tariff Section 13.1.

that introduction of new evidence on appeal of an arbitration decision would change the appeal into a trial *de novo* and would delay the decision-making process. *Pacific Gas & Electric Company, et al.*, 81 FERC at 61,463.

Nothing in Section 13.4.2 justifies Vernon's concern that an arbitrator's decision may be "inconsistent with the Federal Power Act and the goals and policies of the Commission." Amendment to the Complaint at 5. Vernon's statement evidences a misunderstanding of the ADR provisions of the ISO Tariff. Section 13.4.1 specifically provides that any party dissatisfied with the outcome of ADR may appeal an award to the Commission on the ground, *inter alia*, that the award "is contrary to or beyond the scope of . . . the FPA, and any FERC regulations and decisions." According deference to an arbitrator's findings of fact in no way restricts the Commission's ability to ensure the consistent application of its policy.

Accordingly, Vernon has offered no basis for the Commission to modify the generally-applicable ADR provisions of the TCA and the ISO Tariff. The Commission should reaffirm the acceptability of the ISO's ADR methodology.

2. The Fact the ISO Proposed to Address Vernon's Other Concern's through an Amendment to the TCA Rather than By Means of a Separate Vernon-Specific Appendix Was Reasonable.

In its complaint, Vernon identifies four other provisions of the TCA that, in its judgment, require clarification. First, Vernon states that Section 4.1.5 of the TCA needs to more precisely reflect the fact that Vernon is turning over Operational Control of Entitlements, consisting of its rights as a minority owner in jointly-owned transmission projects, not wholly-owned physical transmission facilities. Complaint at 9. Second, Vernon contends that section 6.2.2 of the TCA is "out-of-date and utterly confusing". *Id.* at 10. Third, Vernon cites the need to address a potential ambiguity in Section 9.4. *Id.* Fourth, Vernon seeks

to ensure that Section 10.1.1 would not require it to provide retail access. *Id.* at 11. Vernon believes that these issues should be addressed in a Vernon-specific supplement to the TCA because they “are germane to Vernon’s particular status, and would apply only to Vernon’s issues.” Complaint at 3.

Vernon notes that there was a conference call between Vernon, the ISO and the Original Participating TOs on November 6, 2000. Complaint at 7. What Vernon fails to explain is that a purpose of this call was to discuss these requested clarifications and the position of the Original Participating TOs that changes to the TCA should be made on a generic basis – to the provision in the TCA itself. The clarifications Vernon was proposing were potentially acceptable modifications to the TCA, but they needed to apply to all Participating TOs, not just Vernon. The concern of the Original Participating TOs was that a Vernon-specific appendix would leave the incorrect inference that the existing TCA provisions were meant to mean something different as applied to the Original Participating TOs than as applied to Vernon. The ISO is also concerned that addressing Vernon’s concerns outside the terms of the TCA itself could require the same concerns to be addressed again when another applicant seeks to become a Participating TO.

To address the position avowed by the Original Participating TOs, the ISO prepared proposed amendments to the underlying TCA provisions that would preserve the clarifications sought by Vernon. Unfortunately during the November 6th call, Vernon refused even to listen to the ISO’s proposed amendments.

As described in its Amended Complaint, Vernon subsequently agreed to consider the ISO’s proposal and now states that “three of the four ISO proposed changes, if implemented, could address certain Vernon concerns.” Amended

Complaint at 2. Vernon's concern is that the approach of amending the TCA may not be feasible prior to January 2001. *Id.*

Thus, Vernon now appears to recognize the merit of the ISO's proposal to clarify the underlying provisions of the TCA. The delay is due to Vernon's own refusal even to listen to the ISO's proposal at an earlier date. Obviously, this process would be much further along if Vernon had agreed to hear the proposal during the November 6th call with the ISO and the Original Transmission Owners.

Notwithstanding Vernon's filing of this complaint, the ISO has continued to discuss its proposed clarifications both with Vernon and with the Original Participating TOs. The Original Participating TOs have advised the ISO that they are agreeable to all of the ISO's proposals, as described below and, as Vernon states in its amendment, the ISO's proposals at least partially resolve its concerns. The ISO's proposed clarifications to the TCA in response to Vernon's concerns are as follows:

- To address Vernon's concern about specifying that the nature of its rights to jointly-owned transmission projects, which it would turn over to the ISO, including the right to use a portion of the projects' capacity, the ISO proposes to modify Section 4.1.5 of the TCA to read as follows:

Each Participating TO warrants that as of the date on which it becomes a Participating TO pursuant to Section 2.2.5:

- (i) the transmission lines and associated facilities that it is placing under the ISO's Operational Control and the Entitlements that it is making available for the ISO's use are correctly identified in Appendix A (as amended in accordance with this Agreement); the Participating TO has all of the necessary rights and

authority to place such transmission lines and associated facilities under the ISO's Operational Control subject to the terms and conditions of any agreements governing the use of such transmission lines and associated facilities; and that the Participating TO has the necessary rights and authority to transfer the use of such Entitlements to the ISO subject to the terms and conditions of any agreements governing the use of such Entitlements,⁸

