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February 17, 2004

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

**Re: California Independent System Operator Corporation
Docket No. ER03-683-003**

Dear Secretary Salas:

Enclosed is the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to the Supplemental Protest of Coral Power, L.L.C., *et al.*, submitted today in the above-captioned proceeding. Attachment A to this filing, which contains commercially sensitive information, is provided under seal pursuant to 18 C.F.R. § 388.112.

Two extra copies of this filing are also enclosed. Please stamp these copies with the date and time filed and return them to the messenger. Feel free to contact the undersigned if you have any questions regarding the filing.

Respectfully submitted,

David B. Rubin
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Counsel for the California
Independent System Operator
Corporation

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

**California Independent System)
Operator Corporation)** **Docket No. ER03-683-003**

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO THE
SUPPLEMENTAL PROTEST OF CORAL POWER, L.L.C., *ET AL.***

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the California Independent System Operator Corporation ("ISO")¹ hereby requests leave to file an answer, and files its answer, to the "Supplemental Protest of Coral Power, L.L.C., Energia Azteca X, S. de R.L. de C.V. and Energia de Baja California, S. de R.L. de C.V. to ISO Modification of Compliance Filing Without Request for or Receipt of Commission Authorization, and Request for Emergency Cease and Desist Order" submitted in the above-captioned proceeding on February 2, 2004 ("Coral Power Filing," submitted by "Coral Power").² As explained below, the Commission should reject the Coral Power Filing on procedural grounds. Even if the Commission does not reject the Coral Power Filing, the Commission should treat it as being without merit and should therefore decline to grant the relief requested in the Coral Power Filing.

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

² The ISO requests waiver of Rule 213(a)(2) (18 C.F.R. § 385.213(a)(2)) to permit it to make this answer to the Coral Power Filing. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,2551, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

I. ANSWER

A. The Coral Power Filing Should Be Rejected on Procedural Grounds

The Coral Power Filing is procedurally defective in one or the other of two possible respects. First, the Coral Power Filing, despite how it was styled, is in substance not a protest of any ISO compliance filing, but rather a complaint that should have been submitted pursuant to Section 206 of the Federal Power Act (“FPA”). Second, even assuming *arguendo* that the Coral Power Filing is in substance a protest of an ISO compliance filing, it still violates the correct procedures.

1. The Coral Power Filing Is In Substance a Defective Complaint

Coral Power states that it submitted the Coral Power Filing in response to the revision of the methodology used to determine the decremental reference price, which the ISO announced in a market notice issued on January 20, 2004. See Coral Power Filing at 1-2 and Attachments B and C.³ This revision, however, was not part of the June 30, 2003 compliance filing or the July 18, 2003 addendum to that compliance filing (“July 18 Addendum”) that the ISO submitted in the above-captioned proceeding, nor was the January 20, 2004 market notice filed in this proceeding (or any other proceeding) before Coral Power included it in the Coral Power Filing. Therefore, Coral Power’s claim that the Coral Power Filing is in fact a protest is incorrect. Despite how Coral Power has styled it, the

³ The Coral Power Filing incorrectly states that the ISO (rather than Potomac Economics, Ltd.) implemented the revision of the methodology. Coral Power Filing at 1, 2. This misstatement is addressed further in Section I.B.3, *infra*.

Coral Power Filing is in substance a complaint about the revision of the methodology announced in the January 20 market notice.

As such, the Coral Power Filing is procedurally defective. It was not filed as a complaint, in a new proceeding, pursuant to Section 206 of the FPA, 16 U.S.C. § 824e. Moreover, the filing does not meet the requirements that apply to complaints under Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206.

2. Assuming *Arguendo* that the Coral Power Filing Is In Substance a Protest, It Is Nevertheless Procedurally Defective

As explained above, the Coral Power Filing is not really a protest at all, but rather a defective complaint. But assuming *arguendo* that it is truly a protest, the Coral Power Filing is still defective procedurally. Either the Coral Power Filing was filed (1) before Coral Power has taken advantage of the opportunity to consult with Potomac Economics, Ltd. ("Potomac") to develop a negotiated reference price, or (2) after Coral Power has tried to negotiate with Potomac and failed to persuade it that a lower reference price is warranted. If the first situation is what occurred, the Coral Power Filing is premature. Section 7.2.6.1.1(a)(2) of the ISO Tariff, as proposed in the July 18 Addendum, specifies that the decremental bid reference levels will be determined

in consultation with the Market Participant submitting the bid or bids at issue, provided such consultation has occurred prior to the occurrence of the conduct being examined by the ISO, and provided the Market Participant has provided sufficient data in accordance with specifications provided by the ISO or the independent entity responsible for determining reference prices.

Section 7.2.6.1.1(a)(2) specifies the second of five steps to be applied in determining decremental bid reference levels. If Coral Power has not even tried to negotiate a reference price with Potomac, it certainly has not met the requirements of Section 7.2.6.1.1(a)(2).

If, on the other hand, the second situation described above is what occurred, then the Coral Power Filing constitutes an attempted end-run around the process for determining the reference price, namely, the requirements in the remainder of Section 7.2.6.1.1.

