

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

Public Utilities Providing Service in	)	Docket No. EL04-108-000
California under Sellers' Choice Contracts	)	
	)	

**REQUEST OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
FOR ADOPTION OF CONSENSUS PROPOSAL OF  
NEW PROCEDURAL SCHEDULE**

**To: The Honorable Curtis L. Wagner, Jr.  
Chief Administrative Law Judge**

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, and the *Order of Chief Judge Granting Limited Extension of the Settlement Period, Temporarily Suspending Procedural Schedule, and Canceling Prehearing Conference* issued by the Chief Administrative Law Judge in this docket on December 10, 2004 ("December 10 Order"), the California Independent System Operator Corporation ("CAISO") respectfully requests that the Chief Administrative Law Judge adopt the procedural schedule proposed in Part III of this filing. This proposed schedule reflects a consensus of the parties with contracts remaining in this proceeding and Commission trial staff, and represents the best opportunity to resolve the issues presented by sellers' choice contracts and thereby remove what the CAISO believes is a major impediment to the implementation of its proposed locational marginal pricing ("LMP") congestion management system by the first quarter of 2007.

## **I. BACKGROUND**

1.1 In the *Motion of the California Independent System Operator Corporation Requesting Extension of the Settlement Period, and Suspension of the Prehearing Conference and the Procedural Schedule*, Docket No. EL04-108-000 (December 10, 2004) (“December 10 Motion”), the CAISO requested that the Chief Administrative Law Judge: (i) extend the settlement procedures in this proceeding until February 18, 2005, (ii) suspend the prehearing conference scheduled for December 15, 2004, and (iii) suspend the procedural schedule and permit the CAISO to submit a consensus proposal of the parties and Commission trial staff for a new procedural schedule by December 17, 2004.

1.2 In a *Status Report to the Commission* issued on December 9, 2004 (“Status Report”), the Settlement Judge in this proceeding expressed her support for the CAISO’s then-forthcoming recommendation of an extension of the settlement procedures until February 18, 2005, and also recommended that the prehearing conference be suspended.

1.3 In the December 10 Order, the Chief Administrative Law Judge: (i) extended the settlement procedures until January 18, 2005, noting that he would consider any request of the parties that settlement procedures continue thereafter in parallel with hearing procedures, (ii) canceled the prehearing conference, and (iii) suspended the procedural schedule and directed the CAISO to submit a consensus proposal for a new procedural schedule by December 17, 2004.

1.4 This filing proposes a new procedural schedule as directed by the Chief Administrative Law Judge. The proposed schedule reflects a consensus of the parties with contracts remaining in the proceeding and Commission trial staff. The CAISO also

offers additional factual information in support of the schedule as affording the greatest chance for implementing LMP by the first quarter of 2007.

## **II. FACTUAL BACKGROUND UNDERLYING THE PROPOSED SCHEDULE**

2.1 As noted in the Settlement Judge's Status Report, only contracts with six counterparties remain in the proceeding from the contracts of the California Energy Resources Scheduling Division ("CERS") of the California Department of Water Resources listed on Attachment B to the Commission's *Order on Further Development of the California ISO's Market Redesign and Establishing Hearing Procedures*, issued on June 17, 2004; the other CERS contracts are already subjects of motions to dismiss. The six remaining counterparties of CERS are: Calpine Energy Services; Coral Power, LLC; Power Receivable Finance, LLC; High Desert Power Marketing, Inc.; PPM Energy, Inc. f/k/a PacifiCorp Power Marketing, Inc.; and Sempra Energy Resources.

2.2 Based on discussions with CERS and several of the counterparties to its contracts remaining in this proceeding, the CAISO believes that CERS and its counterparties are close to reaching settlement agreements resolving issues that might arise from the existence of sellers' choice contracts under LMP. The two basic issues that have been addressed in the settlement discussions are: i) determining a delivery point for contracts that call for delivery to an existing congestion management zone ("zonal delivery contracts") to the extent the zones are eliminated under LMP, and ii) mitigating the financial consequences of contracts that might be interpreted to permit the seller to designate low cost nodes as delivery points ("nodal delivery contracts").

