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November 22, 2002

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *Portland General Electric Company, et al.*
Docket No. EL02-114-000

Dear Secretary Salas:

Enclosed please find an original and 14 copies of the Motion for Clarification of the California Independent System Operator Corporation in the above-captioned docket.

Two courtesy copies of this filing have been included to be provided to Judge Jeffie J. Massey. Two additional copies are enclosed to be stamped with the date and time of filing and returned to our messenger. If there are any questions concerning this filing, please contact the undersigned.

Respectfully submitted,



Julia Moore

Counsel for the California Independent System
Operator Corporation

Enclosures

cc: The Honorable Jeffie J. Massey
Service List

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

Portland General Electric Company) Docket No. EL02-114-000
Enron Power Marketing, Inc.))

**MOTION FOR CLARIFICATION OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION**

To: The Honorable Jeffie J. Massey
 Presiding Administrative Law Judge

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.212, the California Independent System Operator Corporation (“ISO”) hereby moves for clarification of the “Order Ruling on Motion of Duke Energy Trading and Marketing, LLC to Stay the City of Tacoma’s Discovery Request to the California Independent System Operator Corporation, Etc.” issued on November 12, 2002 in this proceeding (“November 12 Order”). In support thereof, the ISO states as follows:

I. BACKGROUND

A. First Revised Set of Data Requests of Tacoma

On October 30, 2002, the City of Tacoma, Washington (“Tacoma”) served its First Revised Set of Data Requests (“Data Requests”) on the ISO.¹ On November 6, 2002, the

¹ These Data Requests were served on the ISO in Docket Nos. EL02-113-000 and EL02-115-000, in addition to the instant docket.

ISO served Objections to all but one of the Data Requests on Tacoma. The ISO's Objections, which include the text of the Data Requests, are provided with this Motion as Attachment A.

1. Data Request TAC-ISO-1.2

The sole Data Request among Tacoma's First Revised Set of Data Requests to which the ISO did not object was TAC-ISO-ISO-1.2:

Provide in electronic format all summary settlement statements describing settlements between the CAISO and CalPX during the period January 1, 2000 through June 30, 2001.

The ISO stated in its Objections that it would provide its settlement summary file in response to TAC-ISO-1.2. As the file in question contained confidential data regarding the California Power Exchange ("PX") in its role as a Market Participant, the ISO issued a Market Notice on November 8 informing Market Participants of its intention to produce the file under the terms of the Protective Orders in the three proceedings. The Market Notice, included with this Motion as Attachment B, stated that

if any Market Participant objects to the ISO providing this information to these parties pursuant to the terms of the Protective Order, please forward a court or other appropriate order blocking the disclosure of this information to Mr. Charles Robinson, General Counsel of the ISO, no later than noon (PST) on November 12, 2002.

The Market Notice included the text of TAC-ISO-1.2 as the question to which it intended to respond through the release of the settlement summary file.

On November 12, Duke Energy Trading and Marketing (“Duke”) filed its “Emergency Motion to Stay the City of Tacoma’s Discovery Request to the [ISO], Request for a Further Limited Appearance, Notice of Objection to Discovery Request and Motion to Limit Discovery Request” (“Duke Motion”) in the three dockets. On the same day, Indicated Movants² filed a “Motion For an Order Directing the [ISO] Not to Respond to Certain Discovery Requests, Request for a Stay of the City of Tacoma’s Discovery Requests Pending Ruling on this Objection, Request for a Further Limited Appearance, Notice of Objection to Discovery Requests and Request to Limit Discovery” (“Indicated Movants’ Motion”).

Duke Motion

The Duke Motion requested that the Presiding Judge stay the ISO’s response to Tacoma’s discovery request, and referenced the ISO’s Market Notice of November 8 as evidence that the ISO intended to provide its response to the request by noon November 12 unless it received a court or other appropriate order blocking its response. Duke Motion at 2. Duke indicated that it would suffer “potential irreparable harm” if “confidential and company-specific” information were released. *Id.* Duke further requested that discovery in the three proceedings be limited to the Named Respondents, *i.e.*, the entities whose alleged misconduct is the subject of the three proceedings. *Id.* at 12.

