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ORIGINAL

December 3, 2001

FILED
OFFICE OF THE SECRETARY
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FEDERAL ENERGY
REGULATORY COMMISSION

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **NEO California Power LLC v. California Independent System
Operator Corporation
Docket No. EL02-18-000**

Dear Secretary Boergers:

Enclosed for filing please find the Answer of the California Independent System Operator Corporation to the Complaint of NEO California Power LLC, submitted in the above-captioned docket.

Two additional copies of the enclosed filing are also provided to be time-stamped and returned to our messenger. Please contact the undersigned with any questions. Thank you for your assistance in this matter.

Respectfully submitted,

Bradley R. Miliauskas

David B. Rubin
Bradley R. Miliauskas
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007

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FEDERAL ENERGY
REGULATORY COMMISSION

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NEO California Power LLC,)	
)	
Complainant,)	
)	
v.)	Docket No. EL02-18-000
)	
California Independent System)	
Operator Corporation,)	
)	
Respondent.)	

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION TO COMPLAINT OF
NEO CALIFORNIA POWER LLC

I. INTRODUCTION

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the California Independent System Operator Corporation ("ISO")¹ submits this Answer to the Complaint Requesting An Order to Compel and Show Cause Or, In the Alternative, An Evidentiary Hearing With Fast Track Processing ("Complaint") submitted by NEO California Power LLC ("NEO California") in the above-referenced proceeding on November 13, 2001. NEO California requests that the Commission require the ISO "immediately to

¹ Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.

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pay for capacity already sold, to comply with the July 12 Order² and provide NEO California with a creditworthy buyer or assurance of payment for future transactions, to show cause why it has not violated the Commission's orders and its tariff, and to suspend NEO California's obligations under the [Summer Reliability Agreements ("SRAs")] until the Cal ISO complies with the July 12 Order and the Cal ISO's tariff.³ For the reasons described below, the Commission should find that the relief NEO California requests was already granted through the ISO's compliance with the Commission's November 7, 2001 Order,⁴ and that NEO California's Complaint should therefore be denied.

II. BACKGROUND

On August 24, 2000, the ISO issued a Request for Bids seeking proposals to provide 3,000 MW of new generation of peaking capacity. After reviewing the responses, the ISO Governing Board, at its October 4, 2000 meeting, authorized ISO management to enter into such agreements for approximately 2,045 MW of additional generation at an estimated total cost not to exceed \$255 million per year. The ISO accordingly entered into certain SRAs, including the SRAs with NEO California, and filed them with the Commission for informational purposes

² *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*, 96 FERC ¶ 61,051 (2001).

³ Complaint at 32.

⁴ *California Independent System Operator Corporation*, 97 FERC ¶ 61,151 (2001) ("November 7 Order").

on January 10, 2001.⁵ The Commission accepted the information filing in Docket No. ER01-929-000 by letter order dated February 8, 2001.

The SRAs require the ISO to make 60% of the fixed capacity payments monthly in each summer month (June through October) and to true-up the penalties and offsets with the remainder of the Fixed Charge after the last month. On March 30, 2001, the ISO Governing Board directed ISO management to recover costs incurred under the SRAs as described in the ISO Tariff Section 2.3.5.1.8, which states that, except as otherwise provided, "all costs incurred by the ISO . . . shall be charged to each Scheduling Coordinator pro rata based upon the same proportion as the Scheduling Coordinator's metered hourly Demand (including exports) bears to the total metered hourly Demand (including exports) served in that hour."

When the ISO entered into the SRAs with NEO California in November 2000, all Scheduling Coordinators, including Pacific Gas and Electric Company ("PG&E") and Southern California Edison Company ("SoCal Edison") met the creditworthiness standards of the ISO Tariff. Subsequently, the extraordinary events in the California electricity market resulted in credit downgrades and payment defaults by PG&E and SoCal Edison in January 2001.

On February 14, 2001, the Commission issued an order concerning the ISO's proposed Amendment No. 36 and the creditworthiness provisions of the ISO Tariff.⁶ The Commission required the ISO to ensure credit support "for that

⁵ The ISO and NEO California entered into two SRAs, one concerning the Chowchilla II generating plant, and the other concerning the Rawson Junction (a.k.a. "Red Bluff") generating plant.