2.3 As described in paragraph 1.10 of the CAISO's December 10 Motion, concurrently with the parties' settlement efforts to date in this proceeding, the CAISO has conducted a stakeholder process concerning the development of trading hubs under an LMP congestion management system, which has culminated in a market notice containing the CAISO's proposal for "existing zone generator trading hubs." Based on communications with CERS and other parties in the proceeding, the CAISO now believes that the existing zone generator trading hubs will form the basis of settlement for the zonal delivery contracts remaining in this proceeding. The CAISO also understands that the parties to the zonal delivery contracts believe these settlements can be reached by January 18, 2005, the date for the conclusion of settlement procedures established by the December 10 Order.

2.4 As described in paragraph 1.11 of the CAISO's December 10 Motion, at a settlement conference on November 9, 2004, the CAISO announced its intention to develop a proposal for the CAISO's inter-Scheduling Coordinator trade settlement services under LMP, to be used for settling bilateral contracts, that would require physical validation of inter-Scheduling Coordinator trades at specific nodes (the "physical validation proposal"). The physical validation proposal, as currently structured, would require that the schedules pursuant to which sellers deliver power under the nodal delivery contracts must be backed by a physical resource, thereby ameliorating, if not eliminating, the financial consequences of nodal delivery contracts. The CAISO understands that the parties to the nodal delivery contracts remaining in this proceeding are making progress toward settlements based on this physical validation proposal. However, due to the time required for the full development of the proposal, and for filing

and obtaining approval of the proposal by the Commission, which the CAISO understands will be a condition of these settlements, it will not be possible for these settlements to be completed by January 18, 2005. Rather, as made clear by the timeline discussed below, these settlements cannot become fully effective until early March 2005 at the earliest, because they will be contingent upon Commission approval of the CAISO's physical validation proposal, which will be the subject of a separate Section 205 filing as described in the next paragraph.

2.5 In developing the physical validation proposal, the CAISO has, to date, issued a White Paper and has held one stakeholder meeting. A second stakeholder meeting is scheduled for January 11, 2005. The CAISO now intends to seek approval of the physical validation proposal from its Governing Board in late January 2005, the next scheduled board meeting, to submit the proposal to the Commission in very early February 2005, and to request that the Commission approve it on an expedited basis, *i.e.*, by the end of February 2005. The CAISO has engaged in extended discussions with market participants outside the formal stakeholder meetings, and will continue to do so, in an effort to ensure that this proposal addresses to the extent possible the consensus of the market participants, while still resolving the seller's choice problems and, therefore, that it will receive minimal, if any, opposition before the Commission, thus allowing the Commission to act on the expedited schedule the CAISO will request.

2.6 Based on discussions with CERS and its counterparties, the CAISO believes the nodal delivery contracts will be settled, in principle, once the CAISO's physical validation proposal is approved by the CAISO's Governing Board, *i.e.*, in late January 2005, but that these settlements will be conditioned on the Commission's

approval of the physical validation proposal. If the Commission does approve the proposal, the settlements will be finalized; the issues raised by nodal delivery contracts, like those raised by the zonal delivery contracts, will be resolved, thereby eliminating what the CAISO believes is a major impediment to meeting its first quarter 2007 target for implementing LMP.

2.7 The CAISO is now dedicating significant resources to development of the physical validation proposal and will devote these same resources to developing the supporting documentation for submitting the proposal to the Commission and responding to any comments on the proposal. These are the same resources that would have to be devoted to any litigation concerning the treatment of sellers' choice contracts under LMP. The CAISO respectfully suggests that, through the end of February, it should be allowed to devote these resources fully to the effort to develop and attain expedited Commission approval of the physical validation proposal, rather than having to divert these resources to prepare for a hearing that will not occur if CERS and its counterparties reach the expected settlements and the Commission approves the proposal. The CAISO also believes that allowing CERS and its counterparties to continue to focus on completing their settlements and reaching consensus with the CAISO on the physical validation proposal, rather than themselves diverting scarce time and resources to prepare for hearing, will best further the interests of all parties, and the Commission, in the earliest possible implementation of LMP. Accordingly, the CAISO proposes a litigation schedule that recognizes the importance of developing and supporting the physical validation proposal, in order to facilitate the complete settlement of this proceeding and to avoid litigation.

2.8 Moreover, even if the parties are unable to reach complete consensus on the physical validation proposal, it would still make sense to allow the time necessary to fully develop the proposal and obtain a ruling from the Commission before turning this proceeding from a settlement phase to litigation. More specifically, whether or not all of the market participants agree on all of the precise parameters of the physical validation proposal, the CAISO will file a proposal with the Commission in very early February. If approved, such a proposal would have a significant impact on the scope of whatever hearing may be necessary in the seller's choice proceeding. Until the Commission renders a decision on the physical validation proposal, however, the scope of the issues actually in dispute among the parties in this proceeding will remain unclear.

