

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

La Paloma Generating Company, LLC,)	
Complainant)	
)	
v.)	Docket No. EL05-54-000
)	
California Independent System Operator)	
Corporation,)	
Respondent)	

**REQUEST FOR LEAVE TO FILE ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
TO THE REQUEST FOR REHEARING OF
LA PALOMA GENERATING COMPANY, LLC**

Pursuant to Rule 213(a)(1) of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), the California Independent System Operator Corporation (“CAISO”) respectfully submits this answer to the Request for Rehearing of the La Paloma Generating Company, LLC (“La Paloma”), submitted April 28, 2005 (the “Rehearing Request”). The Rehearing Request asks the Commission to reconsider its Order Denying Complaint, which was issued March 29, 2005 (“March 29 Order”),¹ asserting a variety of errors related to inadequate consideration of La Paloma’s arguments. Because the factual and legal background to this matter is complex, the CAISO requests waiver of Rule 213(a)(2)² to permit it to summarize that background in this reply to the Rehearing Request (the “Answer”). This Answer will aid the

¹ *La Paloma Generating Company, LLC v. California Independent System Operator Corporation*, 110 FERC ¶ 61,386 (2005).

² 18 C.F.R. § 385.213(a)(2).

Commission in understanding the issues in the proceeding and the complete record before it. The CAISO notes that the Commission waived Rule 213(a)(2) for La Paloma earlier in this proceeding.³

I. INTRODUCTION - THE COMMISSION'S MARCH 29 ORDER CORRECTLY ENFORCES THE UNAMBIGUOUS TERMS OF THE AGREEMENT(S) ENTERED INTO BY SOPHISTICATED CORPORATE ENTITIES

The Commission's March 29 Order concerns the rights to cash collateral held by the CAISO that was posted by its CAISO Scheduling Coordinator, NEGTE ("ET"). La Paloma purchased an assignment of ET's rights to the collateral. The purchase agreements refer to the collateral as the "CAISO Cash Collateral," and that is how it will be referenced throughout this Answer.

The CAISO Cash Collateral was posted by ET pursuant to the terms of the CAISO Tariff. The Commission's Order of March 29, 2005 enforces the terms of that agreement.

Urging the Commission to alter its decision, the Rehearing Request sounds a variety of arguments that are variations on a single theme: La Paloma wants the Commission to give it the benefit of an understanding it claims it had with ET. However, no understanding between La Paloma and ET can alter the terms of the CAISO Tariff, which govern the rights to the CAISO Cash Collateral. Nor can La Paloma reasonably expect to enforce its agreement with ET against the CAISO, to the detriment of other CAISO market participants.

This Answer summarizes the ample record evidence that supports the Commission's decision and refutes the two primary arguments in the Rehearing

³ March 29 Order, P 11.

Request by reference to the arguments in the CAISO's Initial Answer.⁴ First, this Answer explains why La Paloma's only rights to the CAISO Cash Collateral are those it received through the assignment from ET. There is no record basis for the suggestion in the Rehearing Request that La Paloma has independent rights to the CAISO Cash Collateral. In fact, the record affirmatively refutes this suggestion. See Part II.A, below.

Second, this Answer explains why ET's rights, which La Paloma now asserts, are governed by the unambiguous terms of the CAISO Tariff. The Tariff dictates that the CAISO must hold the collateral posted by ET until the CAISO is "satisfied that no sums remain owing by the Scheduling Coordinator [*i.e.*, ET] under the ISO Tariff." CAISO Tariff 2.2.4.5. As the Commission found in a prior case involving ET collateral, the obligations of parties in California markets cannot be determined until after the Refund Proceeding is resolved. The Commission's March 29 Order simply, and correctly, enforces this requirement by denying La Paloma's demand for a premature distribution of the CAISO Cash Collateral. See Part II.B, below.

This Answer does not attempt to address every contention in the Complaint or the Rehearing Request, which are almost entirely legal conclusions

⁴ Answer of the California Independent System Operator to the Complaint of La Paloma Generating Company, LLC and Motion for Summary Disposition, filed in this docket February 2, 2005. For ease of reference, the primary documents referenced in the CAISO Initial Answer are attached hereto as Exhibits. Exhibit 1 includes the CAISO Tariff provision cited in the CAISO Initial Answer. Exhibit 2 is ET's Scheduling Coordinator Agreement.

asserting rights on behalf of La Paloma.⁵ Rather, the argument below refutes those asserted legal conclusions.

