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

<b>Alliance for Retail Energy Markets</b>	)	
<b>Shell Energy North America (US), LP</b>	)	
	)	
v.	)	<b>Docket No. EL14-67-000</b>
	)	
<b>California Independent System</b>	)	
<b>Operator Corporation</b>	)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO MOTION TO LODGE**

The California Independent System Operator Corporation (“CAISO”) submits this answer to the Motion to Lodge filed by the Alliance for Retail Energy Markets and Shell Energy North America (US), L.P. (together, “Complainants”) in this proceeding on September 15, 2014.<sup>1</sup> This proceeding concerns a complaint challenging the CAISO’s resettlement of must-offer charges and payments pursuant to the Commission’s directives revising Amendment No. 60 to the CAISO tariff and Commission-established refund effective dates. Complainants seek to supplement the record with a recent decision of the United States Court of Appeals for the District of Columbia Circuit, *West Deptford Energy, LLC v Federal Energy Regulatory Commission*.<sup>2</sup> In *West Deptford*, the court concluded, *inter alia*, that the Commission had not provided a reasoned explanation why its ruling did not violate the filed rate doctrine.

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<sup>1</sup> The CAISO files this answer pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213.

<sup>2</sup> No. 12-1340 (D.C. Cir. Aug. 26, 2014).

As the CAISO has explained in its answer to the complaint, the complaint is a collateral attack on the Commission's decision regarding Amendment No. 60. The *West Deptford* decision is therefore irrelevant.<sup>3</sup> Nonetheless, the CAISO files this answer also to object to Complainants' mischaracterization of the ruling in *West Deptford*. Complainants state, "As found by the court, the **only** times the notice exemption can apply are when: '[f]irst, . . . tariffs that provide a formula for calculating rates, rather than a specific rate number' and '[s]econd, . . . when judicial invalidation of Commission decisions has resulted in retroactive changes in rates.'"<sup>4</sup> The court made no such finding. Rather, the court stated, "**For the most part**, however, the notice exception has been confined to [the] two scenarios" Complainants identify.<sup>5</sup> The court thus was explicit that the notice exception also applies in other circumstances.

In fact, the court went on to consider whether adequate notice was provided in *West Deptford*, even though the case involved neither a formula rate nor a judicial remand. The court examined in detail whether the Commission had provided a reasoned explanation for concluding that the language upon which the Commission relied as providing notice, "in a non-binding pleading in litigation to which *West Deptford* was not even a party could provide the type of fair notice the Federal Power Act and precedent require."<sup>6</sup> If Complainants were correct that the court found that the notice exception was confined to the two scenarios

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<sup>3</sup> Answer of the California Independent System Operator to Complaint, filed July 7, 2014, at 8-10.

<sup>4</sup> Motion to Lodge at 2 (emphasis added).

<sup>5</sup> *West Deptford*, slip op. at 22 (emphasis added).

<sup>6</sup> *Id.* at 24.

they identify, then there would have been no reason for the *West Deptford* court to further consider the notice issue.

It was, of course, appropriate for the court to conduct this examination because reviewing courts have recognized that the notice exception can apply outside the two scenarios the Complainants identify.<sup>7</sup> Indeed, the Commission has relied upon this exception in circumstances that fit neither of the scenarios the Complainants cite, but rather are precisely the circumstances here—a retroactive modification of rate design.<sup>8</sup> Nothing in the *West Deptford* decision supports the Complainants’ attempt to circumscribe the situations in which adequate notice can permit retroactive rate adjustments, which these judicial and Commission precedents recognize.

Respectfully submitted,

**/s/ Sidney M. Davies**

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Dated: September 25, 2014

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<sup>7</sup> See *Transcontinental Gas Pipeline Corp. v. FERC*, 54 F.3d 893, 898 (D.C. Cir. 1995).

<sup>8</sup> See *Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,032 at P 21 (2004).

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned 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, DC this 25<sup>th</sup> day of September, 2014.

/s/ Daniel Klein  
Daniel Klein