² The Indicated Movants are: Coral Power, LLC, IDACORP Energy L.P., Powerex Corp., Sempra Energy Trading Corp., TransAlta Energy Marketing (California) Inc., and TransAlta Energy Marketing (U.S.) Inc.

In a telephone conversation on November 12, and subsequently at an oral argument in EL02-115 on November 13, counsel for the ISO informed counsel for Duke that the data it intended to release in response to TAC-ISO-1.2 would not include any data related to Duke, but would instead concern only the PX in its role as Market Participant. As a result, counsel for Duke stated at the oral argument that Duke would withdraw its Motion (in all three dockets) on the condition that the ISO and Tacoma confirm that the data to be disclosed by the ISO to Tacoma would not include any confidential, commercially sensitive, or other company-specific information of Duke Energy. Counsel for Tacoma and the ISO so represented at the oral argument of November 13, and again via e-mail upon Duke's filing its Motion to Withdraw on November 14.

Indicated Movants' Motion

The Indicated Movants' Motion requested that the ISO be directed "not to disclose information pertaining to settlements between CAISO and [the PX] involving transactions by any of the Movants." Indicated Movants' Motion at 2. The Indicated Movants further requested that discovery in the three proceedings be limited so that Tacoma would be required to seek special leave to conduct discovery affecting entities that were not respondents in these proceedings.

At the oral argument on November 13, counsel for the ISO informed counsel for Indicated Movants, as well, that the data it intended to release in response to TAC-ISO-1.2 would not include any data related to the Movants, but would instead concern only the PX in its role as Market Participant. As a result, counsel for the Indicated Movants

stated that Movants would withdraw their Motion (in all three dockets) on the condition that the ISO and Tacoma confirm that the data to be disclosed by the ISO to Tacoma would not include any confidential, commercially sensitive, or other company-specific information of the Indicated Movants. Counsel for Tacoma and the ISO so represented at the oral argument of November 13, and again via e-mail upon the Indicated Movants' filing their Motion to Withdraw on November 15.

Order

On November 12, 2002, the Presiding Judge issued the November 12 Order addressing the Duke Motion. In the November 12 Order, the Presiding Judge directed the ISO to "provide *under seal to the undersigned only* all information responsive to the data request served on the ISO by Tacoma." November 12 Order, paragraph 4 (emphasis in original).

2. Data Requests 1.1 and 1.3-1.5

Tacoma's Data Requests 1.1, and 1.3-1.5 sought:

- extensive information regarding bids, sales, and outages related to all Market Participants from January 1, 2000 through June 30, 2001;
- all schedules of energy to and from California related to all Market Participants from January 1, 2000 through June 30, 2001; and
- all written and electronic records of communications between the ISO and all Scheduling Coordinators from January 1, 2000 through June 30, 2001.

The bases of the ISO's Objections with regard to TAC-ISO1.1 and 1.3-1.5 were a generalized objection regarding privilege and specific objections regarding the undue

burden of producing the information sought and the lack of relevance of the information sought to the issues in this proceeding.

Upon receipt of the ISO's Objections on November 6, counsel for Tacoma contacted counsel for the ISO to discuss how a compromise could be reached regarding the information being sought in the Data Requests.

II. MOTION FOR CLARIFICATION

A. Did the Presiding Judge Intend to Require the ISO to File Under Seal with the Secretary Responses to the Data Requests to Which the ISO Objected on November 6?

At the time the November 12 Order was issued, the ISO was under the impression that the data to be submitted under seal was only that responsive to TAC-ISO-1.2, which was the subject of Duke's Motion. The ISO provided such data under seal to the Presiding Judge on November 14. On November 19, counsel for the ISO was informed by the Presiding Judge's law clerk that in fact data responsive to *all* of the Data Requests was to be filed under seal with the Secretary's Office.

