

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

**San Diego Gas & Electric Company,** )  
**Complainant,** )

v. )

**Docket No. EL00-95-075**

**Sellers of Energy and Ancillary Service Into** )  
**Markets Operated by the California** )  
**Independent System Operator Corporation** )  
**and the California Power Exchange,** )  
**Respondents.** )

**Investigation of Practices of the California** )  
**Independent System Operator and the** )  
**California Power Exchange.** )

**Docket No. EL00-98-063**

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION IN OPPOSITION TO MOTION TO STRIKE  
OF THE CALIFORNIA GENERATORS**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.213 (2002), the California Independent System Operator Corporation ("ISO") hereby answers the California Generators' Motion To Strike the ISO's Reply Comments filed on March 20, 2003 ("Motion"). The ISO urges the Commission to deny the Motion as baseless.

In its order of February 10, 2003,<sup>1</sup> setting out ground rules for the filings on February 28 (later moved to March 3) and March 17 (later moved to March 20), the Commission stated that the second round of filings was for the purpose of replying to

the first round. Specifically, the Commission stated: “Upon reconsideration, we will afford parties the opportunity to *respond to submissions* made by adverse parties on February 28, 2003.” February 10 Order at ¶ 4. It is quite telling that the California Generators, in a pleading more akin to a substantive response to the ISO’s March 20 filing, rather than a motion to strike, never even assert that the ISO’s filing failed to respond to submissions from the first round. Nor could they do so. As is apparent from its face, every point made in the ISO’s filing was in direct response to a submission filed on March 3, by either Mirant, Reliant, Powerex, or the Competitive Supplier Group (“CSG”). The ISO’s filing consisted of straightforward reply comments as provided for by the Commission’s February 10 Order.

California Generators also assert that the ISO made out-of-time “affirmative claims of market manipulation,” Motion at 2, and “belatedly” presented an interpretation of its Market Monitoring and Information Protocol (“MMIP”). *Id.* Both assertions are baseless. The ISO’s filing discusses its MMIP, as well as what it considers to be market manipulation, *only* in the context of replying to the contention advanced by CSG and Mirant, in their March 3 filings, that gaming did not violate the ISO Tariff. In making that contention, these parties advanced their own interpretation of the MMIP. The ISO simply *replied* to these parties by offering its interpretation of the MMIP, and pointing to evidence adduced in another March 3 filing that showed gaming conduct that, contrary to CSG and Mirant’s contention, *did* violate the ISO Tariff. As the California Generators themselves note, they have had a full opportunity to reply to that previously filed evidence, so they were not prejudiced in any way by the ISO’s reference to it in the course of making a full reply to CSG and Mirant.

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<sup>1</sup> Order on Clarification and Rehearing, 102 FERC ¶ 61,164 (2003) (“February 10 Order”).

California Generators next make a red herring contention that the ISO should be precluded from giving its interpretation of the MMIP, in reply to CSG and Mirant, because it had not produced documents regarding application of the protocol. The ISO stated in response to discovery requests that it would provide any such documents it found. The ISO found no such documents. These requests were among over 440 propounded to the ISO by Duke alone, and more than double that number propounded to the ISO by all parties. The ISO made good faith efforts to respond to as many as it could, as evidenced by the fact that no party filed a motion to compel against the ISO; in doing so, again, the ISO found no documents regarding the MMIP that were responsive to these requests. When Duke informally asked the ISO to focus special efforts on responding to certain of its requests, these requests were not among them. Moreover, the ISO's reply comments did not include any such documents, but only testimony providing the ISO's interpretation of the MMIP, so again, there is no way in which the California Generators were prejudiced.

The California Generators finally resort to mud-slinging, characterizing the ISO's filing as "political."<sup>2</sup> This accusation shows a stubborn unwillingness to accept the obvious: The ISO, as market monitor, had every right, indeed the obligation, to *reply* to the erroneous characterizations, in various March 3 filings, concerning its MMIP and previous statements and reports prepared by it addressing certain manipulative conduct. No amount of baseless invective and mischaracterization of the ISO's filing can obscure that fundamental fact.

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<sup>2</sup> Along these lines, the California Generators characterize the ISO's discussion of the issue of relief as an attempt to bolster the California Parties' filing. The ISO's entire discussion of remedies, however, was in direct reply to some sellers' contention, in their March 3 filings, that *no* further relief was appropriate.

For the foregoing reasons, the ISO requests that the Commission deny the California Generators' Motion To Strike.

Respectfully submitted,

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Dated: March 25, 2003

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See, e.g., Reliant's Submission of Evidence Counter-Indicative of Market Manipulation, filed in Docket Nos. EL00-95-069, et al. (March 3, 2003) at 42.

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March 25, 2003

The Honorable Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: San Diego Gas & Electric Company, et al.  
Docket Nos. EL00-95-075, et al.**

Dear Secretary Salas :

Enclosed please find an original and fourteen copies of the Answer of the California Independent System Operator Corporation in Opposition to Motion To Strike of the California Generators.

Also enclosed are two extra copies of the filing to be time/date stamped and returned to us by the messenger. Please contact the undersigned if you have any questions regarding this filing. Thank you in advance for you assistance.

Sincerely,

Michael Kunsleman  
Counsel for the California Independent  
System Operator Corporation

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the restricted service list compiled by the Presiding Administrative Law Judge in this proceeding.

Dated at Washington, D.C., this 25<sup>th</sup> day of March, 2003

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Michael Kunselman