⁶ *California Independent System Operator Corporation*, 94 FERC ¶ 61,132 (2001).

portion of power that is not self supplied by [PG&E and SoCal Edison].⁷ In a subsequent order issued on May 25, 2001, the Commission stated that it had "previously ruled that generators are entitled to assurances of payment for all energy they provide through the ISO and ha[s] directed the ISO to ensure the presence of a creditworthy counterparty for all power that any third-party suppliers provide to PG&E and SoCal Edison."⁸

In exchange for the monthly fixed capacity payments, the SRAs gave the ISO the right to call on the generation under these agreements to produce energy up to 500 hours during peak times June through October. The SRAs did not call for the ISO to pay the owners for energy produced at the ISO's request, but instead directed that the owners sell the energy requested to another market participant and, to the extent possible, schedule these sales in the forward markets. While the SRAs did not include energy payments, the ISO did, in early February 2001, seek to have the California Department of Water Resources ("DWR"), which, at that time, was serving as a creditworthy backer of ISO real-time energy purchases on behalf of PG&E and SoCal Edison, back the SRA capacity payments. Of the 30 SRAs, the ISO executed 14 agreements with DWR and either suspended or terminated the SRAs. One project was cancelled, 7 SRAs were terminated because the units were not built, and the remaining 8 SRAs are with the ISO. On June 8, 2001, however, DWR wrote a letter to the ISO stating that DWR would "not be responsible or liable for any monetary

⁷ *Id.* at 61,511.

⁸ *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*, 95 FERC ¶ 61,275, at 61,972 (2001) (emphasis added).

obligations arising under any ISO Summer Reliability Agreement to which the Department is not a party and which has not heretofore been superseded by a bilateral contract entered into by and between the Department and an Owner."⁹ While a number of entities with SRAs entered into agreements with DWR and consequently terminated their SRAs, NEO California elected not to do so.

On June 13, 2001, NEO California's Chowchilla II plant began commercial operations. The ISO has provided invoices for payments due NEO California in accordance with the procedures outlined in July 6, 2001 and July 25, 2001 notices to Market Participants.¹⁰ Under Section 9.4 of the SRA, the ISO's obligation to make any payments was expressly conditioned on the ISO's recovery under the ISO Tariff of costs it invoices under the agreement. Both PG&E and SoCal Edison defaulted on payments, and so NEO California received only its pro rata share of the actual payments made.

On November 7, 2001, the Commission issued another order concerning the creditworthiness requirements. In the November 7 Order, the Commission concluded that:

[B]ecause DWR has assumed responsibility for purchases by the ISO, and because DWR functions as a Scheduling Coordinator for this net short position of PG&E and SoCal Edison, DWR must abide by the requirements of the ISO Tariff and the Scheduling Coordinator Agreement. For this reason, we disagree with the ISO's argument that under the Tariff, it is required to send invoices to PG&E and SoCal Edison – rather than DWR – for generation it dispatches to serve their respective loads. The ISO is obligated under its Tariff to invoice, collect payments from and distribute

⁹ A copy of the letter is included as Exhibit G to the NEO California Complaint.

¹⁰ Copies of the market notices are provided as Attachments A and B to this response. As explained below, the procedures contained in the market notices demonstrate that NEO California's concerns regarding the relationship between the payment provisions of the SRAs and the payment timelines under the ISO Tariff are unfounded.

payments to DWR, as the Scheduling Coordinator for all scheduled and unscheduled transactions made on behalf of DWR, including transactions where DWR serves as the creditworthy counterparty for the applicable portion of PG&E's and SoCal Edison's load.¹¹

The Commission also determined that:

DWR does not have unilateral discretion to determine the rates for purchases it makes on behalf of PG&E and SoCal Edison and instead must accept and pay the rates set by this Commission. If DWR disagrees with these rates, it may challenge the rates through an appropriate filing with this Commission.¹²

As explained below, the ISO believes that the Commission's November 7 Order moots NEO California's complaint. The ISO has billed DWR for all charges applicable to the net short loads, including the proper allocation of SRA charges. Once payment is received from DWR, the funds will be disbursed in accordance with the SRAs and the ISO Tariff.

III. ANSWER

A. **NEO California's Complaint Has Been Mooted By the Commission's November 7, 2001 Order and the ISO's Compliance With That Order**

Although the NEO California Complaint discusses the November 7 Order in regards to creditworthiness requirements, the Complaint fails to recognize the impact the November 7 Order has on the relief requested in the Complaint. The ISO has complied with the requirement in the November 7 Order that the ISO invoice DWR for amounts due, including transactions where DWR is the creditworthy counterparty for the applicable portion of PG&E's and SoCal

¹¹ *Id.* at 61,659 (citation omitted).

¹² *Id.* at 61,660.