As described above, the ISO objected to questions TAC-ISO-1.1 and 1.3-1.5 due to the burden of producing the responses and the lack of relevance of the data requested to any issues in these proceedings, in addition to asserting a generalized objection based on privilege.³ These objections are provided as Attachment A.

³ The privilege at issue here relates to the commercially sensitive nature of much of the information regarding the transactions of Market Participants being sought in these Data Requests.

Since the time that the ISO served its Objections on Tacoma, counsel for Tacoma and the ISO have been engaging in discussions to attempt to devise responses that would be acceptable to both sides. The ISO's goal in the discussions is to reduce the burden and increase the relevance of the data to be produced. If the discussions were successful, the ISO had intended to provide such mutually-acceptable responses in all three proceedings.

1. Relevance

The three proceedings in which Tacoma served its Data Requests on the ISO relate to certain activities of certain entities in the Western electricity markets. These entities are the named respondents to these proceedings: Enron Power Marketing, Inc., Enron Capital and Trade Resources Corporation (together, "Enron"), El Paso Electric Company, Portland General Electric Company ("PGE"), Avista Corporation, and Avista Energy, Inc. In the instant proceeding, only the activities of PGE and Enron are squarely at issue. That being the case, all the data sought by Tacoma relating to other Market Participants are not relevant to the claim or defense of any party and not reasonably calculated to lead to the discovery of admissible evidence.

2. Burden

As explained in the ISO's November 6 Objections (Attachment A), responding to these Data Requests would be a substantial burden to the ISO, in that the amount of data being sought is overwhelming. In response to the November 12 Order, the ISO has sought to refine further its estimate of the burden of responding to these Data Requests.

For example, for TAC-ISO-1.1(a), (b), (c), and (d) and 1.3(a) and (b), the ISO estimates that it would take three full days on the part of an ISO employee to compile the bid, sales, outage, and energy schedule data for the 18-month period for which it is being sought.

With regard to 1.3(c) and (d), the ISO estimates that it would take between 4 and 5 man-days to compile the requested information. Although the raw data regarding existing contracts, as well as regarding the instances when capacity benefit margin and transmission benefit margin were used, is available electronically, these requests require a degree of analysis and evaluation on the part of ISO personnel, and this cannot be accomplished quickly.

The most difficult Data Requests to answer would be 1.4 and 1.5.⁴ These requests ask for

all written and electronic records of communication between CAISO and Scheduling Coordinators during the period January 1, 2000 through June 30, 2001. Please include all email (including attachments), paper correspondence, and existing transcripts of recorded phone conversations, between CAISO and Scheduling Coordinators.

This is oppressively burdensome. The communications sought to be produced include literally every e-mail and item of paper correspondence between the ISO and Scheduling Coordinators, automated communications from the ISO with regard to bids, several hundred pages a day worth of operator logs of conversations, and invoices issued by the ISO. The communications in question cut across all areas of the ISO, from litigation-

⁴ TAC-IAO-1.5 is a more narrowly focused version of the question in 1.4.

related correspondence regarding state and federal proceedings in which the ISO is or has been involved, to contract negotiations and communications between Scheduling Coordinators and the ISO Client Relations Department. The result would be literally truckloads of communications.

In order to produce all this, each individual ISO employee would have to search through 18 months of e-mail and paper correspondence, with regard to both their individual records and records they are responsible for maintaining on behalf of the ISO. These items are not maintained in any central database or repository. The ISO estimates that each one of its employees would need to devote at least an entire day to performing such a search. With more than 550 employees, this constitutes a significant amount of work in the aggregate.

In addition, once all the communications were compiled, the ISO would have to review the items to be produced, and determine which of them were confidential or subject to attorney/client or other privilege. It is difficult to estimate how long this review process would take, but it would certainly be several weeks, at least.

