

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

Pacific Gas and Electric Company

Docket No. ER21-2592-000

CXA La Paloma, LLC

Docket No. EL23-24-000

v.

**California Independent System
Operator Corporation**

(not consolidated)

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S
ANSWER IN OPPOSITION
TO CXA LA PALOMA'S MOTION FOR CONSOLIDATION OF RELATED
PROCEEDINGS, OR, IN THE ALTERNATIVE, TO
HOLD PROCEEDING IN ABEYANCE**

The California Independent System Operator Corporation ("CAISO") submits this answer in opposition to CXA La Paloma, LLC's ("La Paloma") Motion for Consolidation of Related Proceedings or, in the Alternative, to Hold Proceeding in Abeyance ("Motion").¹ The CAISO opposes La Paloma's motion to consolidate its complaint against the CAISO in EL23-24 ("Complaint," "Complaint Proceeding") and the Replacement Generator Interconnection Agreement Proceeding in ER21-2592 ("Replacement GIA Proceeding"). Although the two proceedings have the same set of facts and parties, the burden of proof, standard of review,² and procedural postures are

¹ The CAISO submits this answer pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.213.

² The Replacement GIA Proceeding requires the filing party to demonstrate the GIA is just and reasonable. The CAISO has met this burden in its initial brief. In contrast, a Section 206 complaint

irreconcilably distinct. Consolidation would undermine administrative efficiency by delaying a proceeding and paper hearing already well underway. Such a delay would significantly prejudice the CAISO.

The CAISO timely submitted its brief in the Replacement GIA Proceeding hearing process. In contrast, La Paloma failed to submit a brief despite the Commission's order directing that La Paloma address two questions in its initial brief and provide supporting documentation in support of its position.³ Instead, it filed a Complaint, creating a second proceeding in an attempt to grant itself a reprieve for failing to meet the Commission's directive. La Paloma also seeks to hold in abeyance a proceeding the Commission ordered, less than three months ago, should no longer be in abeyance. The Commission should thus dismiss La Paloma's request to consolidate and alternative request to hold a proceeding in abeyance. La Paloma seeks to delay the resolution of the Replacement GIA Proceeding despite its failure to present its arguments in the hearing against the expectations of the Commission and the parties.

I. Answer

A. Consolidation Undermines Administrative Efficiency by Delaying Resolution of a Proceeding in Which the Hearing Process is Nearly Complete

The Commission evaluates the consolidation of proceedings using a two-part test: finding consolidation is appropriate only if (1) a hearing is required to resolve common issues of law and fact and (2) consolidation will ultimately result in greater

requires the complainant to demonstrate that the tariff or administration of the tariff is unjust or unreasonable. La Paloma has not provided allegations or facts supporting this in its Complaint.

³ Order Lifting Abeyance and Establishing Paper Hearing Briefing Schedule, Docket No. ER21-2592, 181 FERC ¶ 61,204, at P 7 (Dec. 15, 2022), ("Dec. 15 Order").

administrative efficiency.⁴ The situations surrounding these two proceedings fail both elements.

First, La Paloma's Complaint against the CAISO is not set for hearing, yet the Replacement GIA Proceeding is set for end of hearing on March 15, *only six days* after answers to this Motion are due. The Commission has denied motions for consolidation in each of these situations: where one proceeding has not been set for hearing,⁵ and where one proceeding already has a hearing underway.⁶ *Both* situations are true here. La Paloma's Motion presumes the Complaint will be set for hearing, when in fact it has not, and the Commission may still dismiss the Complaint entirely. La Paloma's Motion fails to even acknowledge the existence of the December 15 Order lifting abeyance of the Replacement GIA Proceeding and establishing a paper hearing schedule for that proceeding.⁷ With the paper hearing quickly approaching conclusion in the Replacement GIA Proceeding, there is no opportunity to consolidate for purposes of hearing without allowing La Paloma the opportunity to re-litigate the issues in that proceeding. Because La Paloma inexplicably failed to file an initial brief in the Replacement GIA Proceeding, setting a new hearing would result in a new procedural

⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,095, 61,745 (2020); *see also Midcontinent Express Pipeline LLC Enogex Inc.*, 124 FERC ¶ 61,089, 61,479 (2008).

⁵ *See, CNG Transmission Corp.*, 53 FERC ¶ 61,122, 61,388 (1990) (denying motion to consolidate and finding "some of the proceedings sought to be consolidated have not been referred for hearing before an ALJ, but are pending before the Commission.").

