

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

La Paloma Generating Company, LLC,)	
Complainant)	
)	
v.)	Docket No. EL05-54-____
)	
California Independent System Operator)	
Corporation,)	
Respondent)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO
THE COMPLAINT OF LA PALOMA GENERATING COMPANY, LLC
AND MOTION FOR SUMMARY DISPOSITION**

The California Independent System Operator Corporation (“CAISO”) respectfully submits this Answer to the Complaint of La Paloma Generating Company, LLC (“La Paloma”) in the above-captioned matter (“Complaint”), and moves for summary disposition of the Complaint.

As explained below, the only possible issue in this proceeding is whether the Federal Power Act is violated by the CAISO Tariff provisions that require the CAISO to retain collateral posted by Scheduling Coordinators that are exiting the market until it can be determined that “no sums remain owing by the Scheduling Coordinator” – specifically, until after the California Refund Case¹ is resolved. This issue, however, is not raised in the Complaint, and moreover, this challenge has already been brought to the Commission by the Scheduling Coordinator whose collateral is at stake – National Energy Gas & Transmission Energy Trading – Power, L.P. (“NEGT ET”), which was formerly known as PG&E Energy

¹ San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, *et al.*, Docket Nos. EL00-95, *et al.*

Trading – Power, L.P. The Commission denied that request, and this Complaint provides no justification for a different result here. In particular, the fact that this Complaint was brought by NEG T ET assignee La Paloma, which was a client of NEG T ET at the time NEG T ET posted the collateral at issue, is reason in and of itself for the Commission to deny the Complaint, in light of the applicable agreements and tariff provisions.

The CAISO respectfully requests summary disposition of this Complaint because it is entitled to prevail as a matter of law on the undisputed facts.

I. FACTUAL BACKGROUND

The Complaint leaves an inaccurate impression about the underlying events, for two reasons. First, it omits any discussion of applicable agreements and Tariff provisions. Second, certain material facts are addressed in a way that obscures their significance. To provide a more complete picture, this section explains first what the Complaint seems to say, then elaborates on the missing legal background, and finally sets forth the undisputed facts framed against the legal background.

A. What the Complaint Seems to Say

The Complaint attempts to tell a story of a generator that went on line in 2003, after the California energy crisis, but whose collateral nevertheless has been unjustly caught up in the Refund Proceeding, as follows:

La Paloma Generating Company, LLC (“La Paloma”) owns an exempt wholesale generator located in Kern County, California. Complaint at 1 & 4. The generator came on line in January 2003. Complaint at 5.

In anticipation of the new generator coming on line, the CAISO demanded collateral. La Paloma's corporate affiliate NEG T ET, which served as its Scheduling Coordinator with the CAISO, posted \$5.7 million in cash as security "on La Paloma's behalf." Complaint at 1, 6. This is the "La Paloma Collateral" referenced throughout the Complaint.

After a few months, CAISO "increased [the] collateral requirement solely as a result of the recorded imbalances and anticipated future imbalances associated with the scheduling of La Paloma." Complaint at 7. On March 7, 2003, NEG T ET responded by submitting "an additional \$10 million of Collateral to the CAISO, solely to permit it to schedule La Paloma power." Complaint at 7. "In mid-May 2003, the CAISO returned \$9,285,486 of the Collateral, leaving a principal balance . . . of \$6,414,540." Complaint at 8.²

La Paloma, which has since switched to a new Scheduling Coordinator, cannot obtain return of the remaining collateral posted through NEG T ET. The CAISO has refused to return the collateral because NEG T ET may have additional obligations once the reruns associated with the California Refund proceeding are complete.

La Paloma complains that the CAISO's decision not to return the collateral until after the reruns associated with the California Refund Case violates the Federal Power Act ("FPA") because

- 1) "The La Paloma Collateral was requested by the CAISO and posted for the single purpose of enabling generation from La Paloma to be scheduled in CAISO markets";

² This \$6,414,540 is hereinafter referred to as the "CAISO Cash Collateral."

- 2) “The La Paloma Collateral was first posted 18 months after the expiration of the Refund Period and only to enable transactions to be conducted more than 18 months after the Refund Period”;
- 3) “Other than the fact that ET engaged in transactions during the Refund Period (in which La Paloma did not participate), and ET served as La Paloma’s SC for a short transitional period as La Paloma commenced commercial operation, there is no nexus between the La Paloma Collateral, which is related to scheduling of La Paloma power post-Refund Period, and any activity by ET during the Refund Period”; and
- 4) “CAISO is unlawfully imposing more onerous credit requirements on La Paloma than on other market participants, including generators, traders and electric load, who similarly first began conducting transactions in the CAISO markets after the Refund Period.”

Complaint at 2-3.

Therefore, La Paloma requests that the Commission “find that the CAISO’s refusal to refund the La Paloma Collateral to La Paloma” violates the FPA, and that it “require the CAISO to refund to La Paloma” \$6,414,540, plus interest. Complaint at 25.³

B. Applicable Provisions of the CAISO Tariff and Approved Agreements

This sub-section details the applicable legal framework, which is different than what is suggested by the Complaint. The Complaint fails to mention the Scheduling Coordinator Agreement between CAISO and NEG T ET, which is the legal relationship relevant to the financial transactions at issue here. The CAISO Cash Collateral is governed by the Scheduling Coordinator Agreement and certain provisions of the CAISO Tariff. La Paloma, on the other hand, is party only to a Participating Generator Agreement with the CAISO, and has no relevant

³ The Complaint erroneously identifies the amount of collateral held as \$66,414,540. Complaint at 25. Counsel for La Paloma has confirmed that this is a typographical error.

financial relationship with the CAISO. Finally, both NEG T ET and La Paloma are bound by the ADR provisions of the CAISO Tariff, which limit the scope of the issues that may be addressed in this proceeding.

1. *CAISO Scheduling Coordinators*

The CAISO, in accordance with its Tariff, transacts business through Scheduling Coordinators. Scheduling Coordinators are required to execute the *pro forma* Scheduling Coordinator Agreement (the “SCA”), which has been approved by the Commission.⁴ The SCA obligates Scheduling Coordinators to comply with all CAISO rules, protocols, and instructions. SCA Section 2. NEG T ET executed a Scheduling Coordinator Agreement with CAISO, which was filed with the Commission on May 19, 1999, in docket no. ER99-2985.