Thus, if the ISO were ordered to file all the data responsive to TAC-ISO-1.1 and 1.3-15 under seal with the Secretary, it would take an overwhelming amount of effort on the part of ISO personnel, to the level of actual *man-years* of work. Of course, the personnel needed to compile this data currently are engaged in performing other duties necessary to operate the grid in California and “keep the lights on,” so it would likely

take considerably longer to accomplish these tasks than it would if the individuals involved could devote all of their time to producing the responses.⁵

The ISO requests clarification as to whether the Presiding Judge intended to require the ISO file under seal with the Secretary responses to the Data Requests of Tacoma to which the ISO objected on November 6, and as to which the ISO and Tacoma have been engaged in discussions. The ISO notes that, if the Presiding Judge requires the ISO to do so, the ISO will face the burden described above, which it has been able to avoid thus far through its Objections and discussions with counsel for Tacoma. The ISO also would respectfully request that the Presiding Judge, in considering the burden placed on the ISO, also consider the relevance of the requested information.

B. Did the Presiding Judge Intend to Foreclose Discovery Discussions Between the ISO and Tacoma Regarding these Data Requests, and the Production by the ISO of Responses to these Data Requests, in All of the Three Proceedings?

The November 12 Order states that “Once the CAISO files this information under seal with the Secretary’s Office, no further action shall be required of it to fulfill the data request served on it by Tacoma unless further order of the undersigned so indicates.” November 12 Order, paragraph 6. As described above, Tacoma served the Data Requests in question on the ISO in the three Enron-related proceedings taking place at the Commission: EL02-113-000, EL02-114-000, and EL02-115-000. As noted above,

⁵ Moreover, pursuant to the terms of the ISO Tariff § 20.3.4(b), before producing any of the material under seal, the ISO would have to issue a Market Notice to Market Participants informing them of the planned release of confidential data, and a period of several days would need to elapse after the notice, to allow Market Participants an opportunity to seek a court or other appropriate order preventing its release.


pursuant to these requests and the ISO's November 6 Objections, counsel for Tacoma and the ISO have been engaging in discussions to attempt to devise responses that would be acceptable to both sides. If those discussions were successful, the ISO had intended to provide such mutually-acceptable responses in all three proceedings.

The ISO requests clarification as to whether the Presiding Judge intended to foreclose such discovery discussions with Tacoma, as well as the ISO's provision to Tacoma of any further response to its Data Requests in the other two dockets in which they were filed. The ISO would note that it is possible that the discussions, if allowed to continue, will lead to narrowed responses that could be acceptable to Tacoma, the ISO, and Duke. With respect to the other two dockets, the ISO would note that only by foreclosing provision of any further response in those dockets can the Presiding Judge effectuate any intent to protect Duke's interests – preventing release of information in this docket will be ineffectual if the information is released in another docket in response to the same Data Requests there.

III. CONCLUSION

For the reasons described above, the ISO requests clarification of the November 12 Order on two issues: 1) whether the Presiding Judge intended to require the ISO to file under seal with the Secretary responses to the Data Requests of Tacoma to which the ISO objected on November 6; and 2) whether Presiding Judge intended to foreclose discovery discussions between the ISO and Tacoma regarding these Data Requests, and the production by the ISO of responses to these Data Requests, in all of the three proceedings.

Respectfully submitted,



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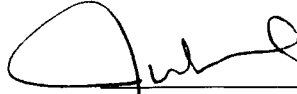
Counsel for the California Independent
System Operator Corporation

Date: November 22, 2002

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 22nd day of November, 2002

A handwritten signature in black ink, appearing to read 'Julia Moore', written over a horizontal line.

Julia Moore
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, D.C. 20007-5116

ATTACHMENT A

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

El Paso Electric Company)	
Enron Power Marketing, Inc.)	Docket No. EL02-113-000
Enron Capital and Trade)	
Resources Corporation)	

Portland General Electric Company)	Docket No. EL02-114-000
Enron Power Marketing, Inc.)	