⁶ *See, Trans-Elect Path 15, LLC California Indep. Sys. Operator Corp.*, 115 FERC ¶ 61,179, 61,666 (2006) (denying motion to consolidate proceedings in case where the hearing in one proceeding had already been completed).

⁷ In its February 22 Motion, La Paloma fails to disclose it did not file an initial brief in the Replacement GIA Proceeding when that initial brief was due on February 13.

schedule that allows La Paloma a complete reprieve to file a brief. This would impede the Commission's intent to resolve the disputed facts in that proceeding.⁸ Doing so would prejudice the CAISO, which has already articulated its arguments and provided the evidence expressly requested of *all parties* by the Commission demonstrating that the Replacement GIA is just and reasonable. The CAISO has received nothing from La Paloma, notwithstanding the Commission's directive that La Paloma provide supporting documentation to support its position with its initial brief.

Secondly, the mismatch in procedural postures between the two proceedings also undermines the second element of the Commission's test, in that the disparate timing of the proceedings would unnecessarily delay resolution of the Replacement GIA Proceeding. Consolidation of this new Complaint with a proceeding in which a hearing is well underway would not "serve the goals of administrative avoidance and undue delay" because it "will result in the delay of the established procedural schedule in the on-going [proceeding]."⁹ It would instead allow for the re-litigation of the common issue of material fact where La Paloma has failed to articulate its arguments and failed to submit an initial brief in the ongoing hearing already set to resolve this disputed fact.

Commission precedent is clear that parties must "raise issues for Commission consideration in a timely fashion so that all parties have a meaningful opportunity to respond."¹⁰ The Commission's December 15 Order establishing the paper hearing schedule in the Replacement GIA Proceeding plainly indicates that it expected La

⁸ The Commission's Dec. 15 Order states that "[n]o answers or additional briefs will be permitted." at 5.

⁹ See, *Golden Spread Elec. Coop., Inc.*, 150 FERC ¶ 63,003, 66,008 (2015).

¹⁰ *Midwest Indep. Transmission Sys. Operator Inc.*, 113 FERC ¶ 61,238 (2005).

Paloma to file an initial brief: it addressed several questions to “parties,” two of which specifically target La Paloma’s claims and request documentation unavailable to any party but La Paloma.¹¹ The Commission expressly stated, “No answers or additional briefs will be permitted.”¹² Granting La Paloma’s Motion would contravene established Commission precedent regarding reply briefs by allowing La Paloma to disregard the initial brief schedule and offer new arguments and evidence in a consolidated proceeding. In several cases, the Commission has prohibited reply briefs when a party failed to file an initial brief.¹³ Commission Administrative Law Judges also have prohibited parties from raising new arguments in reply.¹⁴ La Paloma asks the Commission to allow them to do both here. The Commission should reject La Paloma’s attempt to run out the procedural clock and then shoehorn new arguments at the last hour. Doing otherwise would deprive opposing parties the opportunity to respond.

In addition to its failure to participate in the Replacement GIA Proceeding paper hearing process, the timing of La Paloma’s Complaint and then later-filed consolidation motion are also suspect. La Paloma states it submits its Motion to “efficiently and effectively resolve both disputes, which share common issues and facts.”¹⁵ La

¹¹ Dec. 15 Order, see pg. 4-5, questions to parties nos. 4 and 5.

¹² *Id.* at 5.

¹³ See, for example, *El Paso Natural Gas Co.*, 46 FERC ¶ 63,029 at 65,104 (1989) (ignoring reply brief of party who did not file initial brief because all parties wishing to address issues must set forth their position in an initial brief so that other participants could respond in their reply briefs).

¹⁴ See *Confederated Salish and Kootenai Tribes and Energy Keepers Incorporated*, 156 FERC § 63,036 (2016) (noting that submitting new arguments and new evidence on reply “deprives opposing participants of any opportunity to respond, thus depriving them due process.”); see also *Texas Eastern Transmission Corp.*, 39 FERC ¶ 63,036 at 65,204 (1987) (motion to strike granted because “to hold otherwise would deny [the] opponents a chance to... refute late evidence....”).

¹⁵ Motion at 1.

Paloma's Motion is premised on the pending proceedings including "the same facts or circumstances, similar parties, and similar issues."¹⁶ La Paloma is instead withholding arguments and delaying resolution with procedural diversions. La Paloma's statements about its interest in efficiency are belied by its actions.

