

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

San Diego Gas & Electric Company,	)	
Complainant,	)	
	)	
v.	)	Docket No. EL00-95-085
	)	
Sellers of Energy and Ancillary Services	)	
Into Markets Operated by the California	)	
Independent System Operator and the	)	
California Power Exchange Corporation,	)	
Respondents	)	
	)	
Investigation of Practices of the California	)	Docket No. EL00-98-085
Independent System Operator and the	)	
California Power Exchange	)	

**REQUEST FOR REHEARING OF THE CALIFORNIA INDEPENDENT  
SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's ("Commission's") Rules of Practice and Procedure, 18 C.F.R. 385.713, and Section 313 of the Federal Power Act, 16 U.S.C. § 825, the California Independent System Operator Corporation ("ISO")<sup>1</sup> respectfully requests rehearing of the Commission's June 22, 2004, Order on Remand, 107 FERC ¶ 61,294 (2004) ("Order on Remand") in the above-identified docket. The ISO requests that the Commission reverse its Order on Remand and reinstate its

---

<sup>1</sup> Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

initial conclusion that all Generating Units subject to Participating Generator Agreements (“PGAs”), including the hydroelectric facilities of the California Department of Water Resources (“CDWR”), must be subject to the ISO’s outage coordination authority.

## **I. SUMMARY**

The decision in the Order on Remand to exempt CDWR from the ISO’s control and coordination of outages should be reversed because it threatens the reliability of the ISO Controlled Grid while providing no particular water delivery-related benefit to CDWR. The ISO’s outage coordination simply does not interfere in any material manner with CDWR’s water delivery function.

The Commission’s original decision to deny CDWR’s request for an exemption from the ISO’s outage coordination authority was sound. Consistent with the ISO’s and Commission’s Staff’s recommendations during the Commission’s proceeding regarding the 2000-2001 California energy crisis, the Commission reasonably and correctly concluded that it was necessary for the ISO to coordinate the outages of all units subject to PGAs, including hydroelectric Generating Units.<sup>2</sup> Contrary to CDWR’s arguments, this conclusion was fully supported by the record and was not inconsistent with the exemption granted hydroelectric generators from the must-offer requirements, because the outage coordination requirements are more flexible and less onerous.

The Commission’s justifications in the Order on Remand for reversing its prior decision are contrary to reasoned decision-making. In particular, the

Commission's statement that the exemption was necessary so that the ISO's outage scheduling would not interfere with the primary water delivery function of CDWR's Generating Units ignores the fact that it is the Generators, not the ISO, that remain principally responsible for scheduling outages under the ISO's outage coordination procedures. The ISO only modifies outage schedules submitted by Generators when necessary for system reliability or efficiency. Further, not all of CDWR's hydroelectric units are necessary for CDWR's water delivery function (*i.e.*, water delivery can be accommodated without the operation of selected units). Thus, there is no basis to exclude those units from the ISO's outage coordination authority based on the rationale enunciated by the Commission in the Order on Remand. Even with regard to those units that have water delivery functions, the ISO Tariff prohibits the ISO from causing CDWR to violate "Federal or California law concerning hydro-generation and Dispatch." ISO Tariff Section 2.2.1. Accordingly, the ISO's outage coordination authority would not have any material effect on CDWR's water delivery function.

The only protection that the exemption would provide CDWR is in fulfilling its water delivery function more cheaply, *i.e.*, by giving it a market advantage that other Market Participants do not enjoy. This is not a proper basis for granting CDWR an exemption.

While the exemption is of no real benefit to CDWR's water delivery function, it does interfere with the ISO's ability to ensure the reliability of the ISO Controlled Grid. By removing almost 2,000 MW of capacity from ISO outage

---

<sup>2</sup> *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California*

coordination, the exemption will interfere with the ISO's ability to achieve the objectives that the Commission intended in providing the ISO with outage coordination authority: "to ensure that sufficient generation is available to meet anticipated market needs . . . in ways that will provide sufficient energy resources when needed while also providing for reliable plant operation." *San Diego Gas & Elec. Co. v. Sellers of Ancillary Servs. Into Markets Operated by the Cal. Power Exch. and the Cal. Indep. Sys. Operator*, 95 FERC ¶ 61,115 (2001) ("April 26 Order") at 61,355. The independent scheduling of this volume of generating capacity will inevitably reduce the flexibility necessary to ensure the optimal availability of resources.