B. The Coral Power Filing Is Without Any Substantive Merit

1. The ISO Has Appropriately Implemented Section 7.2.6.1.1 of the ISO Tariff

Coral Power argues that the Tariff changes described in the July 18 Addendum, i.e., the addition of Section 7.2.6.1.1, is not an effective part of the current Tariff. Coral Power Filing at 15-16. Coral Power is incorrect. As relevant here, the order on Amendment No. 50 to the ISO Tariff issued on May 30, 2003, 103 FERC ¶ 61,265 (“Amendment No. 50 Order”), required the ISO to “use reference prices for dec bids to be administered by an independent entity.” Amendment No. 50 Order at P 41. The only way the ISO could follow this Commission directive was to implement a methodology for calculating decremental reference prices. Accordingly, the ISO filed the July 18 Addendum to provide this methodology, effective on May 30, 2003, the effective date the Commission had specified in the Amendment No. 50 Order. *Compare* July 18 Addendum at Attachment A *with* Amendment No. 50 Order at ordering paragraph (A).

If the ISO had not filed the July 18 Addendum, it would have had no methodology for calculating decremental reference prices, and thus would have been out of compliance with the Amendment No. 50 Order. The requirements of that order have not been stayed merely because the Commission has not yet issued an order on the July 18 Addendum. A Commission order, such as the Amendment No. 50 Order, is not stayed unless the Commission specifically requires a stay.⁴ If the Commission issues an order that directs modifications to the Tariff changes in the July 18 Addendum, the ISO shall submit a further filing, but such an order has not and might not be issued.

2. The January 20, 2004 Revision of the Decremental Price Methodology Was Not a Change that Required Any Modification of Tariff Language, and Therefore Its Implementation Does Not Require a Section 205 Filing

Coral Power asserts that the ISO should have submitted a filing under Section 205 of the FPA to revise the methodology to determine the decremental reference price. Coral Power Filing at 14-18. Section 205 only applies to changes in rates, charges, classifications, or services and rules, regulations, and contracts relating thereto. See 16 U.S.C. § 205(d).

Coral Power fails to recognize that the January 20, 2004 revision was merely Potomac's application of a test to determine what constitutes "competitive conditions." See Coral Power Filing at Attachments B and C. In other words, this was a matter of interpretation by Potomac of what competitive conditions are.

⁴ See, e.g., 18 C.F.R. § 385.713(e) ("Unless otherwise ordered by the Commission, the filing of a request for rehearing does not stay the Commission decision or order"); *Columbia Gas Transmission Corporation*, 63 FERC ¶ 61,352, at 63,238 (1993) ("The effectiveness of a Commission order is not stayed by the filing of a rehearing request"); *ANR Storage Company*, 54 FERC ¶ 61,138, at 61,458-59 (1991) ("Any issues related to those [Commission] orders will be resolved in that [court] proceeding. In the meantime, the requirements of those orders have not been stayed and will remain in effect subject to the Court's decision").

The application of this test did not require any kind of change to ISO Tariff language, e.g., in Section 7.2.6.1.1. Therefore, no Section 205 filing was required.⁵

3. Coral Power Attempts to Blur the Distinction Between the ISO and Potomac, Which Entity Has the Right to Provide the Interpretation Described in the January 20, 2004 Market Notice

The Coral Power Filing incorrectly states that the ISO (rather than Potomac) implemented the revision of the methodology. Coral Power Filing at 1, 2 (“the ISO departed from the procedures contained in the July 18 compliance filing . . . the ISO put into effect a new method for calculating the decremental reference level prices”). Coral Power ignores the fact that the market notice provided as Attachment B to the Coral Power Filing states:

On January 20, 2004, *Potomac Economics* revised the methodology *it* uses to determine the decremental reference price. As described in the attached memo, *Potomac* will apply a test (the ratio of energy decremental out-of-sequence to energy decremented in sequence) to determine what constitutes “competitive conditions.”

(Emphasis added.) Although Coral Power does not mention why it erroneously refers to the ISO when it was Potomac that revised and will apply the methodology, the ISO suspects that Coral Power is trying to make the ISO and Potomac appear to be indistinguishable from one another. This suspicion seems especially plausible given that Coral Power argues that Potomac is not independent of the ISO. See *infra* Section I.B.4. Similarly, Coral Power’s reference to “the secret process that the ISO used to develop its plan” (Coral

⁵ If, however, the Commission would prefer that this interpretation be explicitly incorporated into the ISO Tariff, the ISO is willing to submit a Section 205 filing, in spite of its belief that no such filing is required.

Power Filing at 7) indicates both Coral Power's desire to blur the distinction between the ISO and Potomac and its wish to make the revision of the decremental price methodology appear to be sinister and biased.

As the independent entity empowered by the Commission to establish reference prices (see *infra* Section I.B.4), Potomac has the right to interpret the phrase "competitive conditions" as it sees fit. The ISO provided appropriate notice to the market of the implementation of Potomac's interpretation. Therefore, the revision described in the January 20, 2004 market notice was entirely proper.

