

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

California Independent System Operator Corporation)	Docket Nos. ER06-615-000,
)	ER02-1656-___,
)	ER02-1656-___,
)	ER02-1656-___,
)	and ER02-1656-___

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO ANSWERS, RESPONSES, AND COMMENTS

The California Independent System Operator Corporation (“ISO”)¹ hereby files its answer to the answers, responses, and comments submitted in this proceeding in response to the ISO’s submittal on November 20, 2009 of a motion for extension of time, until February 1, 2011, to implement convergence bidding (“November 20 Motion”).²

I. Introduction and Summary

Half of the responses to the ISO’s November 20 Motion either support or do not oppose the requested extension.³ Other responses are largely

¹ The ISO is also sometimes referred to as the CAISO.

² The ISO submits this answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213 (2009). 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 answers. 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. See, e.g., *Xcel Energy Operating Companies*, 129 FERC ¶ 61,203, at P 28 (2009); *Northern Natural Gas Co.*, 127 FERC ¶ 61,038, at P 8 n.8 (2009); *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,123, at P 11 n.5 (2008).

³ The following entities filed answers, responses, and comments in this proceeding: Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC, and Dynegy South Bay, LLC (collectively, “Dynegy”); Pacific Gas and Electric Company (“PG&E”); Powerex Corp. (“Powerex”); SESCO Enterprises, LLC, Jump Power, LLC, Silverado Energy LP, and JPTC, LLC (collectively, “Financial Marketers”); Southern California Edison Company (“SCE”); and Western Power Trading Forum (“WPTF”).

characterized by frustration with the need to delay implementation of convergence bidding. The ISO acknowledges the importance of the Commission's directives in the September 2006 Order, which reflect the high priority that the Commission and many market participants have placed on expeditious implementation of convergence bidding.⁴ The ISO's need for an extension of time to implement convergence bidding does not stem from a desire to defer convergence bidding. Rather, during the time period between late 2008 and the first half of 2009, the ISO found that it had to devote all available resources – of the ISO and its software vendor, Siemens – to ensuring the successful launch of the new market design in the spring of 2009 without any further delay. Further, once the new ISO market was implemented, the ISO's and Siemens' resources remained dedicated to ensuring the success of the new market design. The decisions made during this time period were made incrementally; the ISO never decided to delay convergence bidding per se.

Once the ISO and Siemens were able to refocus their attention on convergence bidding and other critical software enhancements, the ISO ultimately concluded that an 18, rather than 15, month, schedule was necessary in order for the ISO and market participants to develop, test, and implement the extensive software modifications needed to implement a convergence bidding market feature in a safe and reliable manner. Hence, the ISO is requesting a ten-month extension of time to implement convergence bidding.

⁴ *California Independent System Operator Corp.*, 116 FERC ¶ 61,274 at P 452 (2006) ("September 2006 Order").

In light of the prior Commission directives concerning convergence bidding in California, the ISO recognizes that a well-developed record should support any request to modify the deadline for implementing convergence bidding. The ISO therefore submitted in support of the November 20 Motion four sworn declarations from the following ISO officers and key personnel working on the development of convergence bidding: Steve Berberich, the Vice President of Corporate Services for the ISO; Janet Morris, Director of the Program Office for the ISO; Khaled Abdul-Rahman, Principal, Power Systems Technology Architecture & Development for the ISO; and Margaret Miller, Senior Market Design and Policy Specialist for the ISO. These declarations document at length the reasons why the extended implementation schedule is justified.

No party responding to the November 20 Motion addressed the merits of these declarations or contested in any but the most conclusory manner the facts related to the convergence bidding schedule and the conclusions of the ISO as discussed in those declarations. The ISO respectfully requests that the Commission grant the extension of time as fully supported by the record in this proceeding, including the November 20 Motion, the supporting declarations, and this Answer.

The ISO fully expects that the Commission and interested stakeholders will closely follow the progress of the ISO and market participants in maintaining the current convergence bidding implementation schedule. To facilitate that effort, the ISO agrees in this Answer to submit quarterly status reports to the

Commission. These status reports would track the ISO's progress against the ISO's implementation schedule.

II. Answer

A. Response to Motion for Leave to Intervene Out of Time

All of the Financial Marketers except SESCO Enterprises, LLC request leave to intervene out of time.⁵ Those entities state that they intend to conduct virtual transactions in the ISO markets and for that reason have a direct and substantial interest in the proceeding. Those entities indicate that they will accept the record as it stands. The ISO notes that it has been clear for over three years that issues related to the timing of the implementation of convergence bidding would be addressed in this proceeding. Nonetheless, the ISO does not oppose the motion for leave to intervene out of time.