It is common for Scheduling Coordinators to represent other market entities, such as generators like La Paloma, on behalf of whom they interact with the CAISO. *E.g., San Diego Gas & Electric Com., et al.*, 101 FERC ¶ 63,026 at 65,248, P 857 (Dec. 12, 2002) (Certification of Proposed Finding on California Refund Liability) *upheld by* 102 FERC ¶ 61,317 (Mar. 26, 2003) (Order on Proposed Findings on Refund Liability) (discussion regarding APX and its customers). However, it is the Scheduling Coordinator itself, and not its clients, who “shall have the primary responsibility to the ISO, as principal, for all Scheduling Coordinator payment obligations under the ISO Tariff.” SCA, Section 2(E); *see also* CAISO Tariff 2.2.1.

⁴ Copies of the SCA and other *pro forma* agreements are publicly available on the CAISO website. <http://www.caiso.com/clientsev/agreements/>.

2. *Scheduling Coordinator Credit Requirements*

As the financially responsible parties for transactions entered into in the CAISO Markets, Scheduling Coordinators must satisfy certain credit obligations. A Scheduling Coordinator “that does not maintain an Approved Credit Rating . . . shall maintain security in accordance with Section 2.2.3.2 . . . to cover the entity’s outstanding and estimated liability for” Grid Management Charge and specified settlement charges. CAISO Tariff Section 2.2.7.3

The referenced Tariff section, 2.2.3.2, describes the acceptable forms of credit support, which include cash deposits. Other credit support instruments such as guarantees or letters of credit “shall be in such form as the ISO may reasonably require,” and “must cover *all applicable outstanding and estimated liabilities* under Section 2.2.7.3.” CAISO Tariff 2.2.3.2 (emphasis added).

CAISO Tariff section 2.2.4.5 provides that the CAISO shall return or release collateral to a Scheduling Coordinator that is exiting the market “within thirty (30) days of being satisfied that no sums remain owing by the Scheduling Coordinator under the ISO Tariff.”

3. *La Paloma was a Participating Generator, not a Scheduling Coordinator*

Unlike NEG T ET, La Paloma is not a Scheduling Coordinator, nor has it ever been a Scheduling Coordinator. La Paloma is a Participating Generator, and has executed a Participating Generator Agreement (“PGA”) with the CAISO, which was filed with the Commission on March 26, 2001, in docket no. ER01-1611-000. Through the PGA, La Paloma is obligated to “comply with all applicable provisions of the ISO Tariff.” Section 4.2.

The Tariff provides that a Generator seeking to use the CAISO Controlled Grid *must* use a Scheduling Coordinator. CAISO Tariff Sections 2.1.1, 2.2.3; see *also* CAISO Tariff Section 5 (introductory language). In contrast to Scheduling Coordinators, who are the principals in all transactions, Participating Generators are not subject to any credit requirements.

4. *Applicable ADR Provisions*

Both NEG T ET and La Paloma are subject to mandatory ADR through the CAISO Tariff. The SCA provides that Scheduling Coordinators “will abide by, and will perform all of the obligations under the ISO Tariff placed on Scheduling Coordinators . . . including, without limitation, . . . dispute resolution.” Section 2B. The PGA provides that “the Parties shall adhere to the ISO ADR Procedures set forth in Section 13 of the ISO Tariff, which is incorporated by reference.” PGA Section 7.1.

The ADR provisions are in Section 13 of the CAISO Tariff, which mandates that “the ISO ADR Procedures shall apply to all disputes between parties which arise under the ISO Documents . . .” CAISO Tariff 13.1.1.⁵ This requirement is subject to specified exceptions, only one of which is even potentially applicable here: ADR is not mandated for “[d]isputes as to whether rates and charges set forth in this ISO Tariff are just and reasonable under the FPA.” CAISO Tariff 13.1.1.2.

⁵ The term “ISO Documents” includes the Tariff “and any agreement entered into between the ISO and a Scheduling Coordinator . . . or any other Market Participant pursuant to the ISO Tariff.” CAISO Tariff Appendix A, Master Definitions Supplement. The term “Market Participant” includes any “entity . . . who participates in the Energy marketplace through the buying, selling, transmission, or distribution of Energy . . . into, out of, or through the ISO Controlled Grid.” *Id.*

C. What the Complaint Actually Says (and Other Undisputed Facts)

NEGT ET became a CAISO Scheduling Coordinator in 1999. It actively scheduled Energy through the CAISO Controlled Grid and participated in CAISO-administered markets continuously until 2003. This active participation spanned the time covered in the California Refund Proceeding (October 2, 2000 through June 21, 2001). The CAISO has calculated that NEGTE ET will likely have significant refund liability as a result of its activities in the CAISO Markets during this period.⁶

At the same time, NEGTE ET was also a Participant in the California Power Exchange (“CalPX”). *PG&E Energy Trading-Power, L.P. v California Power Exchange Corporation*, 102 FERC ¶ 61,091 (2003). In that capacity, NEGTE ET brought its first dispute to the Commission regarding collateral and the California Refund Proceeding. As of December 10, 2002, the CalPX had refused to release \$19 million in collateral posted by NEGTE ET, so it filed a complaint with the Commission seeking return of the collateral. *Id.* The Complaint argued, among other things, that retaining collateral to secure refunds, as the CalPX was doing, violated the Federal Power Act.

The week after its complaint against the CalPX, on December 18, 2002, NEGTE ET posted cash collateral of \$5.7 million with the CAISO. The Complaint does not allege any agreement or other writing between NEGTE ET and the CAISO governing use of the collateral, or otherwise dispute that the collateral is governed by the CAISO Tariff.

⁶ See Exhs. ISO-30 and ISO-31, as filed in Docket Nos. EL00-95, *et al.* (March, 2002) (indicating an estimated refund liability of approximately \$25 million for PG&E Energy Trading-Power).

The Complaint suggests through the repeated use of the label “La Paloma Collateral” that the posted cash was provided by La Paloma, directly or indirectly. However, nothing in the Complaint or the supporting documents actually says this. The Complaint is likewise silent about any communications or agreement between La Paloma and either the CAISO or NEG T ET prior to the Termination Agreement in May 2003.