* * *

- To reflect the fact that Amendment No. 27 would modify the rights of new Participating TOs to retain scheduling rights under Existing Contracts, but that the Amendment remains subject to further proceedings before the Commission, the ISO would modify Section 6.2.2 of the TCA to read as follows: "When required by the ISO, a Participating TO shall release all of its scheduling rights over the transmission lines and associated facilities that are part of the ISO Controlled Grid to the extent such rights are established through Existing Contracts among or between Participating TOs, as provided in the ISO Tariff. ~~except that any Participating TOs other than PG&E, SDG&E and Edison pursuant to Sections 2.4.3 and 2.4.4 of the ISO Tariff, shall be entitled to retain the benefit of any scheduling rights which do not otherwise expire earlier until five years after the ISO Operations Date.~~

⁸ New language that would be added by the ISO's proposal is underscored. Deletions are struck through.

- To clarify that the ISO's authority to impose sanctions on a Participating TO in the event of a major Outage is directed to Outages that are caused or prolonged by a Participating TO's maintenance and operation of facilities it has placed under the ISO's Operational Control, the ISO's proposal would modify Section 9.4 of the TCA to read as follows: "In the event of a major Outage that affects at least 10 percent of the customers of an entity providing local distribution service, the ISO may order a Participating TO to pay appropriate sanctions, as filed with and approved by FERC in accordance with Section 12.3, if the ISO finds that the operation and maintenance practices of the Participating TO, with respect to its transmission lines and associated facilities that it has placed under the ISO's Operational Control, prolonged the response time or was responsible for the Outage."
- Finally, to address Vernon's concern that, unlike the Original Participating TOs, it is not required by State law to grant open access to its local system for retail access, the ISO proposes to amend Section 10.1.1. of the TCA to read as follows: "The ISO shall respond to requests from the Participating TOs and other Market Participants for access to the ISO Controlled Grid. All Participating TOs who have Eligible Customers connected to their transmission or distribution facilities that do not form part of the ISO Controlled Grid shall ensure open and non-discriminatory access to those facilities for those Eligible Customers through implementation of an open access tariff, provided that a Participating TO shall only be required to ensure open access to

those facilities for End-Use Customers to the extent it is required by applicable law to do so or pursuant to a voluntary offer to do so.

“

The ISO does not believe that the Original Participating TOs are “unreasonably withholding agreement” to the TCA amendment as alleged by Vernon. Complaint at 4. To the contrary, they have worked with the ISO to identify their concerns and to discuss possible solutions. If the ISO thought agreement was being unreasonably withheld, it would seek prompt redress of the situation. However, it was Vernon, not the Original Participating TOs that refused to engage in further discussions and instead elected to commence this action.

3. Vernon Is Already a Scheduling Coordinator But Being a Scheduling Coordinator Has Nothing to Do with Becoming a Participating TO

In its request for relief on the first page of its complaint, Vernon asks that the Commission “determine that Vernon’s Scheduling Coordinator status is sufficient for Vernon to become a P[articipating] TO.” (Complaint at 1). Vernon does not elaborate on this request elsewhere in its pleading.

Presumably, Vernon seeks a finding that it satisfies the requirements of Section 3.1.2 that a New Participating TO “shall become a Scheduling Coordinator or obtain the services of a Scheduling Coordinator.” The ISO does not dispute that Vernon is a Scheduling Coordinator eligible to submit schedules and bids to the ISO.⁹

It is important to clarify that being a Scheduling Coordinator is not sufficient by itself for an entity to become a Participating TO. Many

⁹ Vernon’s Scheduling Coordinator application was accepted by the Commission in Docket No. ER98-1008-000 by orders dated February 25, 1998 and September 8, 1998.

governmental entities are currently Scheduling Coordinators with the ISO but are not Participating TOs. These include the Cities of Anaheim (Docket No. ER98-1919-000), Azusa (Docket No. ER99-716-000), Pasadena (Docket No. ER99-3463-000), and Riverside (Docket No. ER98-1887-000), the Bonneville Power Administration (Docket No. ER98-2595-000); the California Department of Water Resources (Docket No. ER98-2899-000); the Los Angeles Department of Water and Power (Docket No. ER99-2241-000); the Modesto Irrigation District (Docket No. ER98-990-000); and the Western Area Power Administration (Docket No. ER98-1928-001). Section 3.1.2 of the ISO Tariff merely establishes that if an entity became a Participating TO, they no longer may rely on their Responsible Participating TO ("RPTO") as such term is used in the Responsible Participating Transmission Owner Agreement, unless the RPTO agreed to continue in such a role.

