

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

San Diego Gas & Electric Company,
Complainant,

Docket No. EL00-95-069

v.

Sellers of Energy and Ancillary Services
into Markets Operated by the California
Independent System Operator Corporation
and the California Power Exchange,
Respondent.

Investigation of Practices of the California
Independent System Operator and the California
Power Exchange

Docket No. EL00-98-058

**DISCOVERY MASTER ORDER ESTABLISHING PROCEDURES/
ADDRESSING PENDING MOTIONS**

(Issued December 12, 2002)

1. In accordance with discussions conducted at the December 11, 2002 conference convened for purposes of establishing procedures governing discovery in the above-captioned proceedings, the following discovery procedures are **ADOPTED**:
2. Discovery requests, responses, supporting materials and objections shall not be submitted to the Discovery Master unless they are directly related to an accompanying motion to compel discovery or answer to such motion.
3. Discovery responses, document productions and objections shall be made not later than ten (10) business days after the relevant discovery request(s) are made, using best efforts to comply.
4. Document production shall be deemed made if the materials have been reasonably made available in a repository established in: (1) Sacramento, CA; (2) Washington, DC; or (3) any mutually-acceptable other location. Documents produced in this manner shall be deemed reasonably made available if they are accessible during normal business hours and can

be reviewed and copied at the repository site. All costs of production into a repository site shall be borne by the producing party. Costs of reproducing repository materials shall be borne by the requesting party.

5. All motions to compel discovery/other motions shall be resolved at oral argument. No motions will be accepted/considered on the papers. *No motion to compel discovery shall be filed unless the movant is prepared to demonstrate to the Discovery Master's satisfaction at oral argument that the movant made every reasonable good faith effort to resolve the underlying dispute(s) prior to filing the motion.* No written order concerning any motion will be issued unless the Discovery Master deems it absolutely necessary.

6. Oral arguments shall be heard each Tuesday and Thursday at 10:00 a.m., in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, commencing January 7, 2003.

7. To be heard at the next scheduled oral argument, any motion shall be electronically filed and served on all parties at least forty-eight (48) business hours prior to the scheduled argument. Answers may be filed/served electronically at any time in the interim. Any such motion or answer shall be limited to ten (10) pages. Appendices are *strongly disfavored*, but not prohibited—provided they are essential to the pleading and are reasonable in scope.

8. All filings shall be made directly with the Discovery Master (Microsoft Word format) at peter.young@ferc.gov in addition to being filed in accordance with Commission regulations.

9. Service of all motions, answers and other filings shall be made via [LISTSERV](mailto:EL00-95@LISTSERV.GSA.GOV) at EL00-95@LISTSERV.GSA.GOV. Such service shall be confirmed by courtesy e-mail or telephone call.

10. Confidential or protected materials shall not be exchanged via [LISTSERV](mailto:EL00-95@LISTSERV.GSA.GOV); such materials shall be exchanged by hand or via private electronic transmission. Non-disclosure certificates executed in the underlying proceedings before Judge Birchman shall continue in effect, but shall be refreshed or supplemented as appropriate to the instant proceedings.

11. The Commission's November 20, 2002 Order on Motion for Discovery Order expressly prohibits Commission Staff participation in this phase of the proceeding. Accordingly, any [LISTSERV](mailto:EL00-95@LISTSERV.GSA.GOV) communication between or among the parties shall be prefaced with a prominent caveat

concerning Commission Staff review. The parties shall establish and use a uniform Commission Staff caveat.

12. A list of threshold issues identified at the December 11, 2002 discovery conference and in subsequent negotiations shall be posted to LISTSERV by approximately 5:00 p.m. (EST) on December 13, 2002. Oral argument addressing those issues shall be heard at 10:00 a.m. on December 17, 2002. If necessary, oral argument concerning California Parties' December 10, 2002 Motion to Compel Data Responses from Powerex shall be heard immediately thereafter. These arguments will be conducted in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

13. Californians for Renewable Energy, Inc. ("CARE"), representing itself to be a non-profit public benefit corporation, as well as a party intervenor unrepresented by legal counsel and suffering economic hardship, electronically submitted an eighty-one (81) page document designated "Request for Administrative Law Judge Assistance, Motion of [CARE] to Compel Data Responses of Buyers and Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange" on December 10, 2002 ("CARE Motion"). CARE did not attend the December 11, 2002 discovery conference,¹ and the CARE Motion subsumes various requests that are patently inconsistent with the procedures established at the conference and in this order. Rather than deny CARE's motion summarily on those bases, CARE is granted leave to appear and argue its position at the January 7, 2003 (or any subsequent) oral argument, provided CARE gives all parties at least ten (10) business days notice of its intent to do so.

SO ORDERED.

H. Peter Young
Discovery Master

¹ CARE's request—as well as numerous other attendees' prior requests—to "attend" telephonically could not be accommodated due to the unwieldiness of the of the conference itself.