

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

**ETRACOM LLC and Michael Rosenberg**

**Docket No. IN16-2-000**

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S  
COMMENTS ON MOTION TO REQUIRE DISCLOSURE**

The California Independent System Operator Corporation (“CAISO”) submits these comments in response to Etracom’s March 4, 2016 motion seeking extensive third-party discovery of the CAISO in connection with the Commission’s order requiring Etracom to show cause why it did not violate Commission rules and the Federal Power Act.

Etracom’s request should be denied. Etracom seeks to undertake wide-ranging, trial-type discovery of a third party in a proceeding in which it has *voluntarily* elected to waive its opportunity for an administrative hearing. As a result, there is no longer an appropriate forum for the Commission to consider any such third-party discovery requests, or for an administrative law judge to supervise a discovery process. Third-party discovery, to the extent it occurs, should now proceed in an orderly fashion in the district court proceeding Etracom has elected to pursue in the event that the Commission assesses a civil penalty.

## **I. The CAISO Does Not Seek to Intervene or Gain Party Status**

The CAISO is mindful of Commission Rule 214(a)(4), which states that no person “may intervene as a matter of right in a proceeding arising from an investigation pursuant to Part 1b” of the Commission’s rules.<sup>1</sup> Through submitting these comments, the CAISO does not seek to become a party to this proceeding. Rather, the CAISO seeks only to ensure that the Commission has the benefit of the CAISO’s perspective as the Commission considers Etracom’s motion.

## **II. Comments**

The CAISO, of course, will respond to appropriate third-party discovery, and recognizes there may be circumstances where it would be necessary and appropriate for it to do so in proceedings dealing with allegations of market violations by CAISO market participants.<sup>2</sup>

While the CAISO is concerned about the breadth of these requests, this merely highlights the procedural impropriety of Etracom’s motion, as it does not afford the protections to the CAISO which a third-party subject to discovery is entitled. Typically, these protections are provided through a discovery process overseen by a Commission administrative law judge. For example, a judge could

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<sup>1</sup> 18 CFR 385.214(a)(4).

<sup>2</sup> It should be noted that, as Etracom documents in its answer to the Commission’s show cause order, the CAISO already has provided significant public information and analysis regarding the drivers of congestion revenue rights revenue inadequacy at New Melones and the removal of convergence bidding at fully encumbered interties, such as New Melones. See Answer, *ETRACOM LLC and Michael Rosenberg*, Docket No. IN16-2 (Feb. 16, 2016), at 6-8.

ensure that the release of any responsive materials would receive appropriate confidentiality protections and that impacted market participants beyond Etracom would have notice and an opportunity to object to disclosure. Negotiating the terms of confidentiality protections and creating mechanisms for enforcing those protections are inherently part of a discovery process. Similarly, a judicially-administered discovery process also exists to weigh the burdens of production against the benefits of information to be produced.

The CAISO does not see, however, how a Commission administrative law judge, as opposed to a Federal district court judge, could be the party to oversee discovery in this proceeding. On January 14, 2016, Etracom filed an election in this docket to utilize the procedures defined in Section 31(d)(3) of the Federal Power Act. Etracom chose to challenge any final order in Federal district court on a de novo review standard.<sup>3</sup> Alternatively, Etracom could have – *but chose not to* – elect the procedures in Section 31(d)(2), through which Etracom would have had the opportunity for an administrative hearing at the Commission before an administrative law judge, with a right of appeal to a Federal circuit court. Having made the deliberate decision to forego an administrative hearing process and the rights of discovery that go along with it, it is inappropriate for Etracom to seek the discovery contemplated in an administrative hearing.

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<sup>3</sup> Notice of Election, *ETRACOM LLC and Michael Rosenberg*, Docket No. IN16-2 (Jan. 14, 2016). In its notice of election Etracom stated that it would pursue “discovery and cross examination of witnesses governed by the Federal Rules of Civil Procedure” under the jurisdiction of a Federal district court in the event that the Commission assesses civil penalties. *Id.* at 1.

### III. Conclusion

The CAISO respectfully requests that the Commission consider the CAISO's comments and deny Etracom's motion.

Respectfully submitted,

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March 17, 2016

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced 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 17<sup>th</sup> day of March 2016.

*/s/ Anna Pascuzzo*

Anna Pascuzzo