The Financial Marketers also are seeking a technical conference to address the convergence bidding implementation schedule and various convergence bidding design issues which have been discussed at length in the ISO stakeholder process. As discussed below, the ISO strongly believes a technical conference is not justified where entities, like the Financial Marketers, choose not to participate in the ISO stakeholder process and then contend that issues vetted in that stakeholder process must be discussed again in a Commission technical conference.

⁵ Financial Marketers at 6-7.

B. Parties Opposing the November 20 Motion Either Misunderstand or Mischaracterize the Reasons Why an Extended Convergence Bidding Implementation Schedule Is Needed

Some parties opposing the November 20 Motion contend or imply that the ISO made a deliberate decision to delay implementing convergence bidding. These parties offer no evidence in support of their claims, which is unsurprising because these claims are simply incorrect.

Dynergy, for example, claims that the delay is a result of the ISO's failure to inform the Commission and market participants of the potential consequences of suspending all convergence bidding-related activities in October 2008, and its failure to seek the Commission's approval to delay convergence bidding until Nov. 20, 2009.⁶

Dynergy is incorrect. The ISO never made a decision to suspend all convergence bidding-related activities in October 2008. As explained by Steve Berberich, the Vice President of Corporate Services for the ISO, there was no overt decision to delay convergence bidding. There were, instead, a series of incremental decisions beginning in late 2008 to devote all resources of the ISO and its software vendor, Siemens, to implement the new ISO market in the first quarter of 2009. These incremental decisions resulted in all software development resources being committed to market start-up and contributed to the delay of convergence bidding.

As Mr. Berberich explains, absent this full commitment of internal and vendor resources, the ISO believes launch of the new ISO market could not have

⁶ Dynergy at 2-3, 8.

occurred on March 31, 2009. The go-live date for the new market could have been delayed substantially and almost certainly would have occurred after the summer months of 2009. Any delay in the launch of the new market would have led to a delay in the implementation of a convergence bidding market feature. As Mr. Berberich also explains, the ISO needed to continue to devote ISO and vendor resources for a few months after the launch of the new market to ensure a successful launch before resources could be applied to analyze and develop a thorough schedule for developing the convergence bidding software. The extent of any delay was not clear until after this work had been performed. This commitment of ISO and vendor resources was not the only factor contributing to the current convergence bidding schedule. The ISO and Siemens had to assess and prioritize software enhancements and discuss these issues with stakeholders. Other factors, including the application of lessons learned concerning the integration and testing of new market software products, also contributed substantially to the revised schedule for development, testing, and implementation of convergence bidding.

Since there was no single decision point in late 2008 relating to convergence bidding, the ISO had no basis for providing notice to the Commission and stakeholders at that time.

Dynergy and WPTF contend that the ISO should have filed a motion for an extension concerning convergence bidding in the summer of 2009, when the ISO first assessed and announced to market participants the potential for a significant delay in the implementation of convergence bidding. Such a filing would have

been premature in the summer of 2009. As explained in the November 20 Motion, throughout much of the summer and fall of 2009, the ISO explored alternatives that could mitigate the impact on the convergence bidding schedule. These alternatives included the possibility of delaying other market enhancements and the hiring of additional or different consultants. Only after a full exploration of the alternatives did the ISO conclude that an extension of convergence bidding until February 2011 was unavoidable. Indeed, it is likely that the same parties now opposing the November 20 Motion would have objected if the ISO had sought an extension before fully considering these alternatives.

WPTF states that the implementation “challenges” that the ISO points to in its November 20 Motion to are essentially unchanged from those the ISO identified in its August 2009 Technical Challenges White Paper⁷ and that there have been significant breakthroughs since August on software design issues such as a resolution to bid volume issues.⁸ WPTF suggests that these breakthroughs should have resulted in a more expeditious schedule for convergence bidding. While the ISO was indeed exploring ways to implement convergence bidding in a more expeditious way, these breakthroughs, while necessary in order to implement convergence bidding at all, did not allow the ISO, in the final analysis, to expedite the schedule. As explained by Janet Morris, Director of the Program Office for the ISO, the ISO’s current convergence

⁷ This technical challenges document was provided as an attachment to the declaration of Khaled Abdul-Rahman, Principal, Power Systems Technology Architecture & Development for the ISO, submitted in support of the November 20 Motion.

