

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

<b>California Independent System Operator Corporation</b>	)	
	)	<b>Docket No. ER04-835-000</b>
	)	
<b>Pacific Gas and Electric Company</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>California Independent System Operator Corporation</b>	)	<b>Docket No. EL04-103-000 (consolidated)</b>

**MOTION TO QUASH REQUEST FOR SUBPOENA AND ANSWER  
TO MOTION FOR USE OF DEPOSITION TESTIMONY OF THE CALIFORNIA  
INDEPENDENT SYSTEM OPERATOR CORPORATION**

**To: The Honorable H. Peter Young  
Presiding Administrative Law Judge**

Pursuant to Sections Pursuant to Commission Rules 212 and 410(a),<sup>1</sup> the California Independent System Operator Corporation (“ISO”) respectfully moves to quash the Motion for Issuance of a Subpoena for William Ellard (“SWP Motion”) filed by the California Department of Water Resources State Water Project (“SWP”) on June 16, 2005. SWP’s Motion was filed less than two weeks before the hearing in this proceeding is scheduled to begin, and as such is untimely and prejudicial to the ISO, and were the requested subpoena to be issued would present considerable hardship for the ISO as the summer peak period begins. The ISO also submits an Answer pursuant to Commission Rules 213 and 405<sup>2</sup> with regard to the alternative relief sought by SWP,

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<sup>1</sup> 18 CFR §§ 385.212 and 385.410(a) (2004).

<sup>2</sup> 18 CFR §§ 385.213 and 405 (2004).

*i.e.*, that certain portions of Mr. Ellard's deposition be permitted to be used during the hearing in lieu of Mr. Ellard's appearance. In support thereof, the ISO states as follows.

**I. Background**

On June 16, 2005, SWP filed its Motion in this proceeding. SWP's Motion seeks either the use of selected pages from the October 4, 2004 deposition of ISO Supervising Manager for the Grid Operations Department, William Ellard, or that the Presiding Judge Issue a subpoena for Mr. Ellard's appearance at the hearing scheduled to begin on June 28, 2005 in this proceeding. The ISO will respond to these different requests separately below.

**II. Motion to Quash Subpoena**

The ISO opposes SWP's request for a subpoena of Mr. Ellard because it would impose a significant hardship on the ISO, and SWP has not shown good cause for imposing such a hardship.

As described in the attached Declaration (Attachment A), Mr. Ellard has both personal and professional commitments during the time of this hearing. Moreover, his role at the ISO is of tremendous significance during the onset of the summer peak period. As Mr. Ellard notes in his Declaration, "This is probably the single most important time of the year for Grid Operations in California and consequently for my job." Declaration at P 4. The need for Mr. Ellard to be available to the ISO during this period is exacerbated by the necessary appearance at the Amendment No. 60 hearing by ISO Director of Grid Operations, Jim McIntosh. Mr. Ellard and Mr. McIntosh work in close concert, and their combined absence (even sequentially) during this crucial period of time would put a significant strain upon the ISO. Indeed, SWP acknowledges as

much in stating that “the summer months can be challenging to the ISO as load demands often increase. Thus ensuring the reliability of the Grid is of the utmost importance.” SWP Motion at 4.

SWP states that Mr. Ellard’s appearance at the hearing is necessary because of his “specific expertise highly relevant to this matter.” SWP Motion at 2. What SWP fails to explain is why it has not been able to present its case using the information it obtained from Mr. Ellard during his October 4, 2004 deposition in light of the seven months of discovery, further related depositions and two rounds of testimony that have taken place since Mr. Ellard’s deposition. Although SWP is now unable to use Mr. Ellard’s deposition as direct evidence at hearing, see 18 C.F.R. § 385.405, SWP had ample opportunity to discuss and rely whatever portions of Mr. Ellard’s deposition it considered relevant and significant. This could have been achieved through the testimony of its witness David Marcus or another witness with the engineering expertise to evaluate and rely on the information provided by Mr. Ellard to form expert opinions. SWP also was able to request admissions regarding any of the information provided in Mr. Ellard’s deposition, which admissions would have been binding on the ISO, or could have submitted data requests that subsequently could have served as evidence. That it chose not to do so is insufficient reason to call upon Mr. Ellard to abandon his post at the ISO to assist SWP in making up deficiencies in its case.

