

105 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

California Independent System Operator
Corporation

Docket Nos. ER00-2019-013
ER01-819-006
ER03-608-004

ORDER DENYING MOTION FOR STAY

(Issued November 7, 2003)

1. On October 21, 2003, the Presiding Administrative Law Judge issued a Partial Initial Decision in Docket No. ER00-2019-013, et al., which had the effect of excluding certain issues from the hearing that commenced in the proceeding on that same date. The California Department of Water Resources, State Water Project (SWP) filed an emergency request for stay of the Partial Initial Decision. This order denies the request for stay. This action benefits customers by enhancing the efficiency of the administrative process.

BACKGROUND

2. In the Partial Initial Decision, the Presiding Administrative Law Judge granted Southern California Edison Company's (SoCal Edison's) motion for partial summary disposition regarding what facilities are to be included in the transmission rates of the California Independent System Operator Corporation (CAISO) and what types of facilities should be turned over to CAISO operational control. The Presiding Administrative Law Judge found that there are no genuine issues of material fact because the CAISO's Transmission Control Agreement provides adequate notice of the criteria regarding the facilities over which the CAISO will exercise operational control.

3. In its motion for stay, SWP argues that it will suffer irreparable harm if the stay is not granted because its right to a hearing on conflicting testimony and its right "to brief the issue in the full context of the CAISO's rate structure" would be denied. SWP contends that no party will be harmed if the stay is granted because testimony and discovery regarding the issue was already filed in the record and the hearing was designed to accommodate airing of the issue. SWP further asserts that the public interest

will be served by granting a stay and that it can demonstrate a likelihood of prevailing on the merits. SWP requests expeditious action on its motion, concerned that the hearing may be concluded before the Commission considers the request for stay.

4. SoCal Edison and Pacific Gas and Electric Company (PG&E) filed a joint answer arguing that SWP will not be irreparably harmed without an evidentiary hearing on the issues ruled on in the Partial Initial Decision. CAISO also filed an answer concurring with the conclusions reached in the joint answer.

DISCUSSION

5. The Commission may stay its action "when justice so requires."¹ In addressing motions for stay, the Commission considers: (1) whether the moving party will suffer irreparable injury without a stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.² The Commission's general policy is to refrain from granting a stay of its orders, to assure definiteness and finality in Commission proceedings.³ The key element in the inquiry is irreparable injury to the moving party.⁴ If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.⁵

6. We will deny SWP's motion for stay. SWP has not demonstrated any irreparable injury it would suffer absent a stay. SWP's issues may be addressed upon consideration of the briefs on exceptions to the Partial Initial Decision. The Commission has the authority to reopen the record in this proceeding, if necessary. Thus, SWP is not correct that our granting the stay is necessary in order to preserve its right to hearing on the issue.

¹5 U.S.C. § 705 (2000).

²See, e.g., CMS Midland, Inc., Midland Cogeneration Venture Limited Partnership, 56 FERC ¶ 61,177 at 61,361 (1991), aff'd sub nom. Michigan Municipal Cooperative Group v. FERC, 990 F.2d 1377 (D.C. Cir.), cert. denied, 510 U.S. 990 (1993).

³Id. at 61,630. See also Sea Robin Pipeline Company, 92 FERC ¶ 61,217 (2000).

⁴Id. at 61,621.

⁵Id.

Docket No. ER00-2019-013, et al.

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The Commission orders:

SWP's request for stay is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.