⁸ WPTF at 4-5.

bidding schedule includes a contingency margin of approximately 20 percent to account for complications that have not yet been identified. The ISO's experience with market launch strongly suggests that such a contingency margin is often needed for complex software applications like convergence bidding. SCE supports this contingency as appropriate to allow sufficient time to address issues that may develop during market simulation.⁹ WPTF suggests that the 20 percent contingency seems unusual and possibly unnecessary, as the great majority of ISO projects, including multi-stage generation, are not scheduled with a 20 percent contingency. Absent this contingency, WPTF suggests that convergence bidding may well be ready to go into effect close to the October 2010 date that some stakeholder discussions have suggested is potentially feasible.¹⁰ The ISO wishes to clarify that the 20 percent contingency will be incorporated into all software development, testing, and implementation schedules for market enhancements as complex as convergence bidding. The ISO recently announced a revised schedule for implementation of multi-stage generation modeling ("MSG") functionality. The ISO has had to revise its schedule to implement MSG in the fall of 2010 and this schedule includes a 20 percent contingency.¹¹ The inclusion of a 20 percent contingency factor will help to avoid the need for future delays in implementing complex market enhancements in the future.

⁹ SCE at 3.

¹⁰ WPTF at 4-5.

¹¹ The ISO intends to implement the deferred functionality of forbidden operating region procedures in the spring of 2010.

A group of four commenters designated as “Financial Marketers” raise a number of additional issues reflecting an apparent misunderstanding of the basis for the November 20 Motion. First, Financial Marketers contend that the ISO’s motion for extension proceeds from an assumption that convergence bidding must be implemented very gradually or it will impose an undue risk of market manipulation and a loss of reliability.¹² The need to address the potential for market manipulation, however, is not the driver of the current convergence bidding schedule. Reliability is a driver insofar as sufficient time is needed for software integration, testing, and market simulation before a market enhancement is added to the ISO’s market software systems. The ISO does not believe that Financial Marketers are suggesting that the ISO should implement software that has not been fully tested for flaws or adverse impacts on the operation of the ISO-controlled transmission grid.

Financial Marketers also suggest that the ISO should need no more than a few months to implement convergence bidding, particularly where the ISO can use the best policies, software features, and tariff provisions of virtual trading programs found in the “laboratories” of other ISOs and RTOs. As explained by Dr. Abdul-Rahman in his declaration in support of the November 20 Motion, the software platform underlying the new ISO market is completely different from the software platforms used by other ISOs and RTOs. The new California ISO market software is based on Siemens Spectrum Power energy market management systems that are integrated with more than 20 other California ISO

¹² Financial Marketers at 2.

systems that perform various business and operational functions on Web-based services and a Service-Oriented Architecture. As a result it is not possible to simply "plug and play" software designed for other ISO and RTO markets into the California ISO's systems.

Financial Marketers also suggest that, if the ISO needs additional resources to assist in developing convergence bidding, the ISO can simply "hire a consultant."¹³ As explained in the declaration of Mr. Berberich, however, the ISO has already gained the commitment of additional personnel by the ISO's software vendor, and learned that adding new vendor personnel to the convergence bidding project would not materially advance the schedule for a number of reasons, chief among them the extensive learning curve required.

In short, the arguments of Financial Marketers and other parties opposing the November 20 Motion are at odds with the record established by the ISO's November 20 Motion and supporting declarations.

C. The ISO Agrees To Provide Quarterly Status Reports on Convergence Bidding

Several parties contend that the ISO should provide the Commission with status reports on its convergence bidding implementation efforts. Powerex asks the Commission to direct the ISO to file quarterly reports on its progress towards implementation of convergence bidding, including a statement as to whether the ISO expects to implement convergence bidding either before or after Feb. 1,

¹³ Financial Marketers at 5.

2011.¹⁴ WPTF makes a similar request, but suggests that the status reports should be monthly.¹⁵

Given the importance of this issue to the Commission and many stakeholders, the ISO agrees that informational status reports concerning the ISO's progress toward implementing convergence bidding may be appropriate. The ISO believes that quarterly reports should be more than sufficient to provide information to the Commission and interested parties on the progress of the ISO's efforts.

