

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

)	
Coral Power, L.L.C)	
Enron Power Marketing, Inc.)	
Arizona Public Service Company)	
Cargill-Alliant, LLC))
San Diego Gas & Electric Company)	
Avista Energy, Inc.)	
Sempra Energy Trading Corp.)	
PacifiCorp)	Docket No. EL01-36-000
Constellation Power Source,)	
)	
Complainants)	
)	
v.)	
)	
California Power Exchange Corp.)	
)	
Respondent)	

**MOTION TO INTERVENE AND RESPONSE TO THE ANSWER OF
THE CALIFORNIA POWER EXCHANGE OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 211 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214, and the Commission’s February 12, 2001 Notice, the California Independent System Operator Corporation (“ISO”) hereby moves to intervene in the above-identified proceeding and submits the comments, which respond to proposals made for the first time in the Answer filed by the California Power Exchange (“PX”) in this proceeding on February 12, 2001.

I. BACKGROUND

This proceeding concerns a complaint filed by various participants¹ in the PX markets seeking a Commission determination that the PX's attempt to implement "chargebacks" to sellers into the PX market for defaults of certain other PX market purchasers is unauthorized by the PX Tariff and is unjust and unreasonable given current circumstances in California. The Complainants argue that the PX's chargeback mechanism² was not designed to recoup large defaults by the PX's utility buyers, but rather to address defaults resulting from the failure of suppliers participating in the PX markets to deliver power. The Complainants also assert that the PX is improperly applying the chargeback mechanism in an iterative manner, such that as subsequent PX Participants default on chargeback payments to the PX, the PX, in order to make up for these shortfalls, seeks to force increasingly greater chargeback liabilities on a shrinking pool of PX Participants. Finally, the Complainants maintain that the PX's plan to use the chargeback mechanism in order to recover PX defaults to the ISO, pursuant to the PX's role as a Scheduling Coordinator in accordance with the ISO Tariff, in addition to defaults in the PX markets, is without basis in law. Citing an "immediate and devastating blow to electricity markets throughout the West" caused by the PX's attempt to impose chargebacks on sellers into its

¹ Coral Power, L.L.C., Enron Power Marketing, Inc., Arizona Public Service Company, Cargill-Alliant, LLC, San Diego Gas & Electric Company, Avista Energy, Inc., Sempra Energy Trading Corp., PacifiCorp, and Constellation Power Source, referred to jointly herein as "Complainants."

² The PX's chargeback authority is described in Section 5.3 of Schedule 2 of the PX Tariff. It states that "in the event that amounts owed to the PX Participants on a payout date cannot be fully paid due to an insufficiency of funds in the PX clearing accounts, the PX will allocate the shortage to the PX Participants using the proportional chargeback methodology"

markets, the Complainants request that the Commission order a temporary standstill preventing further application of the PX's chargeback mechanism.

On February 12, 2001, the PX filed with the Commission its "initial" Answer to the complaint, which it characterizes as "strictly limited to addressing the procedural proposal" for a Commission order by February 14, 2001 directing a standstill of the chargeback provision of the PX Tariff. In that answer, the PX, while refusing to concede the merits of the complaint, expresses its support for the Commission's issuance of the standstill order as requested by Complainants, subject to certain conditions, including suspension of the portions of both the ISO's Tariff and the PX/ISO Scheduling Coordinator Agreement that hold the PX responsible for amounts owed to the ISO by PX participants.³ The PX argues that such a suspension is necessary in order to avoid leaving it in an untenable position of exposure to ongoing financial liability due to payment obligations to the ISO.⁴ Finally, the PX requests that the ISO be named as a respondent in this matter.

II. MOTION TO INTERVENE

The ISO is a non-profit public benefit corporation organized under the laws of the State of California and responsible for the reliable operation of a grid comprising the transmission systems of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (the "ISO Controlled Grid"). The ISO is also the Control Area Operator for the ISO

³ The PX states that its support for the standstill order is also conditioned upon the Commission adopting a standstill of the relevant portions of the PX Tariff that govern its payment obligations to creditors, allowing the PX to continue to engage in its normal invoicing process for the Core and PX Trading Services markets, and making any order binding as to all PX participants and the ISO.

⁴ In its answer, the PX notes that while this complaint is pending, it does intend to pay the ISO's Grid Management Charge.

Controlled Grid and other areas of California that constitute the ISO Control Area. In order to reliably operate the ISO Controlled Grid and satisfy its obligations as Control Area Operator, the ISO accepts forward transmission, load and generation schedules from entities that have entered into Scheduling Coordinator Agreements with the ISO. The ISO also allocates various costs associated with maintaining system reliability to those Scheduling Coordinators.

While the scope of the complaint initiating these proceedings does not directly implicate the ISO, the PX's answer to that complaint raises serious issues concerning the suspension of provisions of the ISO Tariff and the Scheduling Coordinator Agreement between the ISO and PX. The ISO therefore has a unique interest in this proceeding. In addition, because the suspension of the ISO Tariff and SC Agreement provisions may have serious financial consequences for the ISO, which in turn could affect the reliability of the ISO Controlled Grid, it is in the public interest that the ISO participate in this proceeding.

The ISO should therefore be permitted to intervene in this proceeding.

III. RESPONSE TO PROPOSALS PRESENTED IN THE PX'S ANSWER

While the ISO takes no position on the appropriateness of a standstill of the chargeback provisions of the PX Tariff, the ISO strongly disagrees with the PX's proposal that any such standstill order be made conditional upon the suspension of the portions of the ISO's Tariff and SC Agreement with the PX that hold the PX liable for amounts owed to the ISO.