A month after NEG T ET posted the collateral, on January 30, 2003, it received the Commission’s response to the complaint concerning the CalPX collateral. The Commission denied the Complaint in *PG&E Energy Trading-Power, L.P. v California Power Exchange Corporation*, 102 FERC ¶ 61,091 (2003). The Commission found, among other things, that the CalPX obligations would not be finally billed and settled until after the completion of the California Refund Proceedings, and that the collateral must be retained until then.

On March 7, 2003, the CAISO requested and NEG T ET submitted an additional \$10 million of Collateral to the CAISO. Complaint at 7.⁷ In mid-May 2003, the CAISO returned \$9,285,486 of the collateral, leaving a principal balance . . . of \$6,414,540.” Complaint at 8.

On May 12, 2003, NEG T and La Paloma entered a “Termination Agreement” through which La Paloma apparently agreed to purchase NEG T ET’s rights to the “CAISO Cash Collateral” – a term that stems from their agreement,

⁷ In addition to the undisputed fact, it is noteworthy that in late March, there was an attempt to substitute a different \$10 million Letter of Credit that was purportedly “on behalf of La Paloma LLC.” See Nethercut Declaration, Exh 1. CAISO returned the Letter unsigned, with an explanation that the CAISO could accept only a letter of credit submitted expressly “on behalf of PG&E Energy Trading” – NEG T ET’s corporate name at the time. See Nethercut Declaration, Exh 2. La Paloma was instructed that credit posted for PG&E Energy Trading would “cover any and all transactions” PGET had with CAISO. *Id.*

not from the CAISO. See Exhibit 3, § 2.1(b)&(c). Specifically, it was agreed that on the demand of NEG T ET, La Paloma would pay the then-current value of the CAISO Cash Collateral (*id.*) and, after receipt of payment, NEG T ET would deliver “an assignment agreement duly executed and delivered by [NEG T ET] assigning all of its right, title and interest in, to and under the CAISO Cash Collateral to [La Paloma].” See *id.* § 2.1 (c). NEG T ET agreed that, until the exchange of the assignment for the payment, it would “take all steps reasonably available to it to cause the CAISO to return the CAISO Cash Collateral to” it (i.e., NEG T ET). *Id.* § 2.2. The Termination Agreement expressly contemplates the possibility that CAISO would deduct from the CAISO Cash Collateral “to satisfy payment obligations owing from [NEG T ET] to CAISO.” *Id.* § 2.1 (b)(ii)

On July 24, 2003, in response to telephone requests from NEG T ET, the CAISO wrote to indicate that it could not release the CAISO Cash Collateral until it was “satisfied that no sums remain owing” as required by CAISO Tariff 2.2.4.5. See Complaint Exhibit 7. The letter solicited “any input that [NEG T ET] can provide,” but there was no response.

On November 3, 2003, NEG T ET executed the Assignment contemplated by the Termination Agreement. See Complaint, Exhibit 2. Almost a year later, on September 7, 2004, La Paloma asked the CAISO to return the CAISO Cash Collateral to it. See Complaint Exhibit 8. The CAISO declined this request, citing the reasons stated in its earlier letter. See Complaint Exhibit 9.

II. APPLICABLE LEGAL STANDARDS

A. Only Certain Challenges to CAISO Tariff Language may be Brought Initially as 206 Complaints, Bypassing ADR

The CAISO Tariff, to which La Paloma and NEG T ET are bound, limits the scope of any Complaint that may be brought directly to the Commission. CAISO Tariff Section 13 mandates that all disputes arising under the Tariff must proceed in the first instance through ADR. A complaint may bypass ADR and come directly to the Commission only to the extent it challenges “whether rates and charges *set forth in this ISO Tariff* are just and reasonable under the Federal Power Act.” CAISO Tariff 13.1.1.2 (emphasis added).

B. Complaints that Commission Approved Tariffs Violate the FPA

The proponent of a change in an existing rate or other tariff provision has the burden of demonstrating that (1) the existing rate or provision is unjust, unreasonable, unduly discriminatory, or preferential, and (2) the proposed change will produce a just and reasonable result. See *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980); *California Electricity Oversight Board v. CAISO*, 109 FERC ¶ 61,182 (2004) at P 24.

C. Summary Disposition

If “there is no genuine issue of fact material to the decision of a proceeding or part of a proceeding, the decisional authority may summarily dispose of all or part of the proceeding.” 18 CFR § 385.217(b)

III. LEGAL ARGUMENT

A. THE COMPLAINT FAILS TO ASSERT GROUNDS FOR RELIEF

The Complaint is defective on its face because it does not assert a legally viable basis for relief. There is no dispute that the CAISO Cash Collateral was posted by a CAISO Scheduling Coordinator pursuant to the CAISO Tariff, and is being retained by the CAISO pursuant to that Tariff. In particular, the Tariff provides that the CAISO may return collateral to a Scheduling Coordinator that will be terminating its Scheduling Coordinator Agreement, such as NEG T ET, only after “being satisfied that no sums remain owing by the Scheduling Coordinator under the ISO Tariff.” CAISO Tariff 2.2.4.5, cited in Complaint Exhibit 7 (July 24, 2003 letter from CAISO to NEG T ET). Under the circumstances, the Complaint must demonstrate that this (or another) provision of the CAISO Tariff violates the FPA. The Complaint does not even attempt to make this showing, and therefore is defective on its face.

The Complaint may proceed only to the extent it alleges that the *CAISO Tariff itself* is not just and reasonable, because any other allegations concerning the CAISO’s treatment of Market Participants must first be brought to ADR. Both the Complainant and NEG T ET are contractually bound by the ADR provisions of the CAISO Tariff. Those provisions mandate ADR for “all disputes . . . aris[ing] under the ISO Documents,” a term defined to include “any agreement . . . between the ISO and a Scheduling Coordinator . . . or any other Market Participant pursuant to the ISO Tariff.” CAISO Tariff Appendix A, Master Definitions Supplement. The only exception to mandatory ADR is for complaints brought under Section 206 that “[d]ispute . . . whether rates or charges *set forth*

in th[e] ISO Tariff are just and reasonable under the FPA.” CAISO Tariff 13.1.1 (emphasis added). As there is no dispute that the allegations in the Complaint were not first brought to ADR, Complainants are not entitled to argue in this proceeding that the CAISO violated its Tariff.⁸ They are restricted to showing that the CAISO Tariff violates the FPA.