Edison's Load.¹³ The November 21 Compliance Filing explained that the ISO has invoiced DWR; the invoice included charges for SRAs. The ISO, in complying with the November 7 Order, has done all that is within the ISO's power to ensure that entities to which payments are due – including NEO California – receive those payments. However, it has not yet received them. Thus, NEO California is incorrect in arguing that "[t]here is no valid reason why, if invoices to all Scheduling Coordinators were issued, the Cal ISO would not have sufficient funds to pay NEO California."¹⁴

Moreover, NEO California does not give sufficient consideration to the provision in Article 9 of each SRA, which explains that:

The ISO's obligation to make any payments required under this Article 9 is expressly conditioned on the ISO's recovery under the ISO Tariff of costs it incurs under this Agreement.¹⁵

Again, the ISO has provided the necessary invoices, but has not received payment of the amounts contained in the invoices. The ISO is sympathetic to the concerns of entities, such as NEO California, that seek payment of amounts owed, and the ISO will provide them with payment as soon as it receives those amounts.

B. The Payment Provisions of the SRAs and the ISO Tariff Are Consistent With One Another

Contrary to the assertions of NEO California,¹⁶ the payment provisions of the SRAs are entirely consistent with the ISO Tariff. The procedure for billing

¹³ See ISO Compliance Filing, Docket Nos. ER01-3013-000 and ER01-889-008 (Nov. 21, 2001) ("November 21 Compliance Filing").

¹⁴ See Complaint at 23.

¹⁵ See Section 9.4 of the SRA between the ISO and NEO California concerning the Chowchilla II generating plant, included as Exhibit A to the NEO California Complaint.

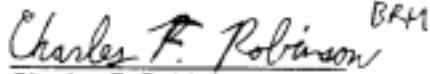
¹⁶ See Complaint at 20-25.

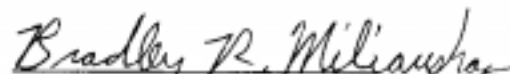
under the SRAs is that billing is done on an estimated basis, and the bills are subsequently tried-up in accordance with the amount of actual funds available. Once payment is received, it is disbursed in accordance with the terms of the ISO Tariff. However, as explained above, the ISO has not received full payment for the SRAs, and so has not been in a position to apply the disbursement provisions of the ISO Tariff to fully compensate the SRA holders. There is no inconsistency between the billing procedures under the SRAs and the terms of the ISO Tariff; the point in the process in which the terms of the ISO Tariff are to be applied has simply not been reached with regard to amounts under the SRAs that are still due.

IV. CONCLUSION

Wherefore, for the reasons described above, the requests for relief contained in the Complaint filed by NEO California should be denied.

Respectfully submitted,


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Dated: December 3, 2001

ATTACHMENT A

Miliauskas, Bradley

From: CRCommunications [CRCommunications@caiso.com]
Sent: Friday, July 06, 2001 2:16 PM
To: ISO Market Participants; SC Settlements Contacts; TSWG
Subject: CAISO NOTIFICATION - NEW CHARGE TYPE (CT 1120) Summer Reliability Contract Capacity Payment/Charge

Importance: High

Market Participants:

- > Summer Reliability Contract Capacity Payment/Charge
- > Charge Type 1120
- >
- > To assist in meeting the peak demand conditions during the summer period,
- > the California Independent System Operator contracted for new generation
- > through the Summer Reliability Agreements (SRA). On March 30th the ISO
- > Board directed management to recover costs incurred under the Summer
- > Reliability Agreements as provided in the ISO Tariff Section 2.3.5.1.8.
- >
- > The SRA Fixed Charge amounts will be charged through Charge Type 1120
- > (Summer Reliability Contract Capacity Payment/Charge) on the Preliminary
- > statement for the last day of the Trade month before payment is due. The
- > ISO will charge the market based on an estimate of the metered Demand
- > (including Exports). This will be the month just prior to the actual
- > billing month. For example, the June 2001 charges will be entered on the
- > Preliminary Statement for Trade Date 5/31/01. The SRA charges will then
- > be adjusted including penalties and offsets on the Final statement for
- > Trade Date 6/30/01 (the last day of each actual billing month) to match
- > actual charges calculated based on metered Demand (including Exports).
- >
- > The first charge for June 2001 will appear on the Preliminary Statement
- > for Trade Date May 31, 2001. This Preliminary Statement will publish on
- > July 25, 2001. Adjustments for June 2001 will appear on the Final
- > Statement for Trade Date 6/30/01, which will publish on September 12,
- > 2001.
- >
- > CT 1120 will be a manual charge type within the Manual Line Item Records.
- > No structural changes will occur in the Specification for Settlement
- > Statement Files, Version 13.0c.
- >
- > Should you have questions, please contact your ISO Client Relations'
- > Account Manager.
- >
- > Client Relations Communication
- > CRCommunications@caiso.com
- >
- >