Moreover, the broader impact of the Commission's order remains to be seen. The Commission exempted all of CDWR's hydroelectric facilities, not just those that are involved with water delivery. The ISO is concerned that other hydroelectric Generators may come forward (possibly followed by other categories of Generators) citing the instant precedent and insisting that their Generating Units have other unique characteristics and should be exempted from the ISO's outage protocol procedures for similar reasons. The Commission's order undermines the very uniformity necessary to ensure reliability and correct some of the shortcomings that led to the California energy crisis.

---

*Power Exchange, et al.*, 95 FERC ¶ 61,418 (2001) ("June 19 Order") at 62,551.

## II. BACKGROUND

### A. The Commission's Recognition of the Need for ISO Outage Coordination

The Order on Remand is the latest in a series of orders in these dockets in which the Commission has recognized that ISO coordination of Generator outages is a critical component of the ISO's ability to ensure the reliability of the ISO Controlled Grid. The Commission initially responded to the California energy crisis of 2000 by issuing its Order Proposing Remedies for California Wholesale Electric Markets, in which it solicited comments on its proposed remedies. *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs. Into Markets Operated by the Cal. Power Exch. and the Cal. Indep. Sys. Operator*, 93 FERC ¶ 61,121 (2000). At that time, the ISO's authority to coordinate long-term maintenance outage schedules of generating units was limited to maintenance outages associated with Reliability Must-Run ("RMR") Units. ISO authority over changes to other outage schedules was limited to those made less than seven days before the scheduled date of the outage. Such changes required ISO approval, and the ISO could withhold approval for reasons of System Reliability or security.<sup>3</sup> In its November 22, 2000 comments on the Commission's proposal in the November 15 Order, the ISO explained that inability to coordinate outages effectively had created significant reliability problems:

During the week of November 12, 2000, approximately 11,000 MW of generating unit capacity was either forced or planned to be out of

---

<sup>3</sup> In addition, the ISO had the authority "to instruct a Participating Generator [whether or not its generating unit is a Reliability Must Run Unit] to bring its Generating Unit on-line, off-line, or increase or curtail the output of the Generating Unit . . . if such an instruction is reasonably necessary to prevent an imminent or threatened System Emergency or to retain Operational Control over the ISO Controlled Grid during an actual System Emergency."

service. These outages required the ISO to declare a Stage 2 Emergency (dropping interruptible load) on three consecutive days.

ISO Comments at 4.

On December 15, 2000, the Commission issued its “Order Directing Remedies for California Wholesale Electric Markets.” *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs. into Markets Operated by the Cal. Power Exch. and the Cal. Indep. Sys. Operator*, 93 FERC ¶ 61,294 (2000). Although the Commission did not direct any changes to the ISO’s authority concerning outages, it stated that it would be monitoring the market for evidence of market power, specifically including outage schedules. *Id.* at 61,996-97. The Commission directed sellers to submit weekly reports, which were to include outage information.

On February 7, 2001, in Comments solicited by the Commission in a technical conference held on January 23, 2001, the ISO specifically described the need for authority to require all Participating Generators to schedule outages in a manner consistent with reliable operation of the system. In connection with the Comments, the ISO submitted a draft market power mitigation proposal prepared by its Department of Market Analysis. The proposal identified the importance of outage coordination:

This past year the ISO has witnessed a substantial increase in the number of generating unit outages. Both the magnitude and frequency of these outages (planned and forced) has risen to a level to cause severe operational problems for the ISO. In fact, it was in large part due to generating unit outages that, for the first time ever, the ISO had to initiate wide-scale interruptions of firm service on January 17, 2001. . . . Currently, the ISO authority to coordinate planned outages is limited to a small subset of units operating under Reliability Must Run contracts. The fact that the

ISO does not have authority to fully coordinate planned generating unit maintenance with all unit owners has serious reliability and market efficiency implications. To address this problem, the ISO is developing a proposal through a stakeholder process for requiring all generators to coordinate their planned maintenance schedules with the ISO. Under such a proposal, the ISO would require all generators to submit their “preferred” annual planned maintenance schedules with the ISO and identify allowable “scheduling windows” for performing the necessary maintenance, repairs, and/or upgrades. The ISO would then assess each owner’s plan and determine an optimal annual planned maintenance schedule for all generators in the ISO control area to levelize system reliability throughout the year.

