

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

<b>Calpine Corporation, Citigroup</b>	)	
<b>Energy Inc., Dynegy Power</b>	)	
<b>Marketing, Inc., J.P. Morgan</b>	)	
<b>Ventures Energy Corporation,</b>	)	
<b>BE CA, LLC, Mirant Energy</b>	)	
<b>Trading, LLC, NRG Energy, Inc.,</b>	)	
<b>Powerex Corporation, and</b>	)	
<b>RRI Energy, Inc.,</b>	)	
<b>Complainants,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL09-62-000</b>
	)	
<b>California Independent System</b>	)	
<b>Operator Corporation,</b>	)	
<b>Respondent.</b>	)	

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”)<sup>1</sup> submits this motion for leave to file an answer, and files its answer, to the “Motion for Leave to File Reply and Reply of California Sellers” submitted in this proceeding on August 4, 2009 (“California Sellers’ Reply”).<sup>2</sup>

**I. Motion for Leave to File Answer**

The Commission’s Rules of Practice and Procedure generally do not permit an answer to a reply unless otherwise ordered by the decisional

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<sup>1</sup> The ISO is also sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the CAISO Tariff.

<sup>2</sup> The ISO submits this filing pursuant to Sections 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, -213.

authority.<sup>3</sup> The ISO respectfully requests waiver of the Commission's rules to permit the ISO to make a limited answer to the California Sellers' Reply. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case.<sup>4</sup>

## **II. Answer**

The ISO offers this limited answer to address statements characterizing the default loss allocation provisions of other Independent System Operators ("ISOs") and Regional Transmission Organizations ("RTOs") in the California Sellers' Reply and to urge the Commission to direct settlement discussions.

### **A. Other ISOs and RTOs Have Not Adopted the California Sellers' Default Allocation Proposal.**

As indicated in the ISO's July 20, 2009, answer ("July 20 ISO Answer") and in other parties' comments and protests in this proceeding, the California Sellers' gross allocation approach has not been adopted by any Commission-jurisdictional ISO or RTO. Although the California Sellers claim that their proposed alternative default rule closely follows the rules of other ISOs and RTOs, in fact no other ISO or RTO applies the specific rules proposed by the California Sellers. The California Sellers assert that their proposed rule "closely

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<sup>3</sup> 18 C.F.R § 385.213(a)(2).

<sup>4</sup> See, e.g., *Northern Natural Gas Co.*, 127 FERC ¶ 61,038, at P 8 n.8 (2009); *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114, at P 11 (2009); *California Independent System Operator Corp.*, 128 FERC ¶ 61,148, at P 7 (2009).

aligns with the default allocation rule in use in ISO New England,”<sup>5</sup> but that is simply not the case. As the California Sellers recognize in their complaint in this proceeding (“Complaint”) and elsewhere in their Reply, ISO New England is alone in maintaining insurance to cover some portion of default losses, with only the residual default loss amount being allocated to market participants.<sup>6</sup> In contrast, the California Sellers do not propose to cover any default losses through the use of insurance.

The California Sellers’ alternative proposal also differs from the Midwest ISO default allocation rules. In their Reply, in response to answers filed by the ISO and other parties pointing out that the Midwest ISO does not allocate default losses on a gross basis, the California Sellers acknowledge that some netting of transactions can apply under the Midwest ISO default allocation rules but assert that, in practice, the Midwest ISO allocates default losses on a gross basis.<sup>7</sup> In its July 20 Answer, the ISO stated its understanding was that the Midwest ISO exempts self-schedules and bilateral transactions from the default loss allocation.<sup>8</sup> This understanding was based on information received directly from Midwest ISO representatives. Subsequently, in further discussions, representatives of the Midwest ISO confirmed that its default loss allocation methodology excludes energy costs associated with self-schedules and bilateral transactions. The Midwest ISO, however, clarified that costs of congestion and losses associated with such transactions, in cases where the self-schedule or

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<sup>5</sup> California Sellers’ Reply at 18.

<sup>6</sup> July 20 ISO Answer at 11 (citing Complaint at 4 n.11 and Affidavit of Robert B. Stoddard dated June 30, 2009, at P 7); California Sellers’ Reply at 9.

<sup>7</sup> California Sellers’ Reply at 17.