The PX's request for suspension of ISO Tariff and SC Agreement provisions is wholly inappropriate in the context of this proceeding. This proceeding involves a complaint by a certain class of PX Participants regarding the PX's role as an operator of the Day-Ahead and Hour-Ahead markets for

energy. That function is entirely separate and distinct from the PX's role as a Scheduling Coordinator, in which the PX submits schedules to the ISO on behalf of certain utilities and market participants and is responsible for certain charges and payments relating to Ancillary Services, Imbalance Energy, transmission service and other reliability-based services provided by the ISO. Moreover, the PX's market operation functions are governed by the PX Tariff, while the PX's duties and responsibilities as a Scheduling Coordinator are governed by the ISO Tariff and the PX's SC Agreement. As such, the decision as to whether or not to order a standstill of the PX's chargeback authority does not impact the PX's responsibilities as a Scheduling Coordinator under the ISO Tariff.

While the ISO is certainly sympathetic to the PX's concerns relating to financial risks, it is important to note that the ISO Tariff contains specific procedures to deal with situations in which a Scheduling Coordinator defaults on payments due to the ISO.⁵ Granting the PX's request for suspension because of a possibility that the very conditions that these Tariff provisions were created to address might come to pass would render them effectively meaningless. Moreover, suspension of ISO Tariff provisions with respect to the PX would have consequences far beyond and unrelated to the issues raised by Complainants' in this proceeding. It is, therefore, in the interest of administrative efficiency and sound regulatory practice to deal with such issues in a separate proceeding.

The PX's argument that the ISO should be named as a respondent in this matter because of "related issues under the CAISO tariff raised by the Complaint" is also without merit. The only reference in the complaint to the ISO Tariff is found in the Complainants' argument that the PX is without authority to chargeback to market participants amounts owed to the ISO by the PX pursuant

⁵ See, e.g., California Independent System Operator Corporation, FERC Electric Tariff, First Replacement Volume No. 1 at § 11.16.1 (providing for pro rata reductions of payments to ISO Creditors in the event that the ISO has insufficient funds to cover all such payments in full).

to its function as a Scheduling Coordinator. While this argument does mention the ISO Tariff, it is entirely concerned with behavior on the part of the PX. The Complainants simply use a provision of the ISO Tariff as a reference point for interpreting the PX Tariff. Nowhere does the complaint assert that the ISO has acted inappropriately, nor does it urge modification of any ISO practice. The mere mention of the ISO Tariff cannot, as some sort of “magic phrase,” serve to make the ISO a respondent to a complaint that does not actually implicate any ISO policy or course of action.

Even if the relief sought by the PX were substantively appropriate, the PX has chosen a procedurally defective means to pursue it. The Commission’s precedents are clear that a party seeking to modify a tariff of a jurisdictional entity, such as the ISO Tariff, must do so through a separate complaint. *See, e.g., Louisiana Power & Light Company*, 50 FERC ¶ 61,040 at 61,062-63 (1990) (stating that “a complaint cannot submitted as an integral part of a protest and motion to intervene in an ongoing proceeding; it does not allow interested parties sufficient notice of the complaint because it is not formally docketed and noticed”); *Lakeland Pipe Line Company, L.P.*, 65 FERC ¶ 63,021 at 65,129 (1993) (“[T]he Commission’s regulations make clear that the proper ‘petition’ to challenge [a pipeline company’s] pre-existing rates is a complaint”). If the PX feels that the financial obligations imposed upon it under the ISO Tariff and its SC Agreement are improper and should be modified, then the proper vehicle in which to present such arguments and to demand changes to those jurisdictional documents would be a separate proceeding that provides affected parties, including the ISO, sufficient notice and the opportunity to meaningfully participate.

Finally, the ISO notes that both the Complainants and the PX have requested that the Commission act upon this matter in an expedited fashion.

The ISO agrees that the issues raised in the complaint are of paramount importance, and that the failure to resolve them immediately could have significant consequences for the California electricity markets. Therefore, the ISO joins with the Complainants and the PX in requesting that the Commission address this complaint as swiftly as possible.

IV. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

Roger Smith, Senior
Regulatory Counsel
Deborah A. Le Vine, Director
of Contracts
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-2334
Fax: (916) 351-2350

Edward Berlin
Kenneth G. Jaffe
Sean A. Atkins
Michael Kunselman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., #300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

V. CONCLUSION

Based on the foregoing, the ISO respectfully requests that the Commission permit it to intervene, according it full party status in this proceeding, and that the Commission reject the PX's proposal to suspend portions of the ISO Tariff and the SC Agreement between the PX and ISO that hold the PX responsible for amounts owed to the ISO pursuant to its function as a Scheduling Coordinator. In addition, the Commission should reject the PX's request that the ISO be named as a respondent in this action.

Respectfully submitted,

Charles F. Robinson
Vice President and General Counsel
Roger E. Smith, Regulatory Counsel
California Independent
System Operator Corporation
Folsom, CA 95630
Tel: (916) 351-2334
Fax: (916) 351-2350

Edward Berlin
Kenneth G. Jaffe
Sean A. Atkins
Michael Kunselman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., #300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

Attorneys for the California Independent System Operator Corporation

Date: February 28, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this Docket No. EL01-36-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2000).

Dated at Washington, D.C. on this 28th day of February, 2001.

Michael Kunselman

February 28, 2001

David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **Coral Power, LLC, et al. v. California Power Exchange Corp.**
Docket No. EL01-36-000

Dear Secretary Boergers:

Enclosed for filing are one original and 14 copies of the Motion to Intervene and Response to the Answer of the California Power Exchange of the California Independent System Operator Corporation in the above-identified docket. An additional copy of the filing is also enclosed. Please stamp the additional copy with the date and time filed and return it to the messenger.

Thank you for your assistance in this matter.

Respectfully submitted,

Michael Kunselman

Counsel for the California
Independent System Operator Corporation