

UNITED STATES OF AMERICA 103 FERC ¶ 61,076
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman
William L. Massey, and Nora Mead Brownell.

California Independent System
Operator Corporation

Docket No. ER02-1656-000

ORDER DENYING MOTION FOR INJUNCTIVE RELIEF

(Issued April 17, 2003)

1. In this order, we deny Duke Energy Trading and Marketing, L.L.C.'s (Duke) motion to enjoin the California Independent System Operator Corporation (CAISO) from complying with a subpoena issued by the California Electricity Oversight Board (EOB). In that subpoena, the EOB directed the CAISO to produce (1) generator reference levels curves for its automatic mitigation procedures (AMP); (2) all results of AMP conduct tests and market impact tests; and (3) all data and calculation procedures the CAISO's Department of Market Analysis used to estimate marginal costs for each generation unit for the period from October 1, 2002 through March 18, 2004. In its March 28, 2003 motion, Duke states that the EOB directed that the CAISO comply with its subpoena by close of business on March 28, 2003. Due to this time deadline, Duke requests expedited consideration of its motion.

2. In its motion, Duke states that it is inappropriate for the EOB, as an "active participant in on-going FERC proceedings," to be allowed to use its state subpoena power to obtain confidential and sensitive company-specific information not available to other participants in the same Commission proceedings. Duke also argues that because the State of California through its Department of Water Resources is a CAISO market participant, it is inappropriate for the EOB to obtain sensitive market participant information absent a showing that such information is necessary to fulfill a legitimate state regulatory function. Finally, Duke states that a state agency should not be able to decide whether confidential information collected pursuant to a Commission-approved CAISO tariff is legitimately proprietary or a trade secret in nature, or likely to result in harm if publicly disclosed.

3. On April 8, 2003, the EOB filed an answer to the Duke motion in which it states that its subpoena is a lawful and legitimate exercise of its authority and that the Commission lacks jurisdiction to prohibit the CAISO's compliance with the EOB

Docket No. ER02-1656-000

- 2 -

subpoena. The EOB states that Duke's arguments generally ignore overarching legal standards. Specifically, the EOB contends that Duke's argument that a state agency should not determine whether information is legitimately proprietary or a trade secret in nature is misplaced because the EOB is abiding by laws that govern the definitions of these terms. Also, the EOB states that Duke's arguments concerning placing "other CAISO market participants" at a competitive disadvantage are incorrect and intentionally misleading because the EOB is not a CAISO market participant and the EOB does not intend to use this data to participate in an "ongoing FERC proceeding."

4. Duke has not cited nor do we find that the Commission has the statutory authority to enjoin the CAISO from complying with a valid subpoena issued by a state entity. Accordingly, we will deny Duke's motion seeking to enjoin the EOB's subpoena.

The Commission orders:

The Commission hereby denies Duke's motion seeking to enjoin the EOB's subpoena, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.