The Complaint does not attempt any such showing. The Complaint does not identify any Tariff provisions or rates that it claims are not just or reasonable. In fact, it does not address the Tariff at all. For this reason alone, the Complaint is fatally defective, and should be rejected by the Commission.

Moreover, even assuming that the Commission concludes that the Complaint does challenge the CAISO Tariff itself, and not whether the CAISO complied with that Tariff, it does not include the type of arguments that could potentially demonstrate a Tariff provision is unreasonable or unduly discriminatory. The applicable CAISO Tariff provisions have, of course, been approved by the Commission as just and reasonable. *See, generally, Pacific Gas & Electric Co.*, 81 FERC ¶ 61,122, at 61,462 (1997). A viable complaint, therefore, should address – explicitly or implicitly – the assumptions behind the Commission’s approval and explain why the continued application of these provisions is no longer consistent with the FPA. This Complaint, on the other

⁸ The Commission has previously denied complaints that do not challenge Tariff language for failing to first proceed through CAISO ADR. *See Strategic Energy LLC v. California Indep. Sys. Operator Corp.*, 95 FERC 61,312 (2001). Strategic Energy L.L.C. (“Strategic”) filed a complaint against the CAISO with the Commission over an invoice dispute. The Commission denied the complaint because Strategic had not first pursued its dispute through the ADR procedures in the CAISO Tariff. *Id* at 62,069. The Commission specifically rejected Strategic’s argument that its invoice dispute implicated the justness and reasonableness of the CAISO’s rates, and therefore could proceed at the Commission pursuant to the exception in CAISO Tariff Section 13.1.1.2. *Id* at 62,070.

hand, reads as if the provisions are up for their initial review and comment. It is silent about the Commission's approval, and does not even attempt to address the assumptions behind approval, or how circumstances may have changed since then.

Along the same lines, the Complaint does not supply any alternative proposal for handling the security of exiting Scheduling Coordinators. Without an alternative, it could not possibly establish that an alternative is just and reasonable. The Complaint is facially defective for this reason as well.

B. THE COMMISSION HAS ALREADY REJECTED AN ESSENTIALLY IDENTICAL COMPLAINT AGAINST THE CAL PX

Turning to substance of La Paloma's allegations, the Commission has already denied an identical complaint by NEG T ET for return of collateral posted with the Cal PX. *PG&E Energy Trading-Power, L.P. v California Power Exchange Corporation*, 102 FERC ¶ 61,091 (2003) ("January 10, 2003 Order"). The Complaint should be rejected, because La Paloma does not provide any valid reason why this Complaint should be resolved differently.

On December 10, 2002, NEG T ET filed a complaint asking the Commission to direct the return of collateral posted with the CalPX. It relied on the same arguments raised here:

- i) the collateral could not be held to secure potential refunds (*compare* 102 FERC at 61, 091 *with* Complaint at 15-16),
- ii) the Commission's decision in *Constellation Power Source, Inc. v. California Power Exchange Corporation, et al.*, 100 FERC ¶ 61,380 (2002) compelled return of the Collateral (*compare* 102 FERC at 61, 091 *with* Complaint at 16-17),

- iii) NEG T ET's posted collateral was excessive (*compare* 102 FERC at 61, 091 *with* Complaint at 11 & 17, and
- iv) retention of the collateral will harm the liquidity of the market and remove needed capital (*compare* 102 FERC at 61, 091 *with* Complaint at 11 & 18).

Each of these arguments was rejected by the Commission, which found that "retaining the collateral is in the public interest." See 102 FERC at 61, 091 – 61,092.⁹ The Complaint does not directly address any of these aspects of the January 10, 2003 Order, because it could not hope to distinguish the decision on its substance. Instead, the Complaint raises only one purported distinction between the issues resolved in the January 10, 2003 order and this Complaint: the fact that the rights asserted here have been assigned to La Paloma.¹⁰ This is simply immaterial, however, as explained in Section C, *below*.

C. LABELS ASIDE, THE COMPLAINT ALLEGES NOTHING TO INDICATE THAT THE COMPLAINANT (LA PALOMA) HAS ANY RIGHT TO THE CAISO CASH COLLATERAL OTHER THAN AS ASSIGNEE OF THE CAISO SCHEDULING COORDINATOR (NEG T ET) WHOSE OBLIGATIONS THE COLLATERAL SECURES

⁹ Although the Complaint may not challenge whether the ISO is correctly applying ISO Tariff 2.2.4.5 by holding the ISO Cash Collateral at least until the conclusion of the Refund Proceeding, see Section I(A), *supra*, the January 10, 2003 Order would, in any event, preclude such an objection. Section 2.2.4.5 requires that the ISO hold the collateral of a Scheduling Coordinator that will be terminating its SC Agreement until it is "satisfied that no sums remain owing by the Scheduling Coordinator under the ISO Tariff." The January 10, 2003 order confirmed that NEG T ET's outstanding obligations could not be calculated until after the Refund Proceeding is completed. 102 FERC at 61, 091. This confirms that completion of the Refund Case is a prerequisite to satisfying Section 2.2.4.5, and thus to any return of the CAISO Cash Collateral.

¹⁰ To be sure, the Complaint dresses up the argument in terms of the CAISO Cash Collateral being posted "on behalf of La Paloma, not ET, for La Paloma's separate activities well after the Refund Period." Complaint at 22. There is no legal basis for this contention, however, as explained in Section C. Nor does the context of this statement suggest that a strong legal basis can be expected. The *only* mention of the prior litigation is a brief reference buried in the final, and otherwise non-substantive, section of the brief, under the heading "Compliance With Commission Rule 206".

There is no dispute that the CAISO Cash Collateral was posted by NEGTE, which was a CAISO Scheduling Coordinator. Every argument in the Complaint rests on the premise that the collateral secured only certain obligations of the Scheduling Coordinator – namely those arising out of La Paloma activity – and none of its other obligations. This bare assertion is repeated throughout the Complaint, without argument to support it or even an explanation of what it means. This assertion, moreover, is demonstrably incorrect – contrary to both the CAISO Tariff and the undisputed facts alleged in the Complaint.

