

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

<b>San Diego Gas &amp; Electric Company,</b>	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket Nos. EL00-95-000,</b>
	)	<b><i>et al.</i></b>
<b>Sellers of Energy and Ancillary Services</b>	)	
<b>Into Markets Operated by the California</b>	)	
<b>Independent System Operator and the</b>	)	
<b>California Power Exchange,</b>	)	
<b>Respondents.</b>	)	
	)	
<b>Investigation of Practices of the California</b>	)	<b>Docket Nos. EL00-98-000,</b>
	)	<b><i>et al.</i></b>

**MOTION TO STRIKE OR, IN THE ALTERNATIVE,  
REQUEST FOR LEAVE TO FILE ANSWER AND ANSWER OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
WITH RESPECT TO THE  
“ANSWER OF LA PALOMA GENERATING COMPANY, LLC  
TO THE MOTION OF CONSTELLATION NEWENERGY, INC.  
FOR THE RELEASE OF COLLATERAL HELD BY  
THE CALIFORNIA POWER EXCHANGE CORPORATION”**

Pursuant to Rules 212 and 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 motion to strike or, in the alternative, request for leave to file answer and answer to the “Answer of La Paloma Generating Company, LLC to the Motion of Constellation NewEnergy, Inc. for the Release of Collateral Held by the California Power Exchange Corporation” (the “La Paloma ‘Answer’”). The La Paloma “Answer,” which was submitted June 29, 2006, in these dockets, reargues a pending motion for rehearing of the Commission’s Order Denying

Complaint<sup>1</sup> which was issued March 29, 2005 (“March 29 Order”) in Docket EL05-54.

**I. The La Paloma “Answer” Should Be Stricken Because It Serves No Legitimate Purpose**

The Commission should strike the La Paloma “Answer” to Constellation because it improperly seeks to supplement and re-argue La Paloma’s motion for rehearing that is pending in a separate docket, and needlessly wastes of the Commission’s resources. The Commission properly rejected La Paloma’s complaint. The March 29 Order makes clear that the story that La Paloma repeats here is inaccurate, because the funds that La Paloma is seeking were posted as collateral by a subsidiary of National Energy Gas & Transmission (“NEGT”), which is not entitled to its return, and La Paloma’s only rights to the funds are through an assignment from NEGТ. La Paloma has moved for rehearing of the March 29 Order, and does not even suggest in this new pleading that it has a legitimate reason to supplement the pending motion.

The La Paloma “Answer” is styled as a response to Constellation NewEnergy’s motion for release of collateral that Constellation posted with the PX. But Constellation’s motion is irrelevant to La Paloma’s pending motion for rehearing. It mentions the Commission’s March 29 Order only once, in a footnote, and then only to summarize it. The instant proceeding is not an

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

appropriate occasion for La Paloma to reargue its case against the March 29 Order, thereby spreading that litigation into these dockets.

Because the answer is improper, prejudicial to the CAISO, and a waste of Commission resources, the CAISO respectfully requests that that Answer be stricken.

**II. If the Motion to Strike is Denied, the CAISO Should be Permitted to Answer La Paloma**

In the alternative and to the extent Commission denies this motion to strike, CAISO requests permission to Answer La Paloma. Waiver of Rule 213(a)(2)<sup>2</sup> would be appropriate because 1) this Answer will aid the Commission in understanding the issues in the proceeding and the complete record before it, 2) by hypothesis, the Commission will have denied the motion to strike the La Paloma “Answer,” which would prejudice the CAISO, and 3) the Commission waived Rule 213(a)(2) in favor of La Paloma earlier in the other docket (EL05-54).<sup>3</sup>

In answer to La Paloma, the CAISO submits that the Commission’s March 29 Order was correct. This matter is important to the CAISO and its markets, because the relief sought by La Paloma threatens to undermine both the effective operations of the financial security provisions that protect suppliers, and the bedrock principle on which the CAISO’s business procedures are built – namely, that the CAISO does business with a limited number of certified

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<sup>2</sup> 18 C.F.R. § 385.213(a)(2).

