UNITED STATES OF AMERICA BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

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Pacific Gas and Electric Company

Docket Nos. ER00-565-000, et al.

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO THE MOTION TO COMPEL OF THE NORTHERN CALIFORNIA POWER AGENCY

To: The Honorable Karen V. Johnson Presiding Administrative Law Judge

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedures, 18 U.S.C.

§835.213, the California Independent System Operator Corporation ("ISO") respectfully submits

its Answer to the Motion to Compel of the Northern California Power Agency ("NCPA").

NCPA divides its Motion into two categories: "Unanswered Data Requests" and

"Inadequate Responses to Data Requests". The ISO will address each of these categories in turn.

I. Unanswered Data Requests

The ISO has responded to all of the previously unanswered data requests enumerated in NCPA's Motion.¹

II. "Inadequate" Responses to Data Requests

NCPA contends that it is inappropriate for the ISO to respond to discovery requests with responses attributed to "Counsel". In support of this, NCPA notes that the Commission's Rules of Practice and Procedures Rule 403(c) (18 C.F.R. § 385.403(c)) require a party responding to discovery to "identify the preparer or person under whose direct supervision the response was

¹ The ISO notes that it had provided an incorrectly numbered response to NCP-ISO-2.27 prior to NCPA's filing its Motion. The actual outstanding data response was NCP-ISO-2.28, which has now been answered.

prepared."

By indicating the responses to questions were prepared by "Counsel", the ISO has satisfied this requirement. It was ISO in-house counsel, in collaboration with attorneys from Swidler Berlin, who prepared these responses. The data requests in question relate to issues present in a separate litigation with which ISO counsel are intimately familiar, and thus it is completely appropriate that Counsel should respond to the questions.

Further, discovery responses providing "Counsel" as the respondent are common in practice before the Commission. The ISO has done this on numerous occasions. To cite just one example, the ISO provided data responses signed by "Counsel" in the Refund Proceeding in Docket No. EL00-95, *et al.* Such responses have been accepted as a matter of course.

NCPA attempts to bolster its argument by stating (without providing any precedent or other support) that the nature of the questions at issue here dictates that "[a]n employee competent to authenticate the response should be required to sponsor" them. Motion at 4. While the ISO does not accept the premise that discovery respondents must be employed by the party for whom they are responding, ISO in-house Counsel *are* ISO employees competent to authenticate the responses, and NCPA has presented no evidence to the contrary.

III. Conclusion

Because the ISO has responded to the Unanswered Data Requests and has provided a proper respondent for the "Inadequate" Response To Data Requests, NCPA's Motion should be denied, and no oral argument on this matter is necessary.

Respectfully submitted,

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Date: May 19, 2005

<u>/s/ Julia Moore</u> Kenneth G. Jaffe Michael E. Ward Julia Moore Swidler Berlin LLP 3000 K Street, N.W. Suite 300 Washington, DC 20007

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 19th day of May, 2005.

/s/ Gene L Waas Gene L. Waas