

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	Docket Nos. EL00-95-135
)	
v.)	
)	
Sellers of Energy and Ancillary Services)	
Into Markets Operated by the California)	
Independent System Operator and the)	
California Power Exchange,)	
Respondents)	
)	
Investigation of Practices of the California)	Docket Nos. EL00-98-122
Independent System Operator and the)	
California Power Exchange)	

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO
COMMENTS AND PROTESTS OF THE
CALIFORNIA DEPARTMENT OF WATER RESOURCES**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2005), the California Independent System Operator Corporation (“ISO”)¹ hereby requests leave to file an answer to the California Department of Water Resources State Water Project’s (“DWR”) comments and protest to the ISO’s compliance filing made on August 5, 2005 (“DWR Protest”) in the above-captioned dockets.² Although the Commission normally prohibits answers to protests, good cause exists to grant the ISO waiver

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

² This compliance filing was made in accordance with the Commission’s order in this proceeding issued on July 5, 2005, 112 FERC ¶ 61,024 (2005) (“July 5 Order”).

of Rule 213 (18 C.F.R § 385.213) in this instance, because this answer will aid the Commission in understanding the issues in this proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case.³

I. DISCUSSION

A. The ISO Does Not Object to DWR’s Proposed Modifications Reflected in Sections 2.3.3.1.1 and 2.3.3.1.1.1 of its Redline of the ISO’s Tariff Language

The ISO has no objection to DWR’s requested modifications, as set forth in Sections 2.3.3.1.1 and 2.3.3.1.1.1 of DWR’s redline against the ISO’s proposed outage coordination tariff language. DWR Protest at 5. DWR’s requested modifications simply state in different words what the ISO’s proposed tariff modifications already provided for – that the ISO cannot deny or modify CDWR maintenance outages for economic or market impact reasons.

B. The Remainder of DWR’s Proposed Modifications to the ISO’s Tariff Language Are Not Warranted, and Should be Rejected

The ISO submits that the additional modifications requested by DWR, beyond those discussed in Section I.A above, are not justified, and should be rejected. As explained below, contrary to DWR’s claims, DWR’s changes are not necessary to “expressly follow the Commission’s mandate” in the July 1 Order.

³ See, e.g., Entergy Services, Inc., 101 FERC ¶ 61,289, at 62,163 (2002); Duke Energy Corporation, 100 FERC ¶ 61,251, at 61,886 (2002); Delmarva Power & Light Company, 93 FERC ¶ 61,098, at 61,259 (2000).

First, with respect to its request to strike the phrase “in the reasonable opinion of the ISO,” DWR Protest at 5, DWR does not provide any rationale for such a change. “In the reasonable opinion of the ISO” is the standard applied throughout Section 2.3.3 of the ISO Tariff, and the July 5 Order does not indicate that it is inappropriate to apply this previously approved standard to DWR. Clearly, some assessment and determination of the likely impact that DWR outages will have on grid reliability is necessary in order to apply the standards set forth in Section 2.3.3 and the Outage Coordination Protocol. In other words, someone will have to determine whether a requested DWR maintenance outage, or modification to an approved DWR outage, will have a detrimental impact on the reliable operations of the ISO Controlled Grid. DWR does not suggest that such a determination should be made by an entity other than the ISO, and given the ISO’s role in operating the transmission grid and ensuring the reliability of that grid, it would be inappropriate for any entity other than the ISO to make that decision. The ISO also does not understand DWR’s insistence on the removal of the requirement that the ISO’s exercise of its judgment be “reasonable.” Indeed, the ISO submits that requiring that the ISO’s determination be reasonable provides an added measure of protection and assurance to entities such as DWR, as opposed to language that places no conditions on the ISO’s exercise of its discretion.

Second, DWR’s proposal to strike the term “likely to have a detrimental effect on” and replace it with “necessary to ensure,” is without merit. DWR Protest at 5. DWR’s argument is that such a change is necessary to “expressly

follow the Commission’s mandate.” *Id.* at 4. The Commission stated that the ISO would only be permitted to deny or cancel DWR outages “in order to ensure system reliability.” The ISO’s proposed language satisfies that requirement – if the ISO determines that some occurrence (such as a proposed or scheduled outage) is likely to have a detrimental effect on the reliable operation of the ISO Controlled Grid, then it follows, ipso facto, that any action taken by the ISO to prevent such a detrimental effect is done for reasons of ensuring system reliability.

The Commission did not require the ISO to implement a more rigorous standard in the July 5 Order. Indeed, the term “necessary” does not appear in the July 5 Order. DWR’s proposed modification could be interpreted to require the ISO to take absolutely every other possible action prior to denying or canceling a DWR outage, even if such outage threatened the reliability of the ISO Controlled Grid. The Commission did not suggest such a requirement in the July 5 Order, and there is no reason to read such a requirement into the July 5 Order, because such a reading would render superfluous the Commission’s mandate that the ISO pursue other options prior to rejecting or canceling a DWR outage ***when such action would violate laws affecting hydroelectric operations or “compromise DWR’s ability to deliver water to its customers.”*** July 5 Order at P 29. DWR’s proposed modification would apply this more rigorous standard to all DWR outages, regardless of whether the denial or cancellation of a DWR outage would have any negative impact on DWR’s water functions or implicate any laws affecting hydroelectric operations. This is clearly not what the

Commission intended. Therefore, DWR's requested modification is inconsistent with the July 5 Order, and should be denied.

DWR also proposes to strike the language limiting the ISO's use of options to those available under Section 2.3.3 and the Outage Coordination Protocol, so that in cases where denial or cancellation of a DWR outage would result in the violation of any law affecting hydroelectric operation, or compromise DWR's ability to deliver water to its customers, the ISO would be required to use every available option in its authority prior to rejecting or canceling the DWR outage. DWR Protest at 5. The ISO submits that DWR's proposal is overly broad and unnecessary.

