

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

California Independent System Operator Corporation)	Docket No. ER01-889-003
)	
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, et al.)	Docket No. EL00-95-012, et al.
)	
)	
)	

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION IN OPPOSITION TO EXPEDITED MOTION FOR ENFORCEMENT ACTION

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), the California Independent System Operator Corporation (“ISO”)¹ hereby submits its Answer to the Expedited Motion For Enforcement Action Against the California Independent System Operator and Request for Shortening of Time To Answer filed in these matters on May 24, 2001 by Dynegy Power Marketing Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC (jointly, “Dynegy”).

As discussed herein, Dynegy’s motion is without foundation. The ISO has complied with the Commission’s orders regarding the credit provisions of the ISO Tariff.

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

I. BACKGROUND

On April 6, 2001, the Commission issued an order in response to a motion filed by a number of California Generators. *California Independent System Operator Corp., et al.*, 95 FERC ¶ 61,024 (2001) (the “April 6 Order”). In the April 6 Order, the Commission held that the ISO must provide third-party suppliers with additional “assurances of a creditworthy buyer for all energy delivered to the loads through the ISO,” including real-time Imbalance Energy dispatched by the ISO. April 6 Order, slip op. at 4.

The ISO has sought rehearing of the April 6 Order on the grounds that it was issued without adherence to the requirements of Section 206 of the Federal Power Act, that the Order places assurances of payment to suppliers above the interests of consumers and that it could lead to unnecessary blackouts in California. In the meantime, however, the ISO has implemented procedures and filed conforming Tariff language required by the Commission’s orders in this proceeding.

On April 13, 2001, the ISO issued a notice to all Market Participants describing the terms under which the California Department of Water Resources (“DWR” or “CDWR”) has agreed to “assume financial responsibility for all purchases by the ISO in its ancillary services and Imbalance Energy markets based on bids or other offers determined to be reasonable” and explaining that “[s]uch determination of reasonableness will be made by DWR on a case by case basis.”

On May 11, 2001, the ISO submitted its Compliance filing in Docket No. ER01-889-003. Those Tariff revisions, submitted to comply with a letter order issued by the Commission on April 26, 2001, provide that “the ISO will only instruct the dispatch of Imbalance Energy to the extent that the purchase of such Imbalance Energy is on behalf of a Scheduling Coordinator that complies with the creditworthiness requirements of [the ISO Tariff] or to the extent an entity . . . has provided assurance of payment on behalf of the Scheduling Coordinator.”²

On May 25 2001, the ISO issued a supplemental Market Notice on credit issues. The ISO stated:

Pending rehearing, unless the ISO can provide reasonable assurances that a party meeting the ISO’s credit requirements will support a specific transaction, the ISO will not enter into the transaction with respect to any resource. This includes (1) awarding capacity bids in the forward Ancillary Service (“AS”) markets and (2) dispatching Imbalance Energy bids in the real time market. Therefore, the ISO will not award AS capacity bids nor will it dispatch Imbalance Energy bids above the prices for which CDWR will agree to provide credit backing. Imbalance Energy bids above the prices for which CDWR has agreed to provide credit backing, though not accepted, shall remain in the “BEEP” stack. Accordingly, in accordance with ISO Tariff §§5.1.3 and 11.2.4, resources will not be subject to Out-Of-Market calls unless the ISO has secured a creditworthy buyer for these unawarded Supplemental Energy Bids. See, e.g., ISO Tariff §§ 5.6.2 and 5.1.3. A separate notice will be issued regarding Reliability Must Run.

² Because the ISO has sought rehearing of the requirement that the ISO provide additional assurances of payment for real-time Imbalance Energy purchased, those Tariff revisions were submitted under protest. Consistent with its filed Tariff provisions, however, the ISO will not procure or dispatch real-time Energy without a creditworthy party or counter-party to the transaction for so long as the April 6 Order remains in effect.

II. ANSWER

In its Motion, Dynegy contends that the ISO has “refus[ed] to comply with the Commission’s express directives” (Motion at 2) and alleges that “[w]ithout full compliance on credit issues, sales to non-creditworthy buyers will once again undermine market confidence.” *Id.* at 4. It urges the Commission to institute an enforcement action to compel compliance by the ISO. *Id.* at 7.

The relief sought by Dynegy is neither necessary nor justified. Arrangements currently in place provide Dynegy with assurances that it will receive payment for all sales it makes to the ISO’s Ancillary Services and Imbalance Energy Markets. In particular, the ISO has made arrangements with DWR to serve as a creditworthy counter-party. As noted above, the ISO issued Market Notices on April 13 and May 25, 2001 and submitted Tariff revisions to the Commission on May 11, 2001 relating to credit support for ISO Market transactions. Those Tariff revisions scrupulously comply with the Commission’s directive: they require the ISO to have a creditworthy counter-party in order to effect purchases under the Tariff.

Dynegy’s motion is devoid of any affirmative evidence that the ISO has bought power not backed by a creditworthy entity. Provided as Attachment 1 to this motion is the Declaration of Mr. James W. Detmers, the ISO’s Vice President of Grid Operations, that was recently filed in the Bankruptcy proceeding involving Pacific Gas and Electric Company. Mr. Detmers states that Since April 6, 2001, the ISO has “not entered into any real time transaction unless a creditworthy party has provided assurances of payment.”

Accordingly, Dynegy's motion is without foundation. While it is true that DWR has the option as to whether or not it will back purchases in the ISO Markets (Motion at 4), it does not follow that in the absence of such backing the ISO will call upon any bid; in fact, as the market notices make clear, the ISO will not do so. The ISO will continue to comply with the April 6 Order, unless the order is modified subsequently by the Commission or the courts.

Dynegy's motion is really not a plea for enforcement of the April 6 Order but a poorly concealed attempt to convert the April 6 Order's limitation of the ISO's purchasing authority to something completely different – a requirement that DWR commit to back all ISO purchases, regardless of the price at which the Energy is offered for sale. While it is easy to surmise why Dynegy would desire DWR to sign such a blank check in its favor, the April 6 Order imposed no such requirement (assuming *arguendo* that it would be within the Commission's authority to do so). Accordingly, the fact that the ISO has not complied with this non-existent requirement presents no foundation for an enforcement action or other form of relief.

III. CONCLUSION

For the reasons discussed above, however, the Commission should deny Dynegey's motion.

Respectfully submitted,

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Dated: June 6, 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 6th day of June, 2001.

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