The Commission released its Staff recommendations for market power mitigation on March 6, 2001. The Staff’s discussion of outage coordination and control echoed that of the ISO’s Department of Market Analysis:

In order to limit the ability of generation owners to use the declaration of a forced outage as a means to withhold capacity from real-time markets, an ISO could require all generation owners that are connected to the ISO’s system to schedule their maintenance and other planned outages on an annual basis. The ISO would require owners to adhere to the approved schedule unless alternative arrangements can be made without jeopardizing system reliability or market performance.

The Staff recommended that all planned outages by units owned by Participating Generators be coordinated with, and approved by, the ISO. In its March 22, 2001 comments on the Staff recommendations, the ISO expressed its agreement with the Commission Staff that all planned outages should be “coordinated and approved” by an entity within the state.

In its April 26 Order, the Commission adopted Staff’s recommendation. It directed the ISO to file tariff amendments within 15 days to provide a mechanism “for control and coordination of outages.” April 26 Order at 61,355. The ISO filed its amendment on May 11, 2001.

## **B. CDWR's Exemption.**

CDWR sought rehearing of the April 26 Order, asserting that all of its hydroelectric generation has water management and control as a primary purpose and that it only makes its generation available to the electric grid under a PGA with the ISO to the extent its water management responsibilities permit.<sup>4</sup> CDWR contended that subjecting it to the ISO's outage coordination authority would interfere with its water management responsibilities. It argued that the Commission had recognized such responsibilities by exempting hydroelectric facilities from the must-offer requirement and should similarly exempt CDWR with regard to outage control.

In its June 19 Order, the Commission noted that a number of entities had requested exemption from the ISO's outage coordination authority. It affirmed that the ISO must have the authority to coordinate and control the outages of *all* units with PGAs. June 19 Order at 62,551.

CDWR sought review of the Commission's orders in the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit did not rule on the merits of CDWR's request for an exemption, but found that the Commission had not explained adequately its denial of CDWR's request, and particularly the different treatment between outage coordination and the must-offer requirement. The Court therefore remanded the case to the Commission. *California Dep't of Water*

---

<sup>4</sup> "All of DWR's hydroelectric generation has a primary purpose of water management and control. Thus DWR makes its generation available to the electric grid under a [PGA] *as and to the extent that its water management responsibilities permit.*" Request for Rehearing of the California Department of Water Resources, May 29, 2001, at 5 (emphasis added).

*Resources, et al. v. FERC*, 341 F.3d 906 (9th Cir. 2003), *reh'g denied*, 361 F.3d 517 (9th Cir. 2004).

In the Order on Remand, the Commission reversed its initial decision.

The Commission's reasoning is summed up in three sentences:

DWR persuades us that releasing and pumping water within coordinated time frames is essential to maintaining the operational integrity of the water system, and that any changes to scheduled outages of these facilities could be disruptive to its primary mission.

...

Neither CAISO nor any other party has stated in the record in this proceeding that exempting DWR would place the reliability of the electric grid at risk. We believe that CAISO has a wide range of options at its disposal to maintain reliability and that DWR should be able to perform its primary water management mission without accommodating CAISO scheduling requests.

Order on Remand at PP 8-9.