1. As a Matter of Law, the CAISO Cash Collateral Secures All Obligations of a Scheduling Coordinator, Not Merely a Portion of Them

The CAISO Tariff expressly provides security requirements for Scheduling Coordinators, who must secure all of their transactions. Absent an unambiguous agreement to the contrary, any cash collateral held by the CAISO pursuant to the CAISO Tariff secures all of the Scheduling Coordinator’s financial obligations. Indeed, Section 2.2.4.5 requires the CAISO to hold the collateral until it is “satisfied that no sums remain owing *by the Scheduling Coordinator* under the ISO Tariff.” The Complaint contains no support for its implicit assertion that the CAISO Cash Collateral secured only obligations arising from one of Scheduling Coordinator NEGTE’s clients.

The CAISO Tariff provides that Scheduling Coordinators – and not Participating Generators – are the principals for all financial transactions. See CAISO Tariff 2.2.1 (“In contracting for Ancillary Services and Imbalance Energy

the ISO will not act a principal but as agent for and on behalf of the relevant Scheduling Coordinator”); Scheduling Coordinator Agreement 2(E). Schedules are submitted only by Scheduling Coordinators, not individual Participating Generator customers of Scheduling Coordinators. See CAISO Tariff Section 5 (introduction) (“The ISO shall not schedule Energy or Ancillary Services . . . other than through a Scheduling Coordinator”). Likewise, settlement is among Scheduling Coordinators and not Participating Generators. See CAISO Tariff Sections 11.1.1-2 (“The ISO shall calculate, account for and settle transactions in accordance with the following principles: . . . The ISO shall be responsible for calculating Settlement balances for all transactions *carried out by Scheduling Coordinators* on the ISO Controlled Grid in each Settlement Period”).

Accordingly, requirements for financial security in the CAISO Tariff – either an Approved Credit Rating or a posting an approved credit instrument – are imposed on Scheduling Coordinators as opposed to their Participating Generator customers, such as La Paloma. This is indeed what the Tariff provides: “Each *Scheduling Coordinator* . . . shall either maintain an Approved Credit Rating (which may differ for different types of transactions with the ISO) or provide in favor of the ISO.” ISO Tariff 2.2.3.2 (emphasis added). The credit instruments required of certain Scheduling Coordinators must cover all of their obligations. See CAISO Tariff 2.2.7.3 (“the ISO Security Amount is intended to cover the entity's outstanding and estimated Liability . . . ”); 2.2.3.2 (a Scheduling Coordinator must post either cash or an instrument that “cover[s] *all applicable outstanding and estimated liabilities*”; emphasis added).

There can be no doubt, then, that cash collateral posted pursuant to the CAISO Tariff secures all the obligations of the Scheduling Coordinator, NEG T ET in this instance, and is not limited to only some of its obligations such as those of only one of its Participating Generator clients. Contrary to the assertion throughout the Complaint, the Tariff simply does not establish a structure for posting collateral “on behalf of” the Participating Generator-client of an SC, as opposed to the Scheduling Coordinator itself, and the Complaint contains no explanation about how it claims this structure was created.¹¹

NEG T ET’s arrangement to transfer or sell the interest in the CAISO Cash Collateral to La Paloma reflects nothing more than a private commercial agreement between the Scheduling Coordinator and La Paloma, if that. There is no basis for it to bind the CAISO or its other Scheduling Coordinators who might be harmed by a premature return of the collateral. Indeed, 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. If Scheduling Coordinators could simply assign the interest in their collateral to entities such as La Paloma, which could in turn demand and receive that collateral from the CAISO, regardless of the existence of any outstanding liabilities of the

¹¹ Neither La Paloma nor any other Participating Generator (unless it is also an SC) even has a security requirement under the CAISO Tariff. Consequently, the Complaint’s assertion at La Paloma has been subjected to security requirements “unlike security requirements for other generators” simply makes no sense. See Complaint at 3.

Scheduling Coordinator, then the requirement that Scheduling Coordinators provide security in the first place would be rendered meaningless.

In short, any collateral posted by a Scheduling Coordinator pursuant to the CAISO Tariff secures all the obligations of that Scheduling Coordinator. Because there is no dispute that the CAISO Cash Collateral was posted by Scheduling Coordinator NEG T ET, this collateral secures all of its obligations as a matter of law.

2. The undisputed facts confirm that the CAISO Cash Collateral secures all NEG T ET obligations, and not merely a portion of them.

Against this legal background, the Complainant bears the burden of explaining its assertion that the CAISO Cash Collateral does not secure all the obligations of NEG T ET. The Complaint is silent on this issue, though. If anything, the Complaint confirms that the CAISO Cash Collateral secured the obligations of NEG T ET.

For one thing, La Paloma has admitted that after its relationship with NEG T ET was terminated, it made arrangements for Coral Power to serve as its Scheduling Coordinator. La Paloma acknowledges that because Coral, in contrast to NEG T ET, had an Approved Credit Rating, it was exempted from the requirement to post collateral. See Complaint at 7. Thus La Paloma acknowledges that the CAISO Tariff is concerned only with a Scheduling Coordinator's ability to pay its obligations, and that the creditorworthiness of a Participating Generator is irrelevant.

Other examples can be found in the Termination Agreement dated May 12, 2003. See Complaint Exhibit 3. The Agreement acknowledges in many places that it was NEG T ET that posted the collateral, and that it (and not La Paloma) expected to receive any collateral that was returned by the CAISO. See, e.g., pp. 1, 3, 4. The agreement specifically anticipates “withdrawal by CAISO from the CAISO Cash Collateral to satisfy payment obligations *owing from [NEG T ET] to CAISO.*” § 2.1(b) (i).

Given the admissions in the Complaint, and the absence of any explanation to the contrary, the CAISO Cash Collateral secures all obligations of NEG T ET, not merely those arising from La Paloma transactions. Thus, the fact that La Paloma has no liability associated with the refund period is irrelevant. The appropriate inquiry is what obligations exist with respect to NEG T ET, the Scheduling Coordinator that provided the CAISO Cash Collateral.

