

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

<b>California Independent System Operator Corporation</b>	) ) ) )	<b>Docket No. EL02-45-001</b>
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**MOTION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
TO DISSOLVE THE STAY IMPOSED BY CAISO TARIFF 13.4.4  
AND PERMIT IMPLEMENTATION OF THE AWARD**

The California Independent System Operator Corporation (“CAISO”) respectfully submits this Motion pursuant to Rule 213 of the Rules and Regulations of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.213, to dissolve the stay imposed by CAISO Tariff 13.4.4, and permit implementation of the award in favor of Pacific Gas and Electric Co. (“PG&E”).<sup>1</sup>

**BACKGROUND**

In this docket, the Commission has reviewed and upheld an award in an arbitration conducted pursuant to Section 13 of the CAISO Tariff.<sup>2</sup> Rehearing was denied on April 18, 2005 (“April 2005 Order”),<sup>3</sup> and motions for clarification of that decision were denied on November 4, 2005.

The CAISO plans to implement the arbitrator’s award. Implementation is stayed, however, by operation of CAISO Tariff Section 13.4.4 because the

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<sup>1</sup> Counsel for PG&E has authorized the CAISO to state that PG&E consents to this motion.

<sup>2</sup> *California Independent System Operator Corporation*, 107 FERC ¶ 61,152 (2004).

<sup>3</sup> *California Independent System Operator Corporation*, 111 FERC ¶ 61,078 (2005).

CAISO has filed a petition for review of the Commission's orders.<sup>4</sup> Section 13.4.4 provides:

Implementation of the award shall be deemed stayed pending an appeal unless and until, at the request of a party, the FERC or the court of competent jurisdiction to which an appeal has been filed, issues an order dissolving, shortening or extending such stay. . . .

In this motion, the CAISO seeks to dissolve the stay, which the Commission has ruled would otherwise apply throughout the appellate review process, as explained below.

Other than the CAISO, no party to this proceeding has sought review of the Commission's orders in this docket.<sup>5</sup> The CAISO intends to pursue its petition only if necessary to implement the award – in particular, to protect itself against any contention that the CAISO was required to pursue the petition. Accordingly, the CAISO will be filing a motion tomorrow, February 8, 2006, asking the D.C. Circuit to hold the matter in abeyance pending the implementation of the arbitration award. Assuming the resettlement can be implemented, the CAISO would dismiss the appeal as moot.

## **JURISDICTION**

Under Section 313(b) of the Federal Power Act, the Commission has concurrent jurisdiction over this matter until it files the record in the D.C. Circuit. Although the record is currently due on February 23, 2006, the CAISO would not

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<sup>4</sup> The petition was filed in the United States Court of Appeal for the District of Columbia Circuit on January 3, 2006, and has been assigned Case No. 06-1002.

<sup>5</sup> Although several parties have intervened in the D.C. Circuit, they are parties that support the award in favor of PG&E – namely, PG&E, the Transmission Agency of Northern California, MSR Public Power Agency, Modesto Irrigation District, the City of Santa Clara and the City of Redding.

object to a request by the Solicitor's office to postpone that deadline in order to permit the Commission to rule on this request.

### **STATEMENT OF ISSUES**

1. CAISO intends to implement an arbitration award in favor of PG&E.

The award is under appellate review because the CAISO filed petition for review in the D.C. Circuit. No other party has petitioned for review the Commission's orders in this docket, and the CAISO will ask the court to hold in abeyance pending successful implementation of the award. Should the Commission dissolve the stay on implementation of the award that would otherwise apply to permit the CAISO to proceed with implementation of the award?

### **ARGUMENT**

The CAISO requests that the Commission dissolve the stay imposed by CAISO Tariff 13.4.4 to permit implementation of the arbitration award. The Commission has ruled in this docket that the presumptive stay continues to apply throughout judicial review of Commission orders. See April 2005 Order, ¶ 25. Consequently, without relief, implementation would be barred.

Dissolution of the stay is appropriate because no CAISO market participants have sought rehearing or judicial review of the Commission's orders. Accordingly, dissolution of the stay should not harm parties to this proceeding. Nor would it cause the CAISO to incur resettlement costs unnecessarily (as it might if an award were implemented before appellate review were complete). Finally, dissolving the stay to permit implementation of the award would be in the

public interest because it may moot the CAISO's petition for review, as explained above.

**CONCLUSION**

For the foregoing reasons, the Commission should dissolve the stay imposed by the CAISO Tariff, Section 13.4.4, in order to permit the CAISO to implement the arbitration award in favor of PG&E.

Respectfully submitted,

**/s/ Daniel J. Shonkwiler**

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Dated: February 7, 2006



February 7, 2006

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

**Re: California Independent System Operator Corporation  
Docket No. EL02-45-001**

Dear Secretary Salas:

Enclosed for electronic filing please find a Motion of the California Independent System Operator to Dissolve the Stay Imposed by CAISO Tariff 13.4.4 and Permit Implementation of the Award in the above captioned docket.

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 7<sup>th</sup> day of February, 2006.

**/s/ Daniel J. Shonkwiler**  
Daniel J. Shonkwiler