### **C. The ISO's Outage Coordination Authority.**

Although the revised outage coordination procedures of the ISO Tariff provide the ISO with additional control over outage schedules, the circumstances in which the ISO can exercise that control remain limited. Under those procedures, it is the Participating Generator, not the ISO, that in the first instance schedules outages, and the Participating Generator may submit changes to its schedule. ISO Tariff §§ 2.3.3.5, OCP 2.2.1. The Tariff also allows for scheduling an outage as little as 72 hours before the event. ISO Tariff §§ 2.3.3.3, OCP 2.2.1.1.<sup>5</sup> Under sections 2.3.3.5.2 and 2.3.3.5.3, the ISO must approve the

---

<sup>5</sup> Under the revised terms of the ISO Tariff as filed on May 11, 2001, the notice period would have been 120 hours. The Commission rejected that provision of the tariff in its order of October 23, 2001. *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs. into Markets Operated by the Cal. Power Exch. and the Cal. Indep. Sys. Operator*, 97 FERC ¶ 61,066 (2001) ("October 23 Order") at 61,356.

outage unless it is likely to have a detrimental effect on the efficient use and reliable operation of the ISO Controlled Grid; see *also* ISO Tariff §§ OCP 2.2.3, 2.2.4.<sup>6</sup> Once the outage is approved, the ISO can cancel the outage only if necessary to maintain System Reliability. ISO Tariff § OCP 4.3.9.

### **III. Specification of Errors**

The decision in the Order on Remand to exempt CDWR from the ISO's control and coordination of outages was in error for the following reasons:

(1) Because the record fully supported the Commission's initial denial of CDWR's exemption and the Commission has been presented with no new evidence to justify a reversal of that decision, the Order on Remand fails to reflect reasoned decision-making.

(2) The Commission's conclusions (a) that the ISO's outage coordination would interfere with CDWR's water management mission function and (b) that the exemption would not interfere with the ability of the ISO to ensure the reliability of the ISO Controlled Grid are unsupported by substantial evidence and do not reflect reasoned decision-making.

### **IV. Discussion**

#### **A. Because the Commission's April 26 Order and Rehearing Order Were Sound and Supported by the Record, the Commission Had No Reason to Reverse Those Decisions.**

The Commission's decision to exempt CDWR from the ISO's outage coordination authority is in error because the record strongly supported the Commission's original decision in the April 26 Order to provide the ISO with

---

<sup>6</sup> Under the revised terms of the ISO Tariff as filed on May 11, 2001, the ISO could also reject an outage schedule if the outage would cause an unduly significant market impact. The

authority to coordinate outages of *all* Generating Units owned by Participating Generators, CDWR's request for rehearing of that order provides no sound basis for its reversal, and the Commission has been presented with no new evidence that would justify abandonment of its original position. Therefore, on remand, the only reasoned course of action is to explain and affirm its initial denial of CDWR's requested exemption.

As discussed above, in its comments on the Commission's November 1, 2000, Order and on the Staff technical conference, the ISO identified the serious reliability problems that arose from the lack of authority to coordinate outages. In particular, it cited the week of November 12, 2000, during which approximately 11,000 MW of generating unit capacity was either forced or planned to be out of service, forcing the ISO to declare a Stage 2 Emergency (dropping interruptible load) on three consecutive days. The ISO also noted first-ever wide-scale interruptions of firm service in January 2001 attributable to in part to Generating Unit outages. In the technical conference comments, the ISO also noted the market impacts of the lack of such authority, and specifically indicated its need for authority to coordinate outages. The Commission Staff's recommendations for market power mitigation recognized the need for and specifically called for ISO coordination and approval of outages. The ISO expressed its unwavering agreement with that recommendation.

The April 26 Order was based on the information and recommendations of Commission Staff and the ISO. As such, it was fully supported by the record.

---

Commission also rejected that provision of the tariff in its order of October 23, 2001. October 23 Order at 61,356.

The Commission's rejection of CDWR's rehearing request was equally justified. As a general matter, CDWR contended that the ISO's coordination and control of outages of its hydroelectric Generating Units would interfere with its water delivery and control responsibilities. This argument ignores the fact that CDWR remains largely in control of its outages. As noted above, the ISO's outage coordination and control simply requires hydroelectric generating units to submit their outage schedules to the ISO and allows the ISO to modify those schedules only if the ISO determines that a modification is necessary to protect the reliability and efficient operation of the ISO Controlled Grid. Once it has approved an outage, the ISO can only cancel it for reasons of System Reliability.