It is important to note that La Paloma has had *seventeen months*, since the filing that initiated the Replacement GIA Proceeding to file any Complaint it believed appropriate against the CAISO.¹⁷ La Paloma cannot now claim its interests are aligned with administrative efficiency and avoiding undue delay. The original Replacement GIA Proceeding was started by the filing of the agreement in August 2021.¹⁸ La Paloma and the CAISO intervened in August 2021.¹⁹ The dispute was sent to settlement in December 2021.²⁰ When settlement reached an impasse, the Chief Judge terminated settlement and sent the dispute back to the Commission for paper hearing in July 2022.²¹ In December 2022, the Commission established the paper hearing briefing

¹⁶ Motion at 3.

¹⁷ Motion at 4, citing La Paloma's Complaint which alleges that, "CAISO seeks to use the conversion of La Paloma's Grandfathered GIA with PG&E to the three-party Large Generator Interconnection Agreement [...] to deprive CXA La Paloma of interconnection capacity it was entitled to use or transfer pursuant to Commission orders, the CAISO Tariff, and the Grandfathered GIA." *CXA La Paloma, LLC v. Cal. Indep. Sys. Op. Corp.*, Complaint of CXA La Paloma, LLC, Docket No. EL23-24-000, at 3 (filed Jan. 23, 2023).

¹⁸ *Pac. Gas & Electric Co. submits tariff filing per 35.13(a)(2)(iii): CXA La Paloma Unexecuted LGIA*, Docket No. ER21-2592 (filed Aug. 2, 2021).

¹⁹ *Motion to Intervene and Comments of the California Indep. Sys. Operator Corp.*, Docket No. ER21-2592 (filed Aug. 23, 2021); *Motion to Intervene and Protest of CXA La Paloma, LLC*, Docket No. ER21-2592 (filed Aug. 23, 2021).

²⁰ *Order Accepting and Suspending Unexecuted Large Generator Interconnection Agreement and Establishing Paper Hearing and Settlement Judge Procedures*, Docket No. ER21-2592 (filed Dec. 21, 2021).

²¹ *Order of Chief Judge Terminating Settlement Judge*, Docket No. ER21-2592 (filed June 14, 2022).

schedule with initial briefs due February 13, 2023.²² La Paloma waited until January 23, 2023 to file its Complaint, a full year and five months after the CAISO's intervention and comments in the Replacement GIA Proceeding and after the Commission had already established a paper hearing schedule in that proceeding. La Paloma then failed to submit a brief in the Replacement GIA Proceeding as the Commission directed in its December 15 Order. In its Motion to Consolidate, La Paloma admits its Complaint cites to the CAISO's comments in the Replacement GIA filing as its source for the alleged wrongdoing by the CAISO.²³ No new facts or circumstances came to light during the last ten months since settlement ended, and La Paloma alleges nothing new here. La Paloma had ample time to file a complaint long before what now appears to be a last-ditch effort to extend the Replacement GIA Proceeding as it nears resolution.

La Paloma's Motion only seeks to extend the paper hearing process already in play and in which La Paloma has thus far failed to participate. The CAISO has provided a timely initial brief in the Replacement GIA Proceeding. The CAISO even included nineteen exhibits as ample evidence that shows La Paloma's claims are baseless. A new briefing schedule in a consolidated proceeding would disadvantage the CAISO, who has already provided evidence demonstrating the justness and reasonableness of the Replacement GIA but has yet to see any evidence from La Paloma except for a single affidavit by an expert who has elsewhere contradicted his own attestation.²⁴

²² *Order Lifting Abeyance and Establishing Paper Hearing Briefing Schedule*, Docket No. ER21-2592 (filed Dec. 15, 2022).

²³ Motion at 4. *See also*, Complaint at 14 and 27.

²⁴ *See Initial Brief of the California Indep. Sys. Operator Corp.*, Docket No. ER21-2592 (filed Feb. 13, 2023) at 28; *and Answer of the California Indep. Sys. Operator Corp. to Complaint of CXA La Paloma, LLC*, Docket No. EL23-24 (filed Feb. 22, 2023) at 18.