D. IN CONTRAVENTION TO THE COMMISSION'S PRIOR ORDER, VERNON FAILED TO NEGOTIATE WITH THE ISO PRIOR TO FILING ITS REVISED TRANSMISSION OWNER TARIFF.

In order to be eligible to join the ISO, section 2.2.3(iv) of the TCA requires that all regulatory approvals of the applicant's TO Tariff have been obtained. In its October 27, 2000 Order the Commission conditionally accepted Vernon's proposed Transmission Revenue Requirement. *City of Vernon, California*, 93 FERC ¶ 61,103, 61,283-86 (2000). With respect to Vernon's TO Tariff, the Commission directed "Vernon and the ISO to work together on the appropriate tariff necessary to become a viable Participating TO as of January 1, 2000" *Id.* at 61,286. Vernon was also required to submit the results of such negotiations with the Commission to ensure that the tariff provisions are consistent with those of the Original Participating TOs and, to the extent differences exist to support the need for such differences. *Id.*

Unfortunately, Vernon has failed to implement the Commission's explicit direction. Vernon provided a single individual at the ISO a copy of its proposed TO Tariff revisions on Saturday November 4, 2000. As that individual was involved in series of meetings on Monday November 6, 2000 involving Vernon's application, it wasn't until late that day that the ISO became aware of Vernon's proposed changes. The ISO informed Vernon orally of certain preliminary concerns with the revised TO Tariff on November 7, 2000 and was in the process of preparing written comments when Vernon not only filed its compliant, but also its compliance filing of its TO Tariff.

There were no "negotiations" and Vernon's filing in Docket EL01-105-001 does not address even the preliminary concerns raised by the ISO. Accordingly, the ISO will be forced to submit a protest in that Docket identifying issues such as the following:

- 1) Consistency with the ISO Tariff - The proposed TO Tariff should not limit the definitions, including most importantly the definition of ISO Tariff, to the current version of the ISO Tariff. Moreover, the appropriateness of sections 7.1 and 7.2 is questionable in that they attempt to impose payment obligations on the ISO, which will not be taking service under Vernon's TO Tariff. The ISO's payment obligations are set forth in the ISO Tariff.
- 2) Eligibility – Vernon's TO Tariff attempts to exclude the question of whether an entity is an Eligible Customer from ADR. This question, however, arises under the ISO Tariff and should be resolved in accordance with Article 13 of the ISO Tariff.
- 3) Interconnection - The revised tariff expands the discussion of interconnection to the Mead-Adelanto project, Mead-Phoenix project, California-Oregon Transmission Project, and Marketplace

Substation but does not provide procedures for Eligible Customers, such as new generators, to interconnect with Vernon's local facilities.

In its October 27, 2000 letter to Vernon which is attached to the Complaint, the ISO noted that both the ISO and Vernon had much to do together. The ISO remains committed to having Vernon join the ISO. We believe, however, that the limited resources of both entities are far better spent on working cooperatively to achieve the desired result than by continuing this course of litigation.

E. THE ISO BOARD IS CAPABLE OF ACTING BEFORE JANUARY 2001

Vernon states that it is filing the complaint "out of an abundance of caution" because the ISO Board "will not be able to reasonably act so that Vernon becomes a Participating TO effective January 1, 2001." Complaint at 2. Vernon also expresses a concern that its application "has become a political issue, which keeps Vernon's application off the Board's agenda." *Id.* at 8.

Vernon's concerns about indefinite delay are unsupported and unfounded. The ISO's section 203 application was authorized by a unanimous vote of the Governing Board on October 4th. The Board also discussed the status of the Vernon application process and negotiation status of the TCA on October 25th. Vernon's application along with the amendments for the TCA and ISO Tariff are on the agenda for the ISO Governing Board meeting on November 30, 2000. If approved, the ISO anticipates filing all of the documents relevant to Vernon's application in mid-December. Moreover, the ISO Governing Board has often held special meetings to address significant, time-sensitive issues. Thus, the ISO Governing Board has sufficient time and means to act on Vernon's application before the end of the year.

CONCLUSION

Wherefore, for the reasons stated herein, the ISO respectfully requests that the Commission deny the complaint.

Respectfully submitted,

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Dated: November 29, 2000

CERTIFICATE OF SERVICE

I hereby certify I have this day served this document upon each person designated on the official service list compiled by the Secretary in this docket 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, D.C. on this 29th day of November, 2000.

David B. Rubin

November 29, 2000

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

**Re: City of Vernon California v. California Independent System
Operator Corporation; Docket No. EL01-14-000**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Answer of the California Independent System Operator Corporation To the Complaint of the City of Vernon, California in the above-captioned docket.

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,

Kenneth G. Jaffe
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3000 K Street, N.W.
Washington D.C. 20007

Counsel for the California Independent
System Operator Corporation

Enclosures
cc: Service List