In the April 26 Order, the Commission recognized that that the protections in the ISO's outage coordination procedure rendered an exemption for CDWR unnecessary. The Commission correctly concluded that the ISO must have more systemic control of all generating units subject to its dispatch, but it also responded to the generators' concerns, noting that the procedures for coordination and control of outages would require Commission approval. April 26 Order at 61,355. The Commission further emphasized that it would expect the procedures to provide flexibility for the accommodation of generator needs: "The Commission intends for the ISO's requirements to foster cooperation rather than establish punitive provisions either penalizing generators or the ISO." *Id.* (Footnote omitted.) The Commission also recognized that the ISO would have no motive to abuse its authority and that the authority, to be effective, must be universal. *Id.*

Indeed, the ISO Tariff ensures that the ISO will not abuse its authority in connection with hydroelectric units. *The provisions of the ISO Tariff expressly prevent such a result.* Section 2.2.1 of the ISO Tariff explicitly provides:

Nothing in this ISO Tariff is intended to permit or require the violation of Federal or California law concerning hydro-generation and Dispatch, including but not limited to fish release requirements, minimum and maximum dam reservoir levels for flood control purposes, and in-stream flow levels.

CDWR identified as a basis for an exemption six factors it must consider in planning maintenance schedules, “most of which” it asserts do not impinge upon gas-fired merchant generation. The Commission properly disregarded these. The first, “the ability to meet customer (State Water Contractor) water delivery obligations,” is discussed above. The second, “minimizing impacts to [CDWR] operations, including financial impacts,” does not distinguish CDWR from any Market Participant and should not be a basis for Commission preferment. The third and fourth, “forecasting availability of water” and “time of year” do not distinguish CDWR from other any hydroelectric Generator and are certainly factors that the ISO would consider in coordinating outages with CDWR. The fifth, federal and state regulatory requirements, is already addressed by Section 2.2.1. Finally, the sixth, the availability of internal and external resources to perform required maintenance, again does not distinguish CDWR in any manner.

In light of these facts, the Commission properly rejected CDWR’s argument in its rehearing request that the decision subjecting outages of hydroelectric generating units to the ISO’s control is inconsistent with the

exemption of such facilities from the must-offer requirement. Under the must-offer requirement, Participating Generators must offer all of their available capacity in the ISO's Real Time Market. The Commission exempted hydroelectric facilities from the must-offer obligation because of perceived difficulties in applying such obligations due to the multi-purpose limitations of hydro-electric facilities (e.g., irrigation, recreation, and power production). April 26 Order at 61,357. If hydroelectric Generating Units were subjected to the must-offer obligation, they would indeed surrender to the market their control over the ability to increase and curtail generation as necessary to perform their obligations and functions such as water delivery, irrigation, and recreation. For example, there could be a situation where the ISO could deny a hydroelectric unit a must-offer waiver and require the unit to generate power for the market, thereby precluding the facility from performing other necessary functions such as irrigation. It is understandable in that context why it is inappropriate to subject hydroelectric units to the must-offer obligation. In contrast, outage coordination is a planning function; it occurs primarily on an annual basis. Unlike the must-offer obligation, the ISO's outage coordination Tariff provisions do not give the ISO the authority to dictate on a day-by-day basis (365 days a year) whether a specific unit should be running or not running. This authority does not in any manner threaten the ability of hydroelectric generating units to increase and curtail generation on a day-to-day basis as necessary to meet their other obligations. The outage coordination function simply does not present the same need for an exemption that the must-offer requirement presents.<sup>7</sup>

---

<sup>7</sup> Section 2.2.1 would also protect hydroelectric Generating Units in the case of the must-

Thus, although the Commission may not have fully explained its rejection of CDWR's requested exemption to the satisfaction of the Court of Appeals, the record – and the need to respond to the reliability needs highlighted by the California energy crisis – fully supported the Commission's prior decision not to exempt CDWR from the ISO's outage coordination. The reversal of that decision in the Order on Remand, in the absence of any new evidence, cannot be considered reasoned decision-making.