3. When the Complainant Agreed to Purchase the Assignment, it Knew that the CAISO Cash Collateral Secured all Obligations of NEG T ET, and not Merely those Relating to La Paloma

As of May 12, 2003, when La Paloma agreed to take an assignment of rights to the CAISO Cash Collateral from NEG T ET, La Paloma reasonably knew that the CAISO Cash Collateral secured all of NEG T ET's Scheduling Coordinator obligations, not only those obligations arising from La Paloma transactions. Accordingly, the Commission should give no weight to the equitable and policy arguments advanced in favor of the return.

La Paloma learned this from the CAISO more than six weeks earlier, after La Paloma attempted to submit a Letter of Credit that was purportedly “on behalf

of La Paloma LLC.” See Nethercut Declaration, Exh 1. CAISO returned the Letter unsigned, with an explanation that the CAISO could accept only a letter of credit submitted “on behalf of PG&E Energy Trading” – NEGTE’s corporate name at the time. See Nethercut Declaration, Exh 2. La Paloma was instructed that credit posted for NEGTE would “cover any and all transactions” it had with CAISO. See Blatchford e-mail, Exh 3.

In addition, La Paloma was on notice of the Commission’s January 10, 2003 Order regarding NEGTE’s collateral posted with the CalPX. Beyond the everyday principle that La Paloma is deemed to be on notice of that decision, La Paloma could be expected to be acutely aware of decisions affecting its corporate affiliate and counterparty.

La Paloma and NEGTE arranged the assignment in spite of this knowledge – or perhaps because of their knowledge of the CalPX decision, and with the hopes that the result might be different with a different plaintiff. In either event, La Paloma’s knowledge undermines any equitable or policy considerations that otherwise might merit a return of collateral.

4. The Complainant’s Rights to the CAISO Cash Collateral are limited to the rights of the assignor, NEGTE

For all of these reasons, La Paloma’s rights to the residual CAISO Cash Collateral arise exclusively from the assignment it received or purchased) from NEGTE, in whose shoes it stands. The Complaint provides no basis for returning the collateral to NEGTE, as explained in Section I above. And, as explained in Section II, transferring the collateral to La Paloma, prior to application of the collateral to any outstanding liabilities of NEGTE, would be at

odds with the specific provisions of the CAISO Tariff addressing financial security.

The assignment of the CAISO Cash Collateral to La Paloma is relevant in only one sense: it tells the CAISO where to direct any residual collateral after NEG T ET's obligations are resolved.

IV. CONCLUSION

As explained above, the Complaint is defective on its face, and as a matter of law in light of the undisputed facts. Accordingly, the CAISO respectfully requests that the Commission grant summary disposition in favor of the CAISO, or otherwise deny the Complaint, and provide any other relief the Commission deems appropriate.

Respectfully submitted,

Of Counsel:
J. Phillip Jordan
Michael Kunselman
Swidler Berlin LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
Tel: (202) 424-7500

/s/ Daniel J. Shonkwiler
Charles F. Robinson
Anthony J. Ivancovich
Daniel J. Shonkwiler
Stacie L. Ford
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-4400

Dated: February 2, 2005

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

**La Paloma Generating Company, LLC,
Complainant**

Docket No. EL05-54

v.

**California Independent System Operator Corporation,
Respondent**

DECLARATION OF PAUL NETHERCUT

I, Paul Nethercut, declare as follows:

1. I hold the position of Financial Analyst in the Finance Department of the California Independent System Operator Corporation (“CAISO”).
2. In my capacity as Financial Analyst, one of my areas of responsibility is Scheduling Coordinators’ credit issues. I share the responsibility with one other individual for maintaining files that store information related to Scheduling Coordinators’ credit ratings and security requirements.
3. The two exhibits attached hereto as Exhibit 1 and 2 are true and accurate copies of documents kept in the CAISO file for NEG T Energy Trading-Power, L.P. (formerly known as PG&E Energy Trading-Power, L.P.).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 2 day of February, 2005, at Folsom, California.


Paul Nethercut

EXHIBIT 1



Wednesday, April 9, 2003

Via Fax

Citigroup

Attention: Standby Letter of Credit Series

Fax: 813-604-7187

Re: Cancellation of La Paloma Generating Company Letter of Credit

Dear Citigroup:

Please consider this notice as authorization to cancel the \$10,000,000 Letter of Credit no. NY-3439-30034858 issued upon the request of La Paloma Generating Company.

If you have any questions, please feel free to contact Susan Wright at 916-608-5932. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Philip Leiber'.

Philip Leiber

Treasurer and Director of Financial Planning

California ISO

Tel: (916) 351-2168

Fax: (916) 351-2259

EXHIBIT 2



CALIFORNIA ISO

California Independent
System Operator

Tuesday, April 1, 2003

Via FedEx

Citigroup
Attention: Mark Prybutok
388 Greenwich Street, 20th Floor
New York, NY 10013
Phone: 212-816-6113

Re: PG&E Energy Trading Letter of Credit Return

Dear Mark:

Enclosed is the unsigned Letter of Credit from La Paloma Generating Company. As discussed previously, the California ISO requires that the Letter of Credit state the applicant's name of "PG&E Energy Trading" or "La Paloma Generating Company on behalf of PG&E Energy Trading".

If you have any questions, please feel free to contact Susan Wright at 916-608-5932. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Philip Leiber".

Philip Leiber
Treasurer and Director of Financial Planning
California ISO
Tel: (916) 351-2168
Fax: (916) 351-2259

Citibank, N.A.

NORTH AMERICAN TRADE FINANCE

Applicant: La Paloma Generating Co., LLC
Amount: \$10,000,000.00
Expiration Date: December 3, 2003
Date of Issuance: March 27, 2003

Beneficiary:
California Independent System Operator Corporation ("ISO")
151 Blue Ravine Road
Folsom, CA 95630
Attn: Treasury

We hereby establish in your favor, effective immediately, our irrevocable Letter of Credit no. NY-3439-30034858 which is available for payment

- (a) upon presentation to us at the office of our Servicer, Citicorp North America, Inc., 3800 Citibank Center, Building B 3rd Floor, Tampa, FL 33610 of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II; or
- (b) upon our receipt at fax number (813) 604-7187 of: (i) your written demand for payment containing the text of Exhibit I and (ii) your statement containing the text of Exhibit II.