II. ANSWER

A. The Record Affirmatively Refutes the Contention in La Paloma's Rehearing Request that La Paloma Has Rights to the CAISO Cash Collateral Independent of Those La Paloma Purchased from ET

The arguments advanced in the Rehearing Request depend on the unsupported assertion that “La Paloma was the actual party holding the real financial interest in and responsibility for” the CAISO Cash Collateral, and that ET posted the collateral only in a “technical” sense. Rehearing Request at 6 (point 4). Even assuming this is a legally correct assessment of the arrangement between La Paloma and ET, the record contains no support for the assertion that this describes an arrangement entered by CAISO. To the contrary, the record affirmatively refutes it.

The suggestion that La Paloma had rights to the CAISO Cash Collateral, other than those it received through the assignment from ET, is undermined by the assignment itself. As recited in the assignment and in the notice provided to the ISO in connection with the assignment, La Paloma purchased ET's rights in consideration for a payment equal to the amount of the collateral.⁶ These are

⁵ The CAISO disputes these contentions for the reasons explained below and in the CAISO Initial Answer. Contrary to the assertion of La Paloma, the CAISO does not concede all of its allegations. See Rehearing at 6 n. 14. To the extent that La Paloma makes factual allegations beyond those expressly conceded by CAISO, the CAISO has demonstrated those allegations to be legally irrelevant. Accordingly, there is no basis for La Paloma's request for a factual hearing on disputed issues that La Paloma incorrectly asserts to be material. See Rehearing Request at 3, n. 9.

hardly the actions of an entity that understood itself already to have an independent right to the collateral.

Moreover, the record demonstrates that La Paloma and ET were both on notice that any collateral posted pursuant to the CAISO Tariff would secure the obligations of ET, and not La Paloma.⁷ The Termination Agreement between ET and La Paloma specifically contemplates that the CAISO might deduct from the CAISO Cash Collateral “to satisfy payment obligations owing from [ET] to CAISO.”⁸ La Paloma and ET also clearly understood that, prior to the execution of the assignment, any collateral remaining after satisfaction of ET’s obligations to the CAISO would be the property of ET.⁹ The Termination Agreement provided that, prior to selling the rights to La Paloma, ET itself would seek the return of the CAISO Cash Collateral, as it in fact did.¹⁰

In sum, the record demonstrates that notwithstanding its own separate arrangements with La Paloma (prior to the assignment), ET posted the collateral with CAISO for its own account and expected the return of any remainder after satisfaction of its obligations. There is no basis, therefore, for the suggestion that

⁶ See CAISO Initial Answer, at 9-10; see *also* Complaint Exh. 6 (Nov. 3, 2003 Letter stating that ET “has assigned to [La Paloma] all of its right . . . to . . . the cash collateral held by CAISO attributable for [sic] the account of [ET] . . . , such assignment being effective upon payment being made by [La Paloma] to [ET] of a residual cash collateral amount”) The term “Residual CAISO Cash Collateral” is defined in the Letter and the assignment to equal the amount of collateral retained by the CAISO. Exh. 6 (Assignment Agreement, at 1, Third Recital).

⁷ See CAISO Initial Answer, Exh 3.

⁸ Complaint Exh. 3 (Termination Agreement, § 2.1(b)(ii)).

⁹ See CAISO Initial Answer, at 10 (detailing Termination Agreement).

¹⁰ *Id.* (detailing Termination Agreement and actions of ET); see also Complaint Exh. 7 (CAISO responding to **ET’s** demand for return of collateral).

La Paloma has any rights to the collateral other than those it purchased through the assignment.

B. The Result Reached By The Commission is Dictated By the CAISO Tariff, Which Governs ET's Rights to the CAISO Cash Collateral – the Rights that La Paloma Purchased and Continues to Pursue

The result reached by the Commission is dictated by the unambiguous terms of the CAISO Tariff, which governs ET's rights to the CAISO Cash Collateral. Because La Paloma received through the assignment only those rights that ET has under the CAISO Tariff, and nothing more,¹¹ there is no basis to alter the Commission's March 29 Order.