Avista Corporation)	
Avista Energy, Inc.)	Docket No. EL02-115-000
Enron Power Marketing, Inc.)	
Portland General Electric Company)	

**OBJECTIONS OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION TO
THE REVISED FIRST SET OF DATA REQUESTS OF
THE CITY OF TACOMA**

GENERAL OBJECTIONS

The ISO asserts the following General Objections to Tacoma's Revised Data Requests. Each of these General Objections is expressly asserted and incorporated by reference into the specific responses to each document request set forth below.

1. The ISO objects to these requests to the extent they seek documents and data not relevant to the claim or defense of any party nor relevant to the subject matter involved in this proceeding.
2. The ISO objects to these requests to the extent they seek documents protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege.
3. The ISO objects to these requests to the extent they seek information that is equally or more available to Tacoma from publicly available sources or by other means less onerous than the production of documents by the ISO in response to these requests.

TAC / CAISO 1.1

Provide in electronic format all bid, sales, and outage data for the period January 1, 2000 through June 30, 2001. In bid data, please include:

- a. all ancillary services capacity bid data for the day ahead and hour ahead markets;
- b. all scheduled energy and adjustment bids in the day ahead and hour ahead markets;
- c. all real-time energy bids for ancillary services and supplemental energy;
- d. all real-time energy purchases, including out-of-market and out-of-sequence purchases
- e. all outage information available in electronic form

Response: The ISO objects to this request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome and oppressive. The amount of data requested is overwhelming. This data requests essentially seeks the entirety of the ISO's market data and data pertaining to every market participant for an 18-month period, including market data that are wholly unrelated to the issues being addressed in this proceeding. By way of example, there are more than 20,000 tags a year for outages.

The ISO also objects to this request to the extent it seeks information not relevant to the claim or defense of any party, is not reasonably calculated to lead to the discovery of admissible evidence, and seeks data regarding activities/parties that are not relevant to the subject matter of this proceeding.

Respondent: Counsel
Date: November 6, 2002

TAC / CAISO 1.2

Provide in electronic format all summary settlement statements describing settlements between the CAISO and CalPX during the period January 1, 2000 through June 30, 2001.

Response: The ISO will provide its settlement summary file.

Respondent: Counsel

Date: November 6, 2002

TAC / CAISO 1.3

Provide in electronic format all schedules of energy to and from California during the period January 1, 2000 through June 30, 2001. In schedule data, please include:

- a. All ancillary services schedules, including day-ahead and hour-ahead schedules, and any adjustments to such schedules (including those based on Cong)
- b. Real-time interchange energy schedules;
- c. All existing transmission contracts (ETCs), including how those ETCs affect the total capacity available for scheduling on each intertie in the day-ahead, hour-ahead, and real-time markets; and
- d. All uses of capacity benefit margin (CBM) or transmission reserve margin (TRM) to affect availability of intertie capacity in the day-ahead, hour-ahead, and real-time markets.

Response: The ISO objects to this request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome and oppressive. The amount of data requested is overwhelming.

The ISO also objects to this request to the extent it seeks information not relevant to the claim or defense of any party, is not reasonably calculated to lead to the discovery of admissible evidence, and seeks data regarding activities/parties that are not relevant to the subject matter of this proceeding.

Notwithstanding this objection, the ISO notes that it has provided certain information regarding schedules in response to the narrowly tailored discovery of the Commission Staff in this proceeding. *See* documents provided on November 5, 2002 in response to Staff-ISO-3. These documents were provided on a confidential basis subject to the Protective Order.

Respondent: Counsel
Date: November 6, 2002

TAC / CAISO 1.4

Provide all written and electronic records of communication between CAISO and Scheduling Coordinators during the period January 1, 2000 through June 30, 2001. Please include all email (including attachments), paper correspondence, and existing transcripts of recorded phone conversations, between CAISO and Scheduling Coordinators.

Response: The ISO objects to this request on the grounds that it is overbroad, unduly burdensome and oppressive. Identifying and compiling every communication between the ISO and Scheduling Coordinators over a one-and-one-half year period is an overwhelming amount of work and would require substantial effort on the part of ISO personnel.