In short, SWP has had more than adequate opportunities to secure the kind of information and evidence that Mr. Ellard would be able to provide if compelled to appear at the hearing, and has failed to take advantage of them. This lack of preparation

should not come at the cost of the reliability of the ISO Controlled Grid during this crucial period.

### **III. Answer to Motion for Use of Deposition**

SWP cites Rule 405(a)(3)(iv) of the Commission's Rules of Practice and Procedure<sup>3</sup> as a basis for using certain portions of Mr. Ellard's October 4, 2004 deposition during the hearing in lieu of having Mr. Ellard personally appear. Pursuant to this rule, a deposition of a witness not appearing may be used by a participant if the presiding officer finds that "Exceptional circumstances make it necessary in the interest of fairness...to allow use of the deposition." SWP contends that Mr. Ellard's importance to the ISO during this crucial summer peak period constitutes such "exceptional circumstances." SWP Motion at 4. The ISO appreciates SWP's concern for grid reliability, but must point out that although such exceptional circumstances surely militate against Mr. Ellard's appearance at the hearing, SWP's reliance on this provision presumes that the live testimony of Mr. Ellard would otherwise be justified. As described above, SWP's failure to take advantage of other opportunities to prepare its case does not justify a subpoena of Mr. Ellard.

Nonetheless, in the interest of avoiding the need to litigate the issuance of a subpoena for Mr. Ellard and to avoid the risk that a subpoena might be issued, the ISO previously agreed not to oppose SWP's introduction of the identified portions of the deposition at hearing. Consistent with that commitment, the ISO does not now oppose SWP's motion to use of the indicated portions of the deposition transcript.

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<sup>3</sup> 18 CFR §385.405(a)(3)(iv) (2004).

#### IV. Conclusion

Wherefore, the ISO respectfully requests that the Presiding Judge quash SWP's Motion for Subpoena of William Ellard.

Respectfully submitted,

*/s/ Julia Moore*

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Dated: June 21, 2005

## ATTACHMENT A

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

California Independent System Operator  
Corporation

Docket No. ER04-835-000

and

Pacific Gas and Electric Company

v.

Docket No. EL04-103-000  
(Consolidated)

California Independent System Operator  
Corporation

**DECLARATION OF  
William Ellard**

1. I am the Supervising Manager in the Grid Operations Department of the California Independent System Operator Corporation ("ISO"). I make this declaration in support of ISO's Opposition to State Water Project's Motion for a subpoena to compel me to testify at the upcoming hearing in the above noted docket. I have personal knowledge of all facts set forth herein.
2. I am given to understand that the hearing will commence on Tuesday June 28, 2004 and will continue, with several breaks, into the first week(s) of July. If expected to testify I would not be available during the anticipated time period due to several prior commitments.
3. I will be in Montreal June 27-30 as a member of the NERC Personnel Certification Governance Committee. Substitutes are not acceptable for this group due to the confidentiality of the governance requirements.
4. During the 2nd week of July the ISO expects the beginning of normal summer temperatures and high load periods. This is probably the single most important time of the year for Grid Operations in California and consequently for my job. With the Director of Grid Operations, James McIntosh, already out of the office at the same hearing during the period leading up to the expected high summer loads, it is all the more vital that I am available to coordinate and support real-time operations, establish peak-day calls and prepare for any and all contingencies. Normally the Director and I are both available at all times during this period as our jobs involve necessary overlap and require much, mutual support and interaction. Having us both absent from our posts, albeit for even a limited number of days and at different times, during this time period is, in my professional opinion, not prudent operating practice.
5. Finally, I have personal and family commitments covering the period from July 1 to July 6, 2004.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on June 20, 2005 in Folsom, California.

A handwritten signature in cursive script, appearing to read "William Ellard", is written above a solid horizontal line.

William Ellard

**CERTIFICATE OF SERVICE**

I hereby certify I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, California, on this 21<sup>st</sup> day of June, 2005.

**/s/ Stephen A.S. Morrison**

Stephen A. S. Morrison