<sup>3</sup> March 29 Order, P 11.

Scheduling Coordinators, and not the potentially limitless number of customers that transact with the SCs.

The tale spun by La Paloma about a generator being unjustly deprived of “its” collateral by technicalities and circumstances portrays the situation inaccurately. The facts, which La Paloma reveals sparingly through obscure references, are summarized in the CAISO’s Answer to La Paloma’s Request for Rehearing (filed May 15, 2005, in Docket No. EL05-54). The CAISO will not burden the Commission by re-stating that motion, but only ask the Commission to review it together with La Paloma’s answer. It demonstrates conclusively that:

- La Paloma had no direct financial dealings with the CAISO; it transacted with NEGТ.
- The collateral was posted by and secures the obligations of NEGТ, which was the Scheduling Coordinator doing business with the CAISO.
- La Paloma actually knew this before it provided funds to its Scheduling Coordinator. The record is replete with evidence (mostly found within the documents provided with La Paloma’s complaint) that the ISO told NEGТ and La Paloma before the cash was posted that it would cover the obligations of NEGТ. *Accord* La Paloma “Answer” at 5 (text accompanying n. 14). NEGТ could not post collateral “for La Paloma” because La Paloma had no obligations of its own to secure – it was not a Scheduling Coordinator. Subsequent agreements between La Paloma and NEGТ confirm that they understood this.
- La Paloma’s rights to any excess collateral once NEGТ’s obligations are settled stem from an agreement that La Paloma entered shortly before bringing its complaint in which it procured those rights from NEGТ. As the Commission found, La Paloma stands in the shoes of NEGТ. La Paloma does not dispute that the tariff unambiguously requires the CAISO to retain the NEGТ collateral until CAISO is satisfied that NEGТ’s obligations have been satisfied, or that this result is just and reasonable. In fact, it is essential to the functioning of the California markets. If the Commission were to accept La Paloma’s argument, the result would be to undermine the entire rationale for the CAISO’s requirement that Scheduling Coordinators post collateral under certain circumstances; that is, to ensure that if those Scheduling Coordinators become unable to satisfy their

obligations in the CAISO Markets, that sufficient collateral will exist to cover those obligations.

- Statements in La Paloma’s pleadings about “posting” the collateral, a “transitional” SC, and an understanding that money would secure only its’ obligations can only be understood as describing the arrangements between La Paloma and its Scheduling Coordinator. To the extent they are intended to describe an actual agreement with the CAISO, they are false. It would be grossly unjust to apply these private arrangements to the CAISO or its market participants, as they are contrary to the clear provisions of the governing tariff.

If La Paloma is a victim here – and that is open to doubt – it is not at the hands of the CAISO or the Commission’s decision enforcing the CAISO tariff. La Paloma’s quarrel is with NEGТ. And, as one would expect, La Paloma is seeking relief from NEGТ. See Exhibit A (La Paloma’s claim for payment of administrative expenses in the principal amount of the collateral). According to the representations in that claim, La Paloma bears no risk of loss in this matter, because NEGТ has agreed to indemnify it for any future reduction in the collateral that may be necessary to satisfy the obligations of NEGТ. See Exhibit A, ¶¶ 4, 5, 11 and 12. In short, it appears that NEGТ remains to this day the only party – other than creditors of the CAISO markets – with a stake in the collateral.<sup>4</sup>

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<sup>4</sup> It is difficult to reconcile this with a number of statements in the La Paloma Answer. E.g., p. 4 (“NEGТ is not the real ‘party-in-interest’ for the La Paloma collateral”); p. 5 (“La Paloma is the real and only party-in-interest with respect to its collateral”).

### III. Conclusion

For the reasons set forth above, the CAISO respectfully requests that the Commission strike La Paloma's June 29, 2006 "Answer" to Constellation, or in the alternative, permit the CAISO to make the instant response to La Paloma's June 29 "Answer" and deny the relief sought by La Paloma therein.

Respectfully submitted,

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Dated: July 12, 2006

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 12<sup>th</sup> day of July, 2006.

/s/ Charity Wilson

Charity Wilson