The ISO also objects to this request to the extent it seeks information not relevant to the claim or defense of any party, and is not reasonably calculated to lead to the discovery of admissible evidence. Tacoma is essentially asking for all communications with every ISO Scheduling Coordinator no matter what the topic of the communications. Hence, Tacoma seeks communications between the ISO and parties that are not the subject of this investigation, as well as communications that pertain to topics that are not the subject of this investigation.

Notwithstanding this objection, the ISO notes that it has provided certain information regarding settlements and schedules in response to narrowly tailored discovery of the Commission Staff in this proceeding. See documents provided on November 5, 2002 in response to Staff-ISO-2 and Staff-ISO-3. These documents were provided on a confidential basis subject to the Protective Order.

Respondent: Counsel
Date: November 6, 2002

TAC / CAISO 1.5

Provide all written and electronic records of communication between CAISO and Scheduling Coordinators relating to transactions with the following scheduling coordinators during the period January 1, 2000 through June 30, 2001:

- a. American Electric Power Services
- b. Avista Energy
- c. Duke Energy Trading & Marketing
- d. Dynegy Power Marketing
- e. El Paso Merchant Energy
- f. Enron Power Marketing
- g. Mirant
- h. Southern Company Energy Marketing
- i. Modesto Irrigation District
- j. Morgan Stanley Capital Group,
- k. PacifiCorp
- l. PacifiCorp Power Marketing
- m. Portland General Electric
- n. Powerex
- o. Puget Sound Energy
- p. Reliant Energy Services
- q. Sempra Energy Trading
- r. Sempra Energy Solutions
- s. TransAlta Energy Marketing
- t. Williams Energy Marketing and Trading

Please include all email (including attachments), paper correspondence, and existing transcripts of recorded phone conversations (regardless of the purpose for which such transcripts were created), between CAISO and Scheduling Coordinator personnel.

Response: The ISO objects to this request on the grounds that it is overbroad, unduly burdensome and oppressive. Identifying and compiling every communication between the ISO and Scheduling Coordinators regarding transactions with the aforementioned parties over a one-and-one-half year period would require substantial effort on the part of ISO personnel.

The ISO also objects to this request to the extent it seeks information not relevant to the claim or defense of any party, and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding this objection, the ISO notes that it has provided certain information regarding settlements and schedules in response to narrowly tailored discovery of the Commission Staff in this proceeding. *See*

documents provided on November 5, 2002 in response to Staff-ISO-2 and Staff-ISO-3. These documents were provided on a confidential basis subject to the Protective Order.

Respondent: Counsel
Date: November 6, 2002

ATTACHMENT B

MARKET NOTICE

November 8, 2002

Request for Confidential Information In Re:
FERC Docket Nos. EL02-113-000, EL02-114-000, and EL02-115-000

ISO Market Participants:

In connection with the above-named dockets, the City of Tacoma, California has served data requests on the ISO for the following information:

“Provide in electronic format all summary settlement statements describing settlements between the CAISO and CalPX during the period January 1, 2000 through June 30, 2001.”

The ISO intends to comply with this data request by providing final daily summary settlement statements by charge type for the PX issued by the ISO during the period from January 1, 2000 through June 30, 2001. The ISO believes that its response will require the provision of information that is confidential and/or commercially sensitive under ISO Tariff Section 20.3. The ISO intends to supply the requested information under the Protective Orders in Docket Nos. EL02-113-000, EL02-114-000, and EL02-115-000 to all parties in these proceedings that have completed the pertinent Non-Disclosure Certificate stating that they will abide by the terms of the Protective Orders.

If any Market Participant objects to the ISO providing this information to these parties pursuant to the terms of the Protective Order, please forward a court or other appropriate order blocking the disclosure of this information to Mr. Charles Robinson, General Counsel of the ISO, no later than noon (PST) on November 12, 2002.

If you have questions about this data request, please contact Mr. Anthony Ivancovich at aivancovich@caiso.com or (916) 608-7135.

Client Relations Communications.0715
CRCommunications@caiso.com