**B. The Order on Remand Provides No Reasoned Basis for Reversing the Initial Denial of CDWR's Requested Exemption**

In its terse explanation of its reversal of the sound decision in the April 26 Order, the Commission offered only two justifications: that the outage coordination provisions of the ISO Tariff would interfere with CDWR's "primary water management mission" and that neither the ISO nor any other party had asserted that the outage coordination authority of CDWR's Generating Units was necessary for reliability. Both of these assertions are flawed. As a result of the Order on Remand, the Commission would grant CDWR a privilege that will not advance its water delivery responsibilities, but will only advance its "water management mission" by providing it with a market advantage over other Market Participants. Moreover, in doing so, the Order on Remand would indeed interfere with the ability of the ISO to prevent and respond to System Emergencies.

---

offer requirement, but would be difficult to apply and enforce in the context of the day-to-day and hour-to-hour demands of the Real Time Market.

**1. CDWR Does Not Require an Exemption from the ISO's Outage Coordination Authority in Order to Fulfill Its Water Delivery Obligations.**

As discussed above, the ISO outage coordination authority does not materially interfere with any of CDWR's hydroelectric responsibilities, including its water delivery obligations. It is important to note, however, that not all of CDWR's hydroelectric Generating Units are necessary for water delivery functions. For example, CDWR's Hyatt-Thermalito electric generating units play no role in the California aqueduct system.<sup>8</sup> Based on conversations with CDWR dispatch personnel, the ISO understands that water can be delivered from Lake Oroville to the Sacramento Delta bypassing the electric generating units. They serve no necessary water delivery function – unless reducing CDWR's costs is considered a water delivery function. The purpose of the Hyatt-Thermalito power complex, located on the Feather River below Lake Oroville and Oroville Dam, is the production of Energy.<sup>9</sup> The combined output of the units involved is 759 MW.<sup>10</sup> Under the Order on Remand, CDWR would be free to schedule the outage of these units – which are unrelated to water delivery but responsible for *41% of CDWR's total hydroelectric Energy output in 2001*<sup>11</sup> – to the maximum market advantage, regardless of the impact on the reliability of the ISO Controlled Grid.

---

<sup>8</sup> See generally Management of the State Water Project, Bulletin 132-02 at 5-8, 148. (January 2004) available at <http://www.swpao.water.ca.gov/publications/> .

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 148.

<sup>11</sup> *Id.* at 152.

The Hyatt-Termalito Complex exemplifies the fact that CDWR's objectives in serving its water contractors are not solely concerned with the delivery of water, however. CDWR also attempts to "develop and manage power resources to minimize the cost of water deliveries to [State Water Project] water contractors."<sup>12</sup> Unlike the situation for CDWR's water delivery functions, the ISO Tariff provides CDWR with no special protection in its fulfillment of this goal; it must achieve any cost savings according to the same rules applicable to other Market Participants. Exemption from the outage coordination authority, however, would provide CDWR with a market advantage, and impose a market disadvantage on other Market Participants, should they submit outages that conflict with CDWR outages. Although the Commission cites only reliability in the Order on Remand, the ISO's outage coordination authority was equally intended to protect against market abuses. Both the Commission and the Staff highlight market concerns as a significant source of the need for outage coordination. As the ISO noted in its June 6, 2001 Answer to the protests to its compliance filing following the April 26 Order, "categorical exemptions . . . would undermine the objective of the April 26 Order: enhancing the ability of the Commission and the ISO to ensure that generators do not abuse the outage scheduling process to exploit opportunities to exercise market power." ISO Answer at 8. The Order on Remand serves no purpose but to give CDWR such a market advantage. This economic advantage should not be a basis for providing CDWR an exemption any more than it would be for providing an exemption to any other party.

---

<sup>12</sup> *Id.* at 145.

**2. The Order on Remand Interferes with the ISO's Ability to Ensure the Reliability of the ISO Controlled Grid.**

As part of its justification of the remand, the Commission states, "Neither CAISO nor any other party has stated in the record in this proceeding that exempting DWR would place the reliability of the electric grid at risk." The Commission's reliance upon this statement is somewhat surprising. First, as discussed above, the ISO Tariff only authorizes the ISO to reject a Participating Generator's proposed outages if the proposal is likely to have a detrimental effect on the efficient use and reliable operation of the ISO Controlled Grid. Further, once the ISO approves a planned outage, it can only cancel the outage for reasons of System Reliability. In other words, as a general matter, if the CDWR outage would not put the reliability of the ISO Controlled Grid at risk, then there should be no likelihood of interference with the outage.