First, it must be understood, as the ISO has continually pointed out in this proceeding, that with respect to the violation of laws affecting hydroelectric operation, the ISO Tariff already contains language that explicitly limits the ISO's authority to take actions that violate federal or state laws.⁴ Therefore, with respect to the violation of laws affecting hydroelectric operation, the ISO does not dispute that the ISO should pursue every available option, including those outside of Section 2.3.3 and the Outage Coordination Protocol, prior to taking an action that would violate a federal or state law, including those relating to hydroelectric operations. The ISO believes that such a result is already mandated by the existing terms of the ISO Tariff, and the ISO's proposed tariff language in compliance with the July 5 Order would not change that.

⁴ See Section 2.2.1 of the ISO Tariff, which provides that "[n]othing 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."

However, with respect to denials or cancellations of outages that would compromise DWR's ability to deliver water to its customers, it would be unreasonable to require the ISO to take every available action within its authority prior to denying or canceling a DWR outage. Such a requirement could lead to the bizarre and unreasonable spectacle of the ISO being forced to take an extreme action, such as the curtailment of firm load (*i.e.* rolling blackouts), which is within the ISO's authority if necessary to ensure grid stability, when the cancellation or denial of a DWR outage would prevent the need for such actions. The ISO has no desire to take any action that would negatively impact DWR's water-management obligations, and the ISO submits that the protections already provided in the ISO Tariff, along with those mandated by the Commission in the July 5 Order, will ensure that such an action would only be taken when absolutely necessary, and only when the ISO exhausts all other options available under Section 2.3.3 and the Outage Coordination Protocol, which includes the authority to deny, cancel, or modify the outages of any other Participating Generators. For these reasons, it is reasonable to limit the ISO's obligation to exhausting those options available under Section 2.3.3 of the ISO Tariff and the Outage Coordination Protocol prior to denying or canceling a DWR outage when such denial or cancellation would adversely affect DWR's ability to deliver water to its customers.

The remainder of DWR's requested modifications to the ISO's proposed Tariff language are contrary to the July 5 Order or simply unnecessary. For instance, in the provision discussing the actions that the ISO must take prior to

violating laws affecting hydroelectric operations or compromising DWR's water management functions, DWR suggests removing the reference to the ISO's authority to deny, modify, or cancel DWR outages. DWR Protest at 5. In its place, DWR instead proposes to insert language that would condition the ISO's ability, in such circumstances, to make *any* use of DWR's hydroelectric units. Such a broad provision goes well beyond the July 5 Order, which was limited to considering the ISO's authority to coordinate DWR's outages, and did not address other aspects of the ISO's authority vis-à-vis DWR's units. Such a change is therefore unwarranted and should be rejected.

DWR also proposes to include, in the same provision, additional language illustrating the types of federal and state laws affecting hydroelectric operations that would trigger the ISO's obligation to seek other alternatives prior to canceling or denying a DWR outage, as well as language expanding on the concept of what actions by the ISO could "compromise" DWR's ability to deliver water to its customers.⁵ The first change is superfluous and unnecessary – there is no need for language describing individual federal or state laws affecting hydroelectric operations. The reference to federal and state laws affecting hydroelectric operations is clear without such additional verbiage. The second change is inconsistent with the July 5 Order, which never mentioned these additional provisos. Both should be rejected. Finally, DWR suggests changes to the language in this provision that make the terms of this provision contingent upon DWR first informing the ISO of one of the relevant conditions. However, the ISO

⁵ DWR proposes to expand the reference to CDWR's ability to deliver water to its customers, to include "in real time or later in the delivery year, or adversely affect CDWR's flood water management operations." DWR Protest at 5.

does not see that DWR's proposed changes in any way affect the substance of the provision, and thus, they are unnecessary and should be denied.

C. There is No Need for the ISO to Adopt Additional "Procedures" to Comply with the July 5 Order

DWR maintains that because the ISO's outage coordination authority provides the ISO with certain discretion vis-à-vis DWR, that the ISO should be required to comply with "applicable procedural protections," in addition to the modifications to the ISO Tariff and Outage Coordination Protocol required by the Commission in the July 5 Order. DWR Protest at 6.

DWR first notes that under the Commission's regulations, transmission providers that exercise discretion under their tariff must maintain a written log detailing the manner and circumstances of such exercises of discretion. Section 358.5(c)(4). DWR contends that the Commission should direct the ISO to comply with this provision, insofar as the ISO exercises its discretion under the outage coordination protocol to affect DWR operations. DWR's argument is flawed because the Section cited by DWR is simply not applicable. Specifically, the very first provision in this Section of the Commission's regulations, Section 358.1, states that this Section does not apply to "a public utility Transmission Provider that is a Commission-approved Independent System Operator (ISO)."

DWR also requests that the Commission order revisions to "applicable Operating Procedures" to comply with the Commission's directives in the July 5 Order, because, according to DWR, ISO operators have stated that they rely on Operating Procedures rather than the Tariff. The ISO denies that the provisions in its Operating Procedures are meant to control over the terms of the ISO Tariff,

but it is difficult to directly address DWR's argument, because DWR provides no citation to any statements to the contrary. Moreover, DWR does not identify any particular provisions in any Operating Procedures that are inconsistent with the July 5 Order. DWR's request should therefore be denied.

II. CONCLUSION

Wherefore, for the reasons set forth above, the ISO respectfully requests that the Commission act on DWR's Protest as set forth herein.

Respectfully submitted,

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Dated: September 21, 2005

Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned 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 this 21st day of September, 2005 at Folsom in the State of California.

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