2.9 Confidential Attachment B to the Settling Judge's Status Report listed approximately 100 contracts remaining in the proceeding, in addition to the CERS contracts. It is the CAISO's understanding that most if not all of these contracts will be either dismissed or settled when CERS and its counterparties reach settlement. Thus, the key to terminating this proceeding and permitting the CAISO to proceed with development of LMP is the successful resolution of the CERS contracts along the lines discussed above.

2.10 While wishing to avoid the diversion of its own and others' scarce time and resources during the development of and approval process for the physical validation proposal, the CAISO also recognizes that if a hearing does unexpectedly prove necessary, it will need to be expedited in order to attempt to preserve the CAISO's ability to implement LMP on the current schedule. Therefore, the schedule proposed below starts after the anticipated Commission action on the physical validation proposal but proceeds

thereafter on an extremely compressed timeline, in order to adhere as closely as possible to the current date of April 29, 2005 for an Initial Decision.<sup>1</sup>

### **III. PROPOSED PROCEDURAL SCHEDULE**

3.1 For the reasons stated above, the CAISO requests that the Chief Administrative Law Judge adopt the following procedural schedule for any hearing in this proceeding, in place of the existing procedural schedule:

<u>Date</u>	<u>Event</u>
March 2, 2005	Prehearing conference to identify issues left for hearing.
March 21, 2005	First round of testimony – all parties and Commission trial staff
March 30, 2005	Second round of testimony – all parties and Commission trial staff
April 5, 2005	Hearing commences
April 22, 2005	Initial briefs
April 29, 2005	Reply Briefs
May 28, 2005	Initial Decision

3.2 The CAISO is authorized to state that CERS and all its counterparties with contracts remaining in this proceeding, as well as Commission trial staff, support the request for adoption of this proposed schedule to provide the CAISO time to prepare and

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<sup>1</sup> The April 29, 2005 date was established in the *Substitute Designation of Presiding Administrative Law Judge and Extension of Initial Decision Deadline*, Docket No. EL04-108-000 (November 23, 2004) as modified by *Errata: Substitute Designation of Presiding Administrative Law Judge and Extension of Initial Decision Deadline* (November 24, 2004).

file, and the Commission time to consider, the physical validation proposal before commencement of any hearing procedures in this proceeding. In addition, parties to most of the approximately 100 additional contracts remaining in the proceeding (discussed in paragraph 2.9 above) have authorized the CAISO to state that they support the request, and the CAISO is aware of no party that opposes the request. Such support is provided by the parties described above without prejudice to their right to maintain previously-stated, and to raise future, due process objections relating to the compressed nature of the hearing procedures in this proceeding.<sup>2</sup>

### **III. CONCLUSION**

In order that the parties to the remaining sellers' choice contracts have the greatest opportunity to reach a settlement in this proceeding and thereby remove these contracts as an impediment to the CAISO's implementation of LMP by the first quarter of 2007,

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<sup>2</sup> See, e.g., *Request For Rehearing And Clarification Of The Indicated Sellers* at 2, Docket No. EL04-108-001 (July 12, 2004) (arguing that the "expedited nature of these proceedings [] threatens to deny the due process to which Indicated Sellers and others are entitled.").

the CAISO respectfully requests that the Chief Administrative Law Judge adopt the procedural schedule proposed above.

Respectfully Submitted,

Charles F. Robinson  
General Counsel  
Sidney L. Mannheim  
Regulatory Counsel  
The California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630

/s/ J. Phillip Jordan  
J. Phillip Jordan  
Ronald E. Minsk  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W.  
Suite 300  
Washington, DC 20007  
(202) 424-7500

Counsel to the California Independent  
System Operator Corporation

Dated: December 17, 2004

### **Certificate of Service**

I hereby certify that I have this day served a copy of this document by posting it to the public document listserv, consistent with the guidelines contained in the Presiding Administrative Law Judge's Prehearing Order of July 1, 2004. Dated at Washington, DC this 17<sup>th</sup> day of December, 2004.

/s/ Ronald E. Minsk  
Ronald E. Minsk