ATTACHMENT B

Miliauskas, Bradley

From: CRCommunications [CRCommunications@caiso.com]
Sent: Wednesday, July 25, 2001 8:21 PM
To: ISO Market Participants; SC Settlements Contacts
Cc: Morrison, Stephen; Ng, Chi-Pui; Burns, Beth Ann; Woertz, Byron; Gill, Julietta; Fuller, Don; Deluca, Tony; Bodine, Catherine; Gerber, Spence; Shafa, Masoud; Sibley, Chris
Subject: CAISO Revised Notice - Summer Reliability Contract Capacity Payment/Charge

REVISED MARKET NOTICE from July 6, 2001 @ 11:16AM
 Summer Reliability Contract Capacity Payment/Charge
 Charge Type 1120 (Estimate) and
 Charge Type 1121 (Actual)

ISO Market Participants:**SC Settlement Contacts:**

The California Independent System Operator has contracted for peaking generation through the Summer Reliability Agreements (SRA) to assist in meeting reliability needs this summer. On March 30th, 2001 the ISO Governing Board directed Management to recover costs incurred under the Summer Reliability Agreements as provided in the ISO Tariff Section 2.3.5.1.8. (i.e.: "all costs incurred by the ISO ... shall be charged to each Scheduling Coordinator pro rata based upon the same proportion as the Scheduling Coordinator's metered hourly Demand (including exports) bears to the total metered hourly Demand (including exports) served in that hour.")

The SRAs require the ISO to make the monthly fixed capacity payments in each summer month (June through October) and then true-up the penalties and offsets in the last month. Two facilities with SRAs reached Commercial Operation by June 15th, 2001 and therefore became eligible to extend their SRA, day for day, into November 2001.

The ISO will allocate these charges in two phases based on two new Charge Types, "Estimated Summer Reliability Contract Capacity Payment/Charge (CT 1120)," and "Actual Summer Reliability Contract Capacity Payment/Charge (CT 1121)". To accomplish this, the ISO will allocate an estimated charge, based on the previous month's metered Demand and exports (CT1120). Then, in the following month, the entire estimated charge (CT1120) will be reversed and the Scheduling Coordinator will be charged the actual amount based on actual metered Demand (including exports) (CT1121). An example of the allocation process is as follows:

1. The ISO will allocate the SRA amounts to the Market by applying CT 1120 (Estimated Summer Reliability Contract Capacity Payment/Charge) on the Preliminary statement for the last day of the Trade Month preceding the Trade Month for which payment is due. The estimated charges for SRA costs (CT 1120) applicable to Trade Month June 2001 will be applied to the Preliminary Statement for Trade Day May 31, 2001. The ISO estimate will be based on the Market Participant's metered hourly Demand and exports from the prior month (in this example, the metered hourly Demand and exports for May, 2001). Charges for CT 1120 will also show up on the Final Statement for Trade Date 5/31/01.

2. The ISO will then recalculate the allocation of the SRA amounts through Charge Type 1121 (Actual Summer Reliability Contract Capacity Payment/Charge) based on the Market Participant's actual metered hourly Demand and exports for the appropriate Trade Month. Actual (CT 1121) charges will appear on the Final Statement for the last day of each actual billing month. (In the foregoing example, the charges would appear on the Final Statement for Trade Date 6/30/01.) As CT 1121 appears on the Final

Statement, CT1120 will be reversed in its entirety (e.g., the 6/30/01 Final Statement will include a reversal of the 5/31/01 estimate) The reversal can be identified by the Trade Date for the previous month and it will have the opposite dollar value as the previous month.

3. Additionally, at the end of each SRA Summer Period, the SRA amounts are recalculated to include penalties and offsets. The Actual Summer Reliability Contract Capacity Payment/Charge (CT 1121) will be adjusted after the owner of the facility with the SRA has received the final market settlement for the Summer Period.

The first SRA charge (CT 1120, estimated charge) will be for the June 2001 SRA payment and will appear on the Preliminary Statement for Trade Date May 31, 2001. This Preliminary Statement will publish on July 25, 2001. Adjustments for June 2001 through CT 1121 (based on Actual metered hourly Demand and exports in June) will appear on the Final Statement for Trade Date 6/30/01, which will be published on September 12, 2001.

CT 1120 and CT 1121 will be manual charge types within the Manual Line Item Records. Thus, no structural changes will occur in the Specification for Settlement Statement Files, Version 13.1 and you should not need to make any changes in your own systems. Finally, as this is a new process it will remain under review and may be subject to refinement.

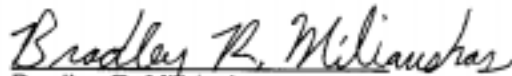
Should you have questions, please contact your ISO Client Relations Account Manager.

Client Relations Communication
CRCommunications@caiso.com

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 this 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 3rd day of December, 2001.



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