D. Requests that the Commission Impose Additional Conditions on the ISO Are Not Justified and Are Beyond the Scope of This Proceeding

Some parties request that the Commission direct the ISO to satisfy a number of additional conditions that would impose onerous and unnecessary obligations on the ISO. The requested conditions would affect virtually every aspect of the ISO's markets and operations and would far exceed the scope of the convergence bidding timing issues raised by the November 20 Motion. Even if these issues were within the scope of this proceeding, the requests for additional conditions are not justified.

Dynegy asks that the Commission direct the ISO to annually seek Commission approval of "the CAISO's future plans – detailing both scope and schedule - for adding new functionality to its markets."¹⁶ Dynegy suggests that

¹⁴ Powerex at 2-3.

¹⁵ WPTF at 5.

¹⁶ Dynegy at 6-7. WPTF makes a similar request that the ISO file quarterly updates of its market software release plan with the Commission. WPTF at 3-4.

this request is justified by the fact that the schedule for market initiatives sometimes can be modified after stakeholder input is received based on the ISO's internal considerations of other factors, including software considerations. Such a requirement would be grossly inefficient and would be inconsistent with the structure for regulating public utilities established by the Federal Power Act ("FPA"). Were this proposal adopted it would result in multiple rounds of litigation over long-term market enhancements – first when these enhancements are included in the ISO's annual "market plan" filing each year and then when specific design filings and/or tariff filings to implement these market enhancements are filed for Commission approval. The proposed requirement would impose obligations on the ISO that far exceed the requirements of the FPA. Under Section 205 of the FPA, the ISO must file for Commission approval changes to rates, terms and conditions of jurisdictional service. There is no basis in the FPA for a stakeholder to expect that a public utility also will file for FERC review and approval each year the utility's long-term software development plan. Moreover, to the extent Dynegy or WPTF believe the ISO is engaged in an unjust and unreasonable practice related to jurisdictional activities, the FPA does provide a specific remedy – the ability to file a complaint under Section 206.

Dynegy also proposes that any ISO expenditures related to the development of market software – whether by ISO employees or vendors – should first be specifically authorized by the Commission.¹⁷ Again, this requirement would lead to needless litigation, in this case, many rounds of back

¹⁷ Dynegy at 7-8.

and forth concerning incremental budget decisions. The Commission has a well-established regime for regulating the expenditures of public utilities – the review and approval of jurisdictional rates for transmission service under Section 205 of the FPA. In the case of the ISO, market software expenditures are recovered through the grid management charge. To the extent Dynegy believes any specific expenditure is imprudent or otherwise contrary to law, its remedy is to challenge the recovery of those costs through the grid management charge.

E. The Commission Should Reject the Financial Marketers' Request for a Technical Conference

The Financial Marketers, alone among the parties in this proceeding, request that the Commission order a technical conference to address issues related to the November 20 Motion.¹⁸ The Commission should reject this request. There is no need to hold a technical conference given that the issues related to the current convergence bidding schedule have been discussed in a series of stakeholder meetings over many months, and any remaining issues are resolvable by the Commission based on the November 20 Motion, the six short pleadings submitted in response to that filing, and this Answer. The Financial Marketers' vague concerns about this proceeding devolving into “an interminable series of pleadings” are unwarranted – the pleadings have already been submitted.

The Financial Marketers also offer no indication as to what factual or technical issues would be addressed in a technical conference. The ISO established a record in support of the November 20 Motion, including the

¹⁸ Financial Marketers at 11-12.

declarations of four ISO officers and key personnel. In order to justify a technical conference, Financial Marketers would need to have identified some inaccuracy or uncertainty created by the ISO's filing. They failed to do so.

Lastly, the ISO believes that entities like the Financial Marketers who choose not to avail themselves of the opportunity to provide input and ask questions in the ISO stakeholder process should not be permitted to seek a technical conference on issues discussed in that stakeholder process.¹⁹

¹⁹ As explained in the ISO's separate answer in Docket No. ER10-300, the failure to participate in the ISO stakeholder process is also a major reason why the Commission should reject the request of the Financial Marketers for a technical conference on the ISO's convergence bidding design.

III. Conclusion

For the reasons explained above and in the November 20 Motion, the Commission should grant the requested extension of time, until February 1, 2011, for the ISO to comply with the directives in the September 2006 Order to implement convergence bidding.

Respectfully submitted,

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Dated: December 23, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing documents upon all of the parties 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. this 23rd day of December, 2009.

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas