

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	
v.)	Docket No. EL00-95-248
)	
Sellers of Energy and Ancillary Services Into)	
Markets Operated by the California)	
Independent System Operator Corporation)	
and the California Power Exchange,)	
Respondents.)	
)	
)	

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S
ANSWER TO THE MOTION TO COMPEL OF THE CALIFORNIANS FOR
RENEWABLE ENERGY**

To: The Honorable H. Peter Young, Presiding Administrative Law Judge

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, and in accordance with the Commission's discovery time standards,¹ the California Independent System Operator Corporation ("ISO") respectfully submits this answer to the August 29, 2011 motion of CALifornians for Renewable Energy ("CARE"). Though styled as a motion to compel the ISO to answer CARE's first set of discovery requests, CARE's motion actually seek to compel the ISO to provide discovery that has not been propounded on the ISO. Specifically, CARE's first set of discovery requests are directed to "market participants" and seek data regarding energy sales and purchases from market participants. The ISO is not a market participant, and these requests make no

¹ <http://www.ferc.gov/legal/admin-lit/time-dis.asp>

sense applied to the ISO. Indeed, the motion makes clear that CARE is seeking different information from the ISO, information that was never propounded in any discovery request. This is an improper use of a motion to compel and CARE's motion should be denied.

I. BACKGROUND

CARE served its first set of discovery requests via listserv on July 1, 2011. It included three data requests, each specifically directed to "market participants," seeking information from buyers or sellers about their transactions in various western energy markets. The ISO is not a market participant. While the ISO administered the markets that are the subject of this proceeding, it did not participate in them, or any other markets, as a buyer or seller. In fact, the ISO's tariff states that it "will not act as a principal but as agent" in market transactions.² Accordingly, the ISO did not respond to these requests that were not propounded on it.

On August 11, several weeks after objections and responses were due to CARE's discovery requests, CARE sent an email to the ISO's counsel asking if the ISO planned to respond to its data requests. The ISO's counsel explained that the ISO did not respond because the requests were expressly directed to "market participants." The complete e-mail correspondence between the ISO and CARE is attached to CARE's motion.

In the course of the correspondence and during an August 17 telephone conversation between ISO counsel and CARE's President, Michael Boyd, CARE

² See section 2.2.1 of the ISO tariff in effect through the time period implicated in this proceeding.

made it clear that it was now seeking discovery from the ISO based upon its evolving theories, not based upon requests actually directed to the ISO. Even though its first set of discovery requests were expressly directed to “market participants,” Mr. Boyd stated that the answers that CARE received from market participants caused it now to want data from the ISO. Specifically, Mr. Boyd stated: “I assumed that when Parties ***in their data responses to CARE*** lists [sic] ISO as the counter party to their energy transactions that this thereby made ISO a market participant.” CARE Friday, August 12 e-mail (attached to CARE motion; emphasis added). Mr. Boyd also indicated that he wanted data from the ISO to verify the information he had received from the Cal Parties in response to CARE’s first set of discovery requests.

II. ARGUMENT

Although styled as a motion to compel the ISO to respond to its first set of discovery requests, CARE’s motion does not actually relate to its first set of discovery requests at all, but rather seeks information from the ISO for which CARE has never propounded a request.

The fundamental basis for a motion to compel is that a party “refuses to make a full, complete, and accurate response” to a data request. 18 C.F.R. § 385.410. CARE has failed to meet its burden of showing that the ISO has refused to produce something that was requested of it. *See, e.g., Mojave Pipeline Co.*, 38 FERC ¶ 61,249 (1987), at 61,842 (movant bears the burden of showing that requested information is relevant). The requests that CARE

actually served were specifically directed to “market participants.” These requests, in fact, make no sense as applied to the ISO because they focus on energy sales and purchases made by market participants. Despite the fact that the ISO explained this to CARE in the subsequent correspondence, CARE's motion fails to address this issue. Notably, the motion even fails to provide the text of CARE's actual discovery requests.

The first request asks for market participants' quarterly transaction data for transactions in the California ISO and PX markets. These reports were filed with the Commission by public utilities that sold to the ISO, CERS or the PX. The ISO was not required to make these filings. The second request asks market participants to provide transaction data for all sales in non-ISO and non-PX western markets. This does not apply to the ISO because the ISO makes no sales in any energy markets, western or otherwise. The third question requests that market participants provide rate schedules and tariffs for sales made in western markets, citing an example of a Pacific Gas and Electric schedule for QF capacity prices as “one type of rate schedule CARE is seeking,” and asks for an explanation regarding “how to determine the price noticed compared to the price paid.” The ISO does not sell energy in any markets, and therefore does not have rate schedules of this nature. Likewise, the concept of comparing a noticed price to a price paid has no application to the ISO. For these reasons, the ISO concluded that CARE's discovery requests, which were specifically directed to market participants and not the ISO, sought transaction and tariff information from those parties who were buyers and sellers in various western markets, and

that these requests did not apply to the ISO because it solely acted as administrator of its markets.

Instead of focusing on the requests it actually served, CARE's motion describes information that, upon reflection, CARE **now** wishes the ISO to produce, though not part of any data request. Though it is not clear exactly what data CARE wants, it is clear that the information CARE describes in its motion is not what it sought in its first set of discovery requests. CARE now wants data "necessary to validate the Cal Parties' data provided to CARE" in response to those same requests. The motion to compel is therefore improper. Pursuant to the discovery procedures adopted by Your Honor in this proceeding, data requests must be submitted in writing and any parties that are the subjects of those requests are entitled to ten business days to respond and/or object. Proper notice of the actual requests is particularly important for the ISO, as the ISO possesses confidential data concerning all market participants. Without notice of the actual requests, the market participants cannot determine whether they too should object to the requests or seek confidential treatment of the information produced.

Because no requests have been noticed or tendered with respect to the information that CARE alludes to in its motion, granting its motion would circumvent these procedures and require the ISO to attempt to respond to vague and potentially overbroad and unreasonably burdensome requests without the opportunity to object and, if necessary, have its arguments as to those objections heard.

III. CONCLUSION

For the reasons stated in this answer, the ISO requests that Your Honor deny CARE's motion to compel.

Respectfully submitted,

/s/ Michael Kunselman

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Dated: September 6, 2011

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010), I hereby certify that I have this day served a copy of this document upon the email listserv established by the Commission for this proceeding.

Dated this 6th day of September, 2011, in Folsom, CA.

/s/ Daniel J. Shonkwiler
Daniel J. Shonkwiler