B. La Paloma Demonstrates No Good Cause to Hold the Replacement GIA Proceeding in Abeyance

The facts also support denying the alternative motion to hold the Replacement GIA Proceeding in abeyance. The Commission has already identified the issue of material fact in this proceeding, which is what capacity facility La Paloma constructed. This issue is already before the Commission in the paper hearing process in the Replacement GIA Proceeding. Holding that proceeding in abeyance would only serve to delay the resolution and cause redundant litigation to begin again in the Complaint Proceeding. Indeed, the Commission decided less than three months ago to lift a prior abeyance that applied to the Replacement GIA Proceeding, and La Paloma provides no basis for reversing the Commission's decision in the December 15 Order. Moreover, the Commission may still dismiss La Paloma's Complaint because it is baseless. There is no cause to delay the Replacement GIA Proceeding so close to resolution.

If anything, La Paloma's Motion only demonstrates that the Commission could defer action on the *Complaint* pending the resolution of the Replacement GIA Proceeding.²⁵ La Paloma argues consolidation or abeyance is necessary because of concerns that the Complaint Proceeding "may be hindered by an inconsistent result in the [Replacement GIA Proceeding],"²⁶ and that "[i]f the proceedings are not coordinated, there is the potential that the Commission could resolve the [Replacement GIA Proceeding] in a manner that would undermine, or be inconsistent with, the relief

²⁵ The CAISO filed its answer to La Paloma's Complaint on Feb. 22, 2023, Docket No. EL23-24. The CAISO argues that the Commission should dismiss the Complaint, as La Paloma has failed to allege that the CAISO's tariff or interpretation of its tariff is unjust and unreasonable.

²⁶ Motion at 3.

requested in the Complaint.”²⁷ The Commission should find these assertions unpersuasive. There can be no expectation that on the same facts and with the same evidence that the same Commission would resolve the two proceedings in an inconsistent way. In actuality, if La Paloma was truly interested in judicial efficiency, it would prefer the common issue of fact be timely resolved in the current Replacement GIA Proceeding where it is already before the Commission and where a hearing is almost complete. In other cases, the Commission has disallowed the re-litigation of issues already before the Commission in related proceedings, holding those later proceedings in abeyance pending the resolution of the more advanced proceedings in which the evidence was ready for hearing and decision.²⁸ Indeed, the Chief Judge has granted motions to hold a proceeding in abeyance in situations where “adjudication of the first case may facilitate adjudication of the instant case,” which supported the “conserv[ation of] judicial and administrative resource[s].”²⁹ It is clear why La Paloma instead argues the more advanced Replacement GIA Proceeding should be held in abeyance. It is not for judicial efficiency, but instead because La Paloma has failed to make its case by filing an initial brief in that proceeding and now seeks the opportunity

²⁷ Motion at 5. La Paloma’s Motion refers to the proceeding in Docket No. ER21-2592 as the “Rate Proceeding.”

²⁸ See *Entergy Services Inc.*, 134 FERC ¶63,018 (2011) (granting a motion to hold in abeyance a proceeding in which the same issues were being litigated in other proceedings and citing to a Commission order directing the ALJ to disallow the re-litigation of issues, *Entergy Servs., Inc.*, 132 FERC ¶ 61,065, 61,388 (2010)). See also *ExxonMobil Pipeline Co.*, Docket No. IS09-177-000 “Order of Chief Judge Holding Proceeding in Abeyance and Canceling Prehearing Conference” (May 14, 2009) (finding that good cause is shown to suspend a procedural schedule pending the outcome of another pending proceeding before the Commission in which there was overlap between issues).

²⁹ See *Basin Electric Power Cooperative*, Docket Nos. ER22-137-000 and EL22-10-000 “Order of Chief Judge Granting Request to Suspend the Procedural Schedule, Denying Request to Hold Proceeding in Abeyance Until Final Commission Order, and Establishing Track II Procedural Time Standards After Suspension,” (Feb. 2, 2022).

to litigate those issues again in a new or newly consolidated venue, with no consequence for its failure to participate.

II. Conclusion

La Paloma seeks an end-run around its failure to participate in the existing hearing process to resolve a common issue of material fact, by making this Motion to essentially allow it to litigate issues it previously chose not to. The CAISO respectfully requests the Commission deny La Paloma's Motion because it would cause unnecessary delay in the resolution of a proceeding currently in which a hearing process is underway. Any other results would unduly prejudice the CAISO, which has timely participated in that hearing.

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Dated: March 9, 2023

CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 9th day of March, 2023.

/s/ Jacqueline Meredith

Jacqueline Meredith
An employee of the California ISO