

ALSTON & BIRD LLP

601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, DC 20004-2601

202-756-3300
Fax: 202-756-3333

Bradley R. Miliauskas

Direct Dial: 202-756-3405

Email: bradley.miliauskas@alston.com

November 21, 2005

VIA ELECTRONIC FILING

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. ER06-39-000**

Dear Secretary Salas:

Attached please find the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation, submitted in the above-captioned docket.

Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas

Counsel for the California Independent
System Operator Corporation

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

California Independent System) Docket No. ER06-39-000
Operator Corporation)

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2005), the California Independent System Operator Corporation (“ISO”)¹ submits its answer to the motions to intervene submitted in the captioned proceeding,² and pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO moves to file an answer, and files its answer, to the motion to intervene and protest submitted in the captioned proceeding.³ This proceeding concerns in relevant part the ISO’s filing of a Metered Subsystem (“MSS”) Agreement between the ISO and the City of Anaheim, California (“Anaheim MSS

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

² Motions to intervene were submitted by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California, the City of Santa Clara, California, and the Northern California Power Agency (“NCPA”).

³ Southern California Edison Company (“SCE”) submitted the motion to intervene and protest. The ISO requests waiver of Rule 213(a)(2) (18 C.F.R. § 213(a)(2)) to permit it to make an answer to SCE’s protest. 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 ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

Agreement”). The ISO requested that the Anaheim MSS Agreement be made effective on December 1, 2005.

I. STATEMENT OF ISSUES

In accordance with Rule 203(a)(7), 18 C.F.R. 385.203(a)(7), the ISO provides this Statement of Issues.

1. Whether the Commission should reject portions of the Anaheim MSS Agreement that are very similar to sections in MSS Agreements that were approved by the Commission in the proceeding concerning Amendment No. 46 to the ISO Tariff. See *California Independent System Operator Corporation*, 100 FERC ¶ 61,234, at Ordering Paragraph (C) (2002).
2. Whether the Commission should reject a recital in the Anaheim MSS Agreement on the ground that Anaheim might use the language in the recital in an attempt to override a directive of the Commission.

II. ANSWER

The ISO does not oppose any of the motions to intervene.

SCE argues that the Commission should reject Section 8.2.1 of the Anaheim MSS Agreement on the grounds that it is unjust, unreasonable, and unduly discriminatory. SCE at 5-7. SCE ignores the fact that this section is very similar to sections contained in the NCPA MSS Aggregator Agreement between the ISO and NCPA (“NCPA MSS Agreement”) and in the MSS Agreement

between the ISO and Silicon Valley Power (“SVP MSS Agreement”), both of which were submitted in the proceeding concerning Amendment No. 46 to the ISO Tariff (“Amendment No. 46”). See Amendment No. 46, Docket No. ER02-2321-000 (July 15, 2002), at Attachment C, § 8.2.2 of NCPA MSS Agreement, and at Attachment E, § 8.2.1 of SVP MSS Agreement. Among the fundamental premises of the concept of a MSS is that it is responsible for meeting its own local reliability needs and is permitted to exercise a greater degree of control over its internal Generating Units than ordinary Market Participants. The provisions of Section 8.2.1 are entirely consistent with this concept. Moreover, the Commission accepted both of those MSS Agreements subject to conditions that are not relevant here. See *California Independent System Operator Corporation*, 100 FERC ¶ 61,234, at Ordering Paragraph (C) (2002). Therefore, the Commission should accept the section at issue in this proceeding as well.

SCE also argues that Section 8.2 of the Anaheim MSS Agreement should be rejected on the grounds of being unjust, unreasonable, and unduly discriminatory. SCE at 7. That section is very similar to sections contained in the NCPA MSS Agreement and the SVP MSS Agreement and accepted by the Commission. See Amendment No. 46 at Attachment C, § 8.2 of NCPA MSS Agreement, and at Attachment E, § 8.2.1 of SVP MSS Agreement. Therefore, the Commission should accept the section at issue in this proceeding as well.

SCE expresses the concern that, “if there is a FERC must-offer obligation, or a successor requirement for load serving entities to be resource adequate with a requirement for resource adequacy resources to be available to the ISO for

dispatch,” Anaheim might claim that one of the recitals in the Anaheim MSS Agreement (Recital J) “overrides that requirement.” SCE at 8. SCE has no reason for concern. SCE’s concern is fully addressed in Section 7.3.5 of the Anaheim MSS Agreement, which provides: “Nothing in this Agreement is intended to affect Anaheim’s obligation to comply with any market mitigation requirement, including any must-offer requirement, that the FERC may impose on MSS Operators such as Anaheim.” The language of the recital cannot “override” either this substantive provision of the Anaheim MSS Agreement or a future directive of the Commission. Moreover, the recital simply reflects the Commission’s decision that municipal Generation is not subject to the must-offer obligation. See *San Diego Gas & Elec. Co. v. Sellers of Ancillary Services*, 97 FERC ¶ 61,275 at 62,252 (2001).

III. CONCLUSION

Wherefore, the ISO respectfully requests that the Commission approve the Anaheim MSS Agreement without modification.

Respectfully submitted,

Charles F. Robinson
General Counsel
John Anders
Senior Counsel
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 608-7222

/s/ Michael E. Ward
Michael E. Ward
Bradley R. Miliauskas
Alston & Bird LLP
601 Pennsylvania Avenue, NW
North Building, 10th Floor
Washington, D.C. 20004-2601
Tel: (202) 756-3405
Fax: (202) 756-3333

Dated: November 21, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

/s/ John Anders
John Anders