Second, neither the ISO nor any other party had occasion to address the issue of the appropriateness of granting an exemption to CDWR's units. CDWR raised the issue in a rehearing request, which the Commission denied. Further, the Commission did not provide any opportunity for parties to submit comments on the issue before issuing the Order on Remand.

Most importantly, the need for outage coordination should appropriately be examined on a Generator-by-Generator basis. When the Commission provided the ISO with outage coordination authority, it recognized the need to coordinate the outages of *all* Generating Units participating in the ISO's markets:

To ensure that sufficient generation is available to meet anticipated market needs, it is important for the ISO and generators to work cooperatively to schedule generating unit maintenance and

outages, in ways that will provide sufficient energy resources when needed while also providing for reliable plant operation.

. . . .  
The ISO must be provided the authority to achieve greater systematic control over all units that the ISO must dispatch . . . ,  
*i.e.*, those units that have signed PGAs.

April 26 Order at 61,355.

The exemption granted to CDWR removes almost 2,000 MW of capacity from the ISO's outage coordination authority. This, quite simply, will significantly interfere with the ISO's ability to achieve the objectives that the Commission intended in providing the ISO with outage coordination authority. For example, on July 19, 2004, ISO system reached a new demand peak of 44,042 MW, during which time Hyatt-Thermalito was at full load for approximately 8 hours supporting California load requirements. Without outage coordination authority of an important resource such as Hyatt-Thermalito the ISO could not have counted on this energy as a resource for California. The lessons of 2000-2001 taught that an uncoordinated outage of even a portion of this Generation in the wrong place or at the wrong time can make the difference between the ability to avoid a System Emergency and the need for curtailments. In light of the lack of any material negative impact on CDWR, the exemption for CDWR cannot be justified.

13

The broader impact of the Commission's order remains to be seen, however. As discussed above, the Commission exempted all of CDWR's hydroelectric facilities, not just those that are involved with water delivery. Moreover, CDWR's original argument to the Commission and the Court of

Appeals criticized the Commission's failure to explain why it exempted hydroelectric Generating Units from the must-offer requirement but not from outage coordination; the must-offer exemption applies to all hydroelectric Generating Units. Other hydroelectric Generators may therefore come forward to insist upon similar treatment. Hydroelectric Generation and pumped storage Generation represents over 9000 MW of capacity under PGAs. Cogeneration Qualifying Facilities also made the argument to the Commission that their primary purpose was not the generation of Energy, but service of their hosts. They too may return to the Commission and contend they are similarly situated to CDWR. This could represent thousands of additional megawatts of capacity. Allowing CDWR to exempt its resources from the ISO's Coordinated Outage Planning process will disadvantage other Market Participants by disrupting the ISO's Long Range Outage Plan when a CDWR outage is taken that conflicts with other planned outages or affects transmission path limitations, further undermining the ISO's authority to coordinate outages. In short, the Commission's Order on Remand undermines the very uniformity the Commission concluded was necessary to ensure reliability and correct the shortcomings that led to the California energy crisis.

---

<sup>13</sup> Significantly, for six hours during that peak load period, the available Generation was serving 1000 MW of CDWR pump load.

**V. Conclusion**

For the reasons discussed above, the ISO requests that the Commission reverse the Order on Remand and reinstate its initial conclusion that the ISO's outage control and coordination extend to all units subject to PGAs.

Respectfully submitted,

Charles F. Robinson  
General Counsel  
Anthony J. Ivancovich  
Senior Regulatory Counsel  
Gene L. Waas  
Regulatory Counsel  
151 Blue Ravine Road  
Folsom, CA 95630

/s/ **Julia Moore**  
J. Phillip Jordan  
Michael E. Ward  
Julia Moore  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

Dated: July 22, 2004

**CERTIFICATE OF SERVICE**

I, Gene L. Waas, hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, 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, CA this 22<sup>nd</sup> day of July, 2004.

    /s/ Gene L. Waas      
Gene L. Waas  
Regulatory Counsel