<sup>8</sup> July 20 ISO Answer at 26 n.65.

bilateral transactions are scheduled pursuant to a “financial schedule” as that term is defined in the Midwest ISO tariff, are included in market charges and these amounts would be included in the total market charges subject to default allocation.<sup>9</sup> Thus, whenever a market participant uses a financial schedule, the energy costs related to its self-schedules and bilateral transactions are not included in the Midwest ISO’s market charges and therefore are not included in its default loss allocation, but congestion and losses charges would be. Even with this additional information, the California Sellers’ proposed alternative rule differs from the Midwest ISO’s rule, because the California Sellers propose to allocate default losses on a gross basis without netting energy associated with self-schedules.<sup>10</sup>

**B. The California Sellers’ Reply Does Not Undermine the ISO’s Recommendation that a Commission Settlement Process Would Be Useful and Appropriate.**

As explained in the July 20 ISO Answer, the ISO proposes to engage in discussions with the California Sellers and other interested parties through a Commission settlement process to see if the interested parties can agree on a mutually acceptable approach to revising the ISO’s default loss rule.<sup>11</sup> The

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<sup>9</sup> A Financial Schedule is defined in the Midwest ISO tariff as “[a] financial arrangement between two Market Participants designating a Source Point, Sink Point and Delivery Point establishing the obligations of the buyer and seller for the payment of Cost of Congestion and Cost of Losses.” Open Access Transmission, Energy and Operating Reserve Markets Tariff for the Midwest ISO, at Section 1.226. The Midwest ISO explained to the California ISO that, in cases where self-schedules and bilateral transactions are not conducted pursuant to a financial schedule, the costs of energy, congestion, and losses associated with such transactions are included in the default loss allocation.

<sup>10</sup> Also, the California Sellers acknowledge the differences between the treatment of self-schedules and bilateral transactions under their proposed alternative rule and the treatment of such transactions under the default loss rules employed by PJM and the New York ISO. California Sellers’ Reply at 17-18.

<sup>11</sup> July 20 ISO Answer at 27-29.

California Sellers argue in their Reply that it would be inappropriate for the Commission to establish a settlement process in this proceeding.<sup>12</sup> There would be nothing inappropriate about a settlement process. The Commission routinely establishes settlement procedures in complaint proceedings under Section 206 of the Federal Power Act without resolving issues raised in the complaint.<sup>13</sup>

The Commission should establish settlement procedures in this case as recommended by the ISO and other parties in their previously filed submittals in this proceeding. Settlement procedures are especially appropriate here given the widespread opposition of affected market participants to the specific alternative default loss rule that the California Sellers propose. Eleven parties other than the ISO submitted comments and protests in response to the Complaint. Ten of those parties either oppose or do not support the California Sellers' specific proposed approach.<sup>14</sup> This strongly suggests that, if the

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<sup>12</sup> California Sellers' Reply at 19-20.

<sup>13</sup> See, e.g., *Mirant Energy Trading, LLC v. PJM Interconnection, LLC*, 122 FERC ¶ 61,007, at P 2 (2008) ("The Commission therefore sets the RPM market rules relating to the Third Incremental Auction for hearing, but holds the hearing in abeyance pending settlement judge proceedings."); *Louisiana Public Service Comm'n v. Entergy Corp., et al.*, 124 FERC ¶ 61,010, at PP 29-30 (2008) ("With regard to the Spindletop and the River Bend ADIT issues raised by the Louisiana Commission, we find that they present issues of material fact that cannot be resolved based on the record before us . . . While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed."). However, the Commission is not obligated to establish settlement procedures before an administrative law judge rather than settlement procedures overseen by Commission staff. "The Commission . . . may convene a conference of the participants in a proceeding at any time for any purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement or the use of alternative dispute resolution procedures." 18 C.F.R. § 385.601(a).

<sup>14</sup> The parties that state either that they do not support or that they oppose the California Sellers' specific proposed approach are: the City and County of San Francisco; California Department of Water Resources State Water Project; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; California Municipal Utilities Association; City of Santa Clara d/b/a Silicon Valley Power, and M-S-R Public Power Agency; Golden State Water Company; Pacific Gas and Electric Company; Sacramento Municipal Utility District; San Diego Gas & Electric Company; and Southern California Edison Company. The California Sellers' Reply was

Commission does not deny the Complaint outright, it should establish settlement procedures to provide a forum for interested parties to discuss possible alternatives to the ISO's default loss rule and the detailed features of those alternatives.<sup>15</sup>

### III. Conclusion

For the foregoing reasons, the Commission should accept this answer and establish settlement procedures regarding the ISO's default loss rule.

Respectfully submitted,

/s/ Sean A. Atkins

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Counsel for the  
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Dated: August 19, 2009

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submitted in response to these ten parties. See California Sellers' Reply at 1-2. Only Morgan Stanley Capital Group Inc. expresses its support for the California Sellers' specific proposed approach.

<sup>15</sup> As was the case when the ISO filed its July 20 Answer, the ISO does not take a position at this time regarding what the specific features of any alternative default loss rule should be. However, the ISO must ensure that any proposed alternative does not contain incentives or other features that would have a significant adverse effect on market participation, market liquidity, or reliable operation of the CAISO Controlled Grid. See July 20 ISO Answer at 26-27, 29.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for the above-referenced 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, D.C. on this 19<sup>th</sup> day of August, 2009.

/s/ Bradley R. Miliauskas  
Bradley R. Miliauskas