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us of drawing documents in conformity with the foregoing, we will, within 1 (one) Business Days after such presentation, but without any other delay whatsoever, irrevocably and without reserve or condition: (a) pay to your order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you, or (b) issue payment instructions to the Federal Reserve wire transfer system in proper form to transfer to the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you in San Francisco, California. We agree that if, on the expiration date of this Letter of Credit, the office specified above is not open for business, this Letter of Credit will be duly honored if the specified statements are presented by you within thirty (30) full Business Days after such office is reopened for business.

As used in this Letter of Credit, the term "Business Day" means any day of the year in which banks located in New York City are not authorized or required by law or executive order to close.

The stated amount of this Letter of Credit may be increased or decreased, and the expiration date of this Letter of Credit may be extended, by an amendment to this Letter of Credit in the form of Exhibit III. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and La Paloma Generating Co., LLC or any other person relating to this credit, whether now or hereafter existing.

Citibank, N.A.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of La Paloma Generating Co., LLC. All of the rights of the ISO set forth above shall inure to the benefit of your successors. In this connection, in the event of a drawing made by a party other than the ISO, such drawing must be accompanied by documents proving the legal status of the party drawing under Letter of Credit as successor by operation of law to the ISO and the following signed certification:

"The undersigned does hereby certify that [drawer] is the successor by operation of law to the ISO, a beneficiary named in [name of Bank] Letter of Credit no. .

[name and title]"

This Letter of Credit is subject to the Uniform Customs and Practice for documentary Credits, Revision 1993, International Chamber of Commerce, Publication No. 500, and as to matters not governed by the UCP, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

CITIBANK, N.A.



AUTHORIZED SIGNATURE

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Documentary Letter of Credit

No. _____ Dated _____, _____

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$ _____ by deposit to our account no. _____ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Documentary Letter of Credit no. _____ dated _____, _____ in the amount of \$ _____ established by you in our favor for the account of _____ as the SC Applicant.

DATED: _____, _____.

California Independent System Operator Corporation

By _____

Title _____

EXHIBIT II

STATEMENT

Re: Your Irrevocable and Unconditional Documentary Letter of Credit

No. _____ Dated _____, _____

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Documentary Letter of Credit no. _____, dated _____, _____ in the amount of \$ _____ established by you in our favor for the account of _____.

We hereby certify to you that \$ _____ is due and owing to us by La Paloma Generating Co., LLC.

DATED: _____, _____.

California Independent System Operator Corporation

By _____

Title _____

EXHIBIT III

AMENDMENT

Re: Irrevocable and Unconditional Documentary Letter of Credit

No. _____ Dated _____, ____

Beneficiary:

California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Attn: Treasury

SC Applicant:

La Paloma Generating Co., LLC
7500 Old Georgetown Rd.
Bethesda, MD 20814
Attn: General Counsel

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Documentary Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (*strike two*) the stated amount by \$ _____ to a new stated amount of \$ _____ or by extending the expiration date to _____ from _____. All other terms and conditions of the Letter of Credit remain unchanged.

This amendment is effective only when accepted by the ISO, which acceptance may only be valid by a signature of an authorized representative.

Dated: _____

Yours faithfully,

[name of issuing bank]

By _____

Title _____

ACCEPTED

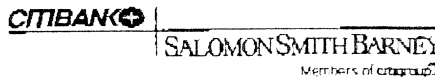
California Independent System Operator Corporation

By _____

Title _____

Date _____

Facsimile



Global Project & Structured Trade Finance
388 Greenwich Street, 20th Floor
New York, NY 10013

To: Susan Wright

Fax: 916-351-2259

CC:

Fax:

Date: March 21, 2003

Subject: CAISO L/C markup

From: Mark Prybutok

Phone: 212-816-6113

Fax: 212-816-0485

Handwritten notes: Reviewed, Mark, 3/21/03

Pages: 3 (including cover)

Susan,

As discussed. I have attached only the pages with our proposed changes. Please give a call when you have reviewed.

Thanks,
Mark

LETTER OF CREDIT – Alternative 1

SC Applicant:
 Amount:
 Expiration Date:
 Date of Issuance:

California Independent System Operator Corporation ("ISO")
 151 Blue Ravine Road
 Folsom, CA 95630
 Attn: Treasury

To Whom It May Concern:

We hereby establish in your favor, effective immediately, our irrevocable Letter of Credit no. _____ which is available for payment

- (a) upon presentation to us at our office at [bank's address],¹ of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II; or
- (b) upon both your telephone or fax advice of demand to the attention of _____ at telephone and/or fax number _____ and presentation to us by fax of: (i) your written demand for payment containing the text of Exhibit I and (ii) your statement containing the text of Exhibit II². Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us in conformity with the foregoing, we will, within 3 ~~hours~~ days after such presentation (~~unless such presentation occurs after 1:00 p.m., Pacific Time, on the day of such presentation, in which event payment will be made within 3 hours after the opening of business at the office specified above on the next business day~~), but without any other delay whatsoever, irrevocably and without reserve or condition: (a) if the office set forth above for presentation is in [City], California, pay to your order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you, or (b) if the office set forth above for presentation is not in [City], California, issue payment instructions to the

¹ Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.

² Note to Issuer: If the office specified for presentation is outside of [City], California, alternative (b) must appear in the Letter of Credit when issued. If the office is in [City], California, alternative (b) may be included only if the bank establishes and maintains with the ISO the necessary electronic arrangements.

"The undersigned does hereby certify that _____ [drawer] _____ is the successor by operation of law to the ISO, a beneficiary named in [name of Bank] Letter of Credit no. _____

[name and title]

Except so far as otherwise expressly stated herein, this documentary credit is subject to the "Uniform Customs and Practices for Documentary Credits," International Chamber of Commerce, in effect on the date of issuance of this credit. This Letter of Credit shall be governed by New York law.

Yours faithfully,

(name of issuing bank)

By _____

Title _____



FACSIMILE

DATE: 3/28/03
TO: Jim Blatchford
COMPANY:
FAX #: 916-608-7074

FROM: Susan Wright
DEPT/GROUP: Finance
FAX #: 916-351-2259
PHONE: 916-608-5932

Total Pages (including cover sheet): 6

Urgent

Please Reply

FYI

This facsimile is intended only for use of the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this facsimile, you are hereby notified that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the address below via the local postal service. We will reimburse any costs you incur in notifying us and returning the facsimile to us.

Post-It® Fax Note

To	Mark
Co./Dept.	Citi
Phone #	212-
Fax #	212-

Susan Dugley

916-351-2259

18	5
	info
	P.
	7193

NORTH AMERICA

Applicant: La Paloma Generating C
Amount: \$10,000,000.00
Expiration Date: December 3, 2003
Date of Issuance: March 27, 2003

on behalf of PG&E - Energy Trading

Beneficiary:
California Independent System Operator Corporation ("ISO")
 151 Blue Ravine Road
 Folsom, CA 95630
 Attn: Treasury

We hereby establish in your favor, effective immediately, our irrevocable Letter of Credit no. NY-3439-30034858 which is available for payment

- (a) upon presentation to us at the office of our Servicer, Citicorp North America, Inc., 3800 Citibank Center, Building B 3rd Floor, Tampa, FL 33610 of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II; or
- (b) upon our receipt at fax number (813) 604-7187 of: (i) your written demand for payment containing the text of Exhibit I and (ii) your statement containing the text of Exhibit II.

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us of drawing documents in conformity with the foregoing, we will, within 1 (one) Business Days after such presentation, but without any other delay whatsoever, irrevocably and without reserve or condition: (a) pay to your order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you, or (b) issue payment instructions to the Federal Reserve wire transfer system in proper form to transfer to the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you in San Francisco, California. We agree that if, on the expiration date of this Letter of Credit, the office specified above is not open for business, this Letter of Credit will be duly honored if the specified statements are presented by you within thirty (30) full Business Days after such office is reopened for business.

As used in this Letter of Credit, the term "Business Day" means any day of the year in which banks located in New York City are not authorized or required by law or executive order to close.

The stated amount of this Letter of Credit may be increased or decreased, and the expiration date of this Letter of Credit may be extended, by an amendment to this Letter of Credit in the form of Exhibit III. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and La Paloma Generating Co., LLC or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of La Paloma Generating Co., LLC. All of the rights of the ISO set forth above shall inure to the benefit of your successors. In this connection, in the event of a drawing made by a party other than the ISO, such drawing must be accompanied by documents proving the legal status of the party drawing under Letter of Credit as successor by operation of law to the ISO and the following signed certification:

"The undersigned does hereby certify that _____ [drawer] _____ is the successor by operation of law to the ISO, a beneficiary named in [name of Bank] Letter of Credit no. _____.

[name and title]"

This Letter of Credit is subject to the Uniform Customs and Practice for documentary Credits, Revision 1993, International Chamber of Commerce, Publication No. 500, and as to matters not governed by the UCP, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

CITIBANK, N.A.



AUTHORIZED SIGNATURE

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Documentary Letter of Credit

No. _____ Dated _____, _____

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$ _____ by deposit to our account no. _____ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Documentary Letter of Credit no. _____ dated _____, _____ in the amount of \$ _____ established by you in our favor for the account of _____ as the SC Applicant.

DATED: _____, _____.

California Independent System Operator Corporation

By _____

Title _____

EXHIBIT II
STATEMENT

Re: Your Irrevocable and Unconditional Documentary Letter of Credit

No. _____ Dated _____, _____

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Documentary Letter of Credit no. _____, dated _____, _____ in the amount of \$ _____ established by you in our favor for the account of _____.

We hereby certify to you that \$ _____ is due and owing to us by ~~La Paloma~~
~~Generating Co., LLC.~~ *PG & E Energy Trading*

DATED: _____, _____.

California Independent System Operator Corporation

By _____

Title _____

EXHIBIT III
AMENDMENT

Re: Irrevocable and Unconditional Documentary Letter of Credit

No. _____ Dated _____

Beneficiary:

California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Attn: Treasury

Applicant:

La Paloma Generating Co., LLC
7500 Old Georgetown Rd.
Bethesda, MD 20814
Attn: General Counsel

on Behalf of
PGE Energy Trading.

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Documentary Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (*strike two*) the stated amount by \$ _____ to a new stated amount of \$ _____ or by extending the expiration date to _____ from _____. All other terms and conditions of the Letter of Credit remain unchanged.

This amendment is effective only when accepted by the ISO, which acceptance may only be valid by a signature of an authorized representative.

Dated: _____

Yours faithfully,

[name of issuing bank]

By _____

Title _____

ACCEPTED

California Independent System Operator Corporation

By _____

Title _____

Date _____

EXHIBIT 3

From: Blatchford, James
Sent: Friday, March 28, 2003 4:31 PM
To: Pierce, David
Subject: PGET Security Posting
Follow Up Flag: Follow up
Flag Status: Flagged

David,

We have run into some problems with the LOC. The ISO is not going to accept credit posted strictly for La Paloma. Mark Prybutok at Citibank has been informed of this. La Paloma can put up a LOC for PG&E Energy Trading, but the a posting needs to cover any and all transactions PG&E Energy Trading has with the ISO. We have no way of segregating units or transactions. Our Financial Manager has marked up the LOC where we feel comfortable that you can add to "La Paloma Generating Company" the words "on behalf of PG&E Energy Trading" as well as statements that need to contain solely the words "PG&E Energy Trading". I will fax this to you, if you send me your fax number.

Also, the Finance department is still asking for another \$10 million in security. If La Paloma is producing in the way that you have relayed to me, we expect that these posting requirements will be decreasing. This issue is becoming an area of concern, so if you can call me on Monday we can discuss it further.

Jim

Jim Blatchford
Account Manager
CAISO
916.608.7051



February 2, 2005

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

**Re: La Paloma Generating Company, LLC vs. California Independent
System Operator Corporation
Docket No. EL05-54-___**

Dear Secretary Salas:

Enclosed for electronic filing please find the Answer of the California Independent System Operator Corporation to the Complaint of La Paloma Generating Company, LLC and Motion for Summary Disposition in the above captioned dockets.

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 2nd day of February, 2005.

/s/ Daniel J. Shonkwiler
Daniel J. Shonkwiler