

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

California Independent System Operator Corporation) Docket No. ER04-835-003
)
Pacific Gas and Electric Company) Docket No. EL04-103-000
)
California Independent System Operator Corporation) Consolidated
)

**MOTION FOR PROTECTIVE ORDER LIMITING SCOPE OF DEPOSITION AND
REQUEST FOR SHORTENED RESPONSE TIME OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION**

To: The Honorable H. Peter Young
Presiding Administrative Law Judge

Pursuant to Rules 212 and 410(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.410(c), the California Independent System Operator Corporation ("ISO") hereby requests a protective order limiting the scope of the deposition of ISO witnesses to factual matters and expert opinions within the witnesses' expertise and authorizing the ISO witnesses to refuse to answer questions beyond such scope. Because the first deposition is scheduled for March 3, 2005, the ISO also requests that the time for Answers be shortened to March 1, 2005. In support whereof, the ISO states as follows.

I. Background

On February 10, 2005, the California Department of Water Resources State Water Project ("SWP") served a Notice of Deposition to the ISO requesting that the ISO produce for deposition "the individual(s) identified by the ISO who is

sponsoring the ISO's testimony filed in October of 2004 and supplemented in December, 2005 in the instant matter and the individual(s) most knowledgeable about the data contained in Ex. ISPO-18." February 10 Notice at 1 [sic]. On February 14, 2005, the ISO served SWP with its Objection to the Notice of Depositions. The ISO objected to the Notice with regard to the request to depose the person sponsoring the ISO's testimony, due to the fact that that person or those persons had not yet been determined. In the course of working out their differences regarding the Notice, the ISO agreed specifically to re-examine the earlier deposition of Brian Theaker and inform SWP of any elements that did not constitute the ISO's position in this proceeding or that the ISO did not consider accurate. Subsequently, the ISO has invested considerable resources reviewing Mr. Theaker's deposition. Out of more than 500 pages of deposition testimony, the ISO identified less than two dozen items of concern, most of which did not involve factual issues but rather Mr. Theaker's expression of his personal opinion.

The ISO did not object to producing for deposition the individual most familiar with Ex. No. ISO-18. Indeed, in subsequent discussions with SWP, the ISO informed SWP that in order to provide full information regarding Ex. No. ISO-18, the ISO would need to make more than one witness available for deposition.

On February 24, 2005, SWP served a revised Notice of Deposition on the ISO, specifying specific ISO witnesses (as indeed had been agreed to by the ISO) to be deposed regarding

matters covered in the testimony and discovery provided in this case. Specifically, [the subject matter] includes the basis of the

testimony filed by the ISO in October and December of 2004 and the data contained in Ex. ISPO-18 [sic]. Other related concepts include the on and off peak periods of the day, overgeneration and the types of dispatches to address System needs and Inter-Zonal and Intra-Zonal Congestion and ISO cost incurrence and allocation to address these grid management issues. Other topics include the must offer obligation, and cost incurrence, special treatment for certain (e.g., SWP) loads, the minimum load for generators, minimum cost allocations and the use of must offer waiver denial units.

February 24 Notice at 2.

II. Motion for Limitation on Scope

The February 24 Notice is far broader in scope than was the February 10 Notice. SWP has already conducted a full day of deposition regarding the ISO's testimony, and all of the factual information obtained in the deposition remains available for SWP's use in testimony and the hearing. SWP has also participated in the depositions of Bill Ellard and Meng Shen regarding Amendment No. 60. In addition, the ISO has responded to 52 data requests from SWP – including 166 sub-parts - regarding Amendment No. 60, and is working on responding to two additional sets of discovery that are due shortly.

The ISO is not offering any of the three deponents as witnesses in this proceeding. They have been identified solely because of their knowledge regarding the data in Ex. No. ISO-18. Although they may have personal opinions on the must-offer obligation, cost allocation, cost-causation, and such matters, those opinions are not appropriate subject matters for discovery in the depositions because they are not experts in such areas, those areas are not within their professional responsibility for the ISO, and their personal opinions on

them, if they have any, are not relevant to the resolution of the issues in this proceeding. Yet if history is any guide, a significant portion of the depositions may be directed toward seeking the witness's opinions on such matters. Without a protective order, the ISO witnesses must answer such questions if they have a personal opinion (even if it is outside their areas of expertise) or the ISO must interrupt the depositions to obtain a ruling from the Presiding Judge concerning the propriety of particular questions.

In light of the competing responsibilities placed on ISO personnel, the ISO believes that it would be appropriate for the Presiding Judge to issue a Protective Order under Rule 410(c) to prevent "undue annoyance, burden [and] harassment." In this case, the ISO simply asks that the Presiding Judge limit the deposition to matters of fact and to opinions within the witness's professional responsibility and area of expertise and to permit the witness to refuse to answer questions regarding personal opinions outside his area of professional responsibility and expertise. It is the ISO's hope that such an order will eliminate the incentive to such questions and the need for the ISO to interrupt the depositions and will expedite the conduct of the depositions and the ultimate resolution of these proceedings.

III. Motion to Shorten Time

The first of the depositions in question is noticed for March 3, 2005. The ISO therefore requests that the time for Answers be shortened such that Answers are due on March 1, 2005, and that the Presiding Judge rule on the Motion before the close of business on March 2, 2005.

IV. Conclusion

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Presiding Administrative Law Judge limit the scope of the depositions of ISO personnel to factual matters and expert opinions within the witnesses' expertise and authorize the ISO witnesses to refuse to answer questions regarding opinions outside their expertise.

Respectfully submitted,

/s/ **Anthony J. Ivancovich**

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Date: February 25, 2005

CERTIFICATE OF SERVICE

I hereby certify I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA, on this 25th day of February, 2005.

/s/ Geeta O. Tholan
Geeta O. Tholan