4. Coral Power Has Failed to Show Any Lack of Independence on Potomac's Part

Coral Power makes efforts to impugn Potomac's independence (Coral Power Filing at 19-21), but fails to produce any evidence that calls its independence into question. In the Amendment No. 50 Order, the Commission required that the ISO "use reference prices for dec bids to be administered by an independent entity," and directed "*the independent entity that determines the reference prices for the AMP [Automatic Mitigation Procedures]* to develop this decremental bid reference price." Amendment No. 50 Order at PP 41, 54 (emphasis added). In an earlier order issued in the comprehensive market redesign (MD02) proceeding, the Commission approved the use of an independent entity to calculate the AMP reference prices. There, the Commission stated that "[w]hile we understand the parties' concerns with the process of calculating reference prices, we reiterate our confidence in the ability of the independent entity to produce an unbiased work product." *California*

Independent System Operator Corporation, 101 FERC ¶ 61,061, at P 38 (2002).

Thus, the Commission has explicitly stated that Potomac is independent.

Moreover, the ISO notes that Potomac is the Independent Market Monitor for the Midwest Independent Transmission System Operator, Inc. and the Independent Market Advisor for the New York Independent System Operator, Inc.⁶ Thus, its independence would seem to be beyond question.

The mud that Coral Power flings at Potomac consists of the argument that there is something sinister in Potomac's working with the ISO to improve the reference bid methodology. Coral Power's argument amounts to a condemnation of any work Potomac does with the ISO. According to Coral Power, Potomac could almost *never* be independent, because it could only be independent by considering issues alone, in a vacuum, without any input from the ISO, or, ostensibly, from Market Participants. Such an extreme view is at odds with the various indicators, described above, that Potomac is independent. Moreover, it is inconsistent with Potomac's ability to determine a reference price based on consultation. Further, in the real world, independent entities such as Potomac do not always act completely *sua sponte*, as Coral Power would have them do in order to demonstrate their independence to Coral Power's satisfaction.

Moreover, if Coral Power has any questions about Potomac's independence with regard to the reference bid levels, Coral Power (or any other Market Participant) has the right to point out to Potomac any perceived problems

⁶ See *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,147, at P 1 (2003); *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,339, at P 1 n.3 (2003).

with those reference bid levels, and Potomac has the right to make any change – or not make any change – that it deems necessary to establish just and reasonable reference levels.

5. Coral Power's Arguments Concerning the Reasons for Asymmetric Treatment of Internal Generators and Import Suppliers Are Repetitive and Unpersuasive

Coral Power faults the ISO for not treating the Palo Verde units and the border generation exactly the same. Coral Power Filing at 9-14. Coral Power ignores the fact that the ISO has already explained the reasons for asymmetric treatment of internal generators and import suppliers in its Amendment No. 50 filing, and that the ISO proposed a technical conference to discuss the issue and the equity of the ISO's proposed solution. See Transmittal Letter for Amendment No. 50 Filing at 14-15. The technical conference proposed by the ISO was held on May 1, 2003. See Amendment No. 50 Order at P 13. Here, Coral Power is simply rehashing complaints it has already presented and that have already been addressed.

6. Coral Power's Reference Price as Determined by Potomac Is Consistent with the Reference Price that is Applicable to Similarly Situated Generators

As shown in Attachment A to the present filing (which is submitted under seal pursuant to 18 C.F.R. § 388.112), the current heat rates for Coral Power's facilities are not substantially different from those of a facility of similar technology and configuration. Prior to January 20, 2004, however, Coral Power's reference levels were substantially different. Thus, Potomac's updated

methodology corrected the anomalous result and rendered Coral Power's reference levels comparable to those of a similarly situated unit.⁷

In making its arguments, Coral Power does not give sufficient consideration to the merits of Potomac's test to determine what constitutes competitive conditions. As the memorandum from Potomac that was electronically linked to the January 20, 2004 market notice explained, the test addresses "the legitimate concern that certain generators in narrow export-constrained areas are in a position to extract excess rents from the California market by depressing the reference levels that are used for mitigation." Coral Power Filing at page 2 of Attachment C. The concern that Potomac describes is legitimate and its test provides a "fix" for the concern. Further, as explained above, Coral Power's criticisms are without merit.

⁷ A similarly situated generator, Sempra Energy, has argued that all units that connect to the Imperial Valley substation should use the same cost-based reference levels. See "Options for Managing Intra-Zonal Congestion on the Miguel Substation: Comments on the Alternative Proposals, The Revised White Paper Stakeholder Meetings of Sempra Energy Resources." This document is available on the ISO's Web site, at the following location: <<http://www.caiso.com/docs/09003a6080/29/fb/09003a608029fb18.pdf>>.

II. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission grant the ISO's motion for leave to file this answer, reject the Coral Power Filing on procedural grounds, or, in the alternative, decline to grant the relief requested in the Coral Power Filing.

Respectfully submitted,

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Date: February 17, 2004

ATTACHMENT A

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 17th day of February, 2004.

Anthony J. Ivancovich