Pursuant to the CAISO Tariff, the collateral must be retained until the CAISO determines that no sums remain owing from ET.¹² The CAISO knows, however, that sums remain owing: ET incurred significant liability for the period of the California Energy Crisis, and the Commission has found that the amount of the outstanding obligations cannot be calculated until the conclusion of the Refund Case.¹³ By the plain terms of the Tariff, therefore, the collateral must be retained.

La Paloma is incorrect in asserting that the CAISO Cash Collateral was not posted by ET in order "to secure ET's outstanding and estimated liabilities."¹⁴ La Paloma argues that this was not the case because ET posted the CAISO

¹¹ See March 29 Order, Para. 13.

¹² See CAISO Initial Answer at 6 (detailing Tariff provisions).

¹³ See CAISO Initial Answer at 15, n.9.

¹⁴ See Rehearing Request at 7-10.

Cash Collateral based solely on liabilities associated with the scheduling of generation from the La Paloma facility. Again, La Paloma fails to comprehend the crucial point that the CAISO transacts with its Scheduling Coordinators, not the entities represented by those Scheduling Coordinators. Liabilities arising due to the scheduling of generation from La Paloma were, under the CAISO Tariff, liabilities of the Scheduling Coordinator representing that generation. Thus, the fact that ET was the Scheduling Coordinator representing La Paloma meant that any CAISO liabilities incurred as a result of the operation of La Paloma's facilities were, necessarily, liabilities of ET. La Paloma is asking the Commission to do nothing less than discard one of the bedrock principles of the CAISO Tariff in order that La Paloma can perfect a claim to the CAISO Cash Collateral. Such a decision would upset the security provisions in the Tariff and open a veritable Pandora's box of unwelcome results, as entities that the CAISO never had contractual arrangements with would be free to seek financial relief from the CAISO, unfettered by the provisions of the CAISO Tariff, to the detriment of the CAISO Market, its Participants, and electricity consumers in California.¹⁵

Moreover, despite La Paloma's argument to the contrary, the ISO Tariff does not permit a Scheduling Coordinator to post collateral for only certain of its clients but not others. A Scheduling Coordinator either is or is not creditworthy. An arrangement to secure only certain of its liabilities and not others would make

¹⁵ Ironically, despite the fact that La Paloma urges the Commission to essentially ignore the CAISO Tariff, La Paloma recognizes that California consumers would best be served by the "Commission imposing rules on a fair, consistent, transparent and lawful basis." Rehearing Request at 22. The CAISO agrees. However, the relief that La Paloma seeks is entirely inconsistent with such principles.

no sense, given that the Scheduling Coordinator itself is the financially responsible party for all liabilities.¹⁶ In fact, La Paloma knew that “[t]he ISO is not going to accept credit posted strictly for La Paloma.”¹⁷

Accordingly, the result reached in the March 29 Order was dictated by the CAISO Tariff, and should not be disturbed.¹⁸

III. CONCLUSION

For the foregoing reasons, the Commission should deny La Paloma’s request for rehearing, as well as its request for a factual hearing.

Respectfully submitted,

J. Phillip Jordan
Michael Kunselman
Swidler Berlin LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
Tel: (202) 424-7500

/s/ Daniel J. Shonkwiler
Charles F. Robinson
Anthony J. Ivancovich
Daniel J. Shonkwiler
Stacie L. Ford
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-4400

Dated: May 13, 2005

¹⁶ See CAISO Initial Answer at 5-6, 16-17 (detailing the role of Scheduling Coordinators and financial security requirements for Scheduling Coordinators).

¹⁷ See CAISO Initial Answer, at 20-21 & Exhs. 2-3.

¹⁸ La Paloma’s arguments about improperly securing refunds are therefore misplaced. E.g., Rehearing Request at 4 (Fourth Specification of Error).



May 13, 2005

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: La Paloma Generating Company, LLC vs. California Independent
System Operator Corporation
Docket No. EL05-54-000**

Dear Secretary Salas:

Enclosed for electronic filing please find the Request for Leave to File Answer and Answer of the California Independent System Operator Corporation to the Request for Rehearing of La Paloma Generating Company, LLC in the above captioned dockets.

Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Daniel J. Shonkwiler

Daniel J. Shonkwiler
Counsel for The California Independent
System Operator Corporation

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 the above-captioned dockets.

Dated at Folsom, California, on this 13th day of May, 2005.

/s/ Daniel J. Shonkwiler
Daniel J. Shonkwiler