

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

<b>Morgan Stanley Capital Group Inc.</b>	)	
<b>v.</b>	)	<b>Docket No. EL01-89-000</b>
<b>California Independent System Operator Corporation</b>	)	
	)	

**MOTION FOR CLARIFICATION OR IN THE ALTERNATIVE  
REQUEST FOR REHEARING OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 212 and 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.213 and 385.713 (2001), the California Independent System Operator Corporation (“ISO”)<sup>1</sup> hereby respectfully seeks clarification or, in the alternative, rehearing of one aspect of the Commission’s September 28, 2001 order in this proceeding. *Morgan Stanley Group, Inc. v. California Independent System Operator Corp.*, 96 FERC ¶ 61,354 (“September 28<sup>th</sup> Order). While the ISO continues to believe that the issue of “phantom congestion” must be addressed expeditiously, the Commission should grant clarification or, in the alternative, rehearing and specify that relief, if any is ordered in this matter, will be on a prospective basis.

**I. BACKGROUND**

On June 14, 2001, Morgan Stanley Capital Group, Inc. (“Morgan Stanley”) filed a complaint seeking to address the problem of “phantom congestion,”

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning as defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.

caused by the requirement that the ISO honor, and reserve transmission capacity associated with, Existing Contracts.<sup>2</sup> These Existing Contracts often contain scheduling timelines that are different from the ISO's Day-Ahead and Hour-Ahead scheduling timelines. While the ISO can use in real time any transmission capacity that has not been scheduled by the holder of Existing rights in the Hour-Ahead scheduling process, the reserved and unused transmission capacity is not available for use by Market Participants in the ISO forward markets (i.e., the Day-Ahead and Hour-Ahead scheduling processes).

In its answer filed on July 5, 2001, the ISO agreed with Morgan Stanley that the problem of phantom congestion should be addressed expeditiously, the ISO disagreed; however, with Morgan Stanley's proposed interim resolution. The ISO offered several alternative proposals.

In the September 28<sup>th</sup> Order, the Commission found that the complaint raised material issues of fact that warranted an evidentiary hearing "to determine whether there are reasonable interim solutions available that would remedy this problem." September 28<sup>th</sup> Order, Slip op at 5-6. The Commission held the

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<sup>2</sup> In its October 1997 Order conditionally authorizing operation of the ISO, the Commission required the ISO to accommodate Existing Contracts:

While we agree with the California Commission that it may be difficult for the ISO to accommodate the varied operational protocols and procedures of Existing Contracts, we view this as an unavoidable transitional problem. We believe that the temporary problem of accommodating the scheduling and operating practices of Existing Contracts under the ISO's rules and protocols is outweighed by considerations of not upsetting the benefits and obligations of Existing Contracts, which were established over many years.

*Pacific Gas & Electric Company, et al.*, 81 FERC ¶ 61,122, 61,470-71. The Commission rejected the ISO's proposal to deny Non-Converted Rightsholders the opportunity to exercise their within-the-hour scheduling rights under Existing Contracts. *Id.* at 61,471.

hearing in abeyance pending proceedings before a Settlement Judge. *Id.* at 6.

The Commission also established a refund effective date of August 13, 2001. *Id.*

## **II. ARGUMENT**

The ISO recognizes the importance of addressing the issue of phantom congestion on an expedited basis. Any relief, however, must be implemented prospectively.

The ISO controls approximately 75 percent of California's power grid delivering more than 239-billion kilowatt hours of electricity in 2000. In addition to operating the ISO Controlled Grid, the ISO conducts a real-time Imbalance Market to match Generation and Demand in real time; an Ancillary Services Market to ensure proper Regulation, Spinning Reserve, Non-Spinning Reserve, and Replacement Reserve are available to provide for reliable operations; and a Congestion Management Market to allocate transmission usage based on the use of Adjustment Bids.

Scheduling Coordinators ("SCs") serve as the intermediaries between the ISO and suppliers and customers. In accordance with the Commission-approved ISO Tariff, SCs submit both Day-Ahead and Hour-Ahead Schedules.<sup>3</sup> These schedules identify how the SC will match their customer's Demand with Generation. The ISO processes these schedules to determine if there will be congestion on the ISO Controlled Grid. SCs are then given the opportunity to adjust these schedules. Currently, more that seventy-five SCs are eligible to schedule deliveries of power over the ISO Controlled Grid and to participate in

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<sup>3</sup> See for example, ISO Tariff at 2.2.6.2 and 2.2.8.

the ISO Markets.

Given the enormous volume of transactions processed by the ISO, it is simply not possible to provide for retroactive relief in this matter. Beyond the sheer volume of effected transactions, it would be very difficult to identify the parameters for such a reanalysis, including: (1) what additional flows would have been scheduled; (2) what the sources of generation would have been (and if, in fact, they would have been available); or (3) what adjustment bids, if any, might have been associated with those schedules. Moreover, there is a cascading effect. The assumption that additional generation could have been exported from California would mean that the same generation would not have been available to serve Load in California. This would require a reexamination of potential sources to make up the difference.

A grant of retroactive relief would lead to endless litigation over what transactions would or would not have been scheduled. It would be a process rife with opportunity for second guessing the actual final schedules utilized by the ISO.

In the September 28<sup>th</sup> Order, the Commission properly stated that this proceeding should focus on “whether there are reasonable interim solutions available that would remedy this problem.” September 28<sup>th</sup> Order, Slip op at 6. The parties should concentrate their efforts on identifying potential prospective solutions to the problem of phantom congestion.

### III. CONCLUSION

For the reasons discussed above, the Commission should grant clarification or in the alternative rehearing and specify that relief, if any is ordered in this matter, will be on a prospective basis.

Respectfully submitted,

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Dated: October 29, 2001

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Washington, DC, on this 29<sup>th</sup> day of October, 2001.

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