

109 FERC ¶ 61,306
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

San Diego Gas & Electric Company,
Complainant,

v.

Docket No. EL00-95-106

Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independent System Operator and the
California Power Exchange Corporation,
Respondents

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

Docket No. EL00-98-093

ORDER ON REHEARING

(Issued December 21, 2004)

1. In this order, we address a request for rehearing of the order issued June 22, 2004 in this proceeding regarding outage coordination requirements of the California Independent System Operator Corporation (CAISO).¹ In the June 22 Order, the Commission found that CAISO control over the planned outages of the hydroelectric facilities of the California Department of Water Resources (DWR) was not necessary, and we exempted DWR from certain provisions of CAISO's outage control protocol. On rehearing, CAISO challenges our determination, in part, based on the lack of opportunity for all parties to weigh in on the issue. In this order, we provide a briefing schedule to obtain comments from all interested parties concerning the appropriateness of granting an exemption from the outage coordination requirements to DWR's hydroelectric units. This action benefits customers by affording an opportunity to supplement the record before further determinations are made.

¹ San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, *et al.*, 107 FERC ¶ 61,294 (2004) (June 22 Order).

Background

2. In April 2001, the Commission adopted a market monitoring and mitigation plan for wholesale power markets in California.² Among the measures put in place were those intended to increase CAISO's coordination and control over outages in order to ensure that sufficient generation capacity will be available to meet anticipated market needs. The Commission directed CAISO to file tariff sheets proposing a mechanism for coordinating and controlling outages and to allow questionable outages to be reported and investigated to provide sufficient energy resources when needed while also providing for reliable plant operation.³ Since DWR operates six hydroelectric generation units and one geo-thermal unit in California, those procedures were to apply to DWR.

3. The Commission also required all generators with Participating Generator Agreements (PGAs) to offer to CAISO all of their capacity in real time if available and not already scheduled to run through bilateral agreements. However, the Commission exempted hydroelectric power from this "must-offer" obligation, recognizing the difficulty in applying the must-offer requirement to hydroelectric facilities because of limitations due to their multiple purposes (*e.g.*, irrigation, recreational uses, and power production).⁴

4. DWR, a state agency charged with managing California's water supply, sought rehearing of the April 26 Order, challenging (among other things) CAISO's authority to control DWR's planned outages. DWR stated that all of its hydroelectric generation has water management and control as a primary purpose and that it only makes its generation available to the electric grid under a PGA with CAISO to the extent its water management responsibilities permit. DWR argued that it must balance a number of considerations when it establishes generator maintenance schedules (such as, meeting its water delivery obligations, the forecasted availability of water for generation, the time of year, and various regulatory requirements) and that allowing CAISO to evaluate its outages did not take into consideration the efficient and reliable operation of California's water delivery and control. Although DWR was willing to abide by reporting and

² San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, *et al.*, 95 FERC ¶ 61,115 (April 26 Order), *order on reh'g*, 95 FERC ¶ 61,418 (2001) (June 19 Order).

³ See April 26 Order, 95 FERC at 61,355.

⁴ See *Id.* at 61,357.

informational requirements, it asserted that CAISO approval requirements should not apply.⁵ DWR further noted that the April 26 Order recognized that hydroelectric facilities should not be subjected to the must-offer requirement, but that the Commission had not considered those same constraints with respect to outage control.

5. In an order on rehearing, issued June 19, 2001, the Commission affirmed that CAISO has the authority to coordinate and control generation outage schedules for generators with PGAs (such as DWR). The June 19 Order clarified that, while units not under a PGA must submit to CAISO their maintenance schedules, CAISO would not be authorized to schedule maintenance for those units.

6. DWR filed a petition for review of the orders objecting that the Commission did not adequately respond to its position that CAISO should not control DWR outages in the same way that it controls the outages of other generators.

7. On August 27, 2003, the Ninth Circuit vacated and remanded in pertinent part the Commission's orders. The court noted that DWR, whose primary mission is the delivery of water, and merchant generators, whose primary function is to generate and distribute electricity, differ in significant ways. The court found that the Commission had not answered the question whether those differences are material for purposes of outage control and that the answer was not evident in the record. The court concluded that the Commission had not considered all relevant factors in deciding to submit DWR's outages to CAISO control, in contrast to the determination on the must-offer requirement, and thus the orders lacked reasoned decisionmaking. The Ninth Circuit vacated the April 26 and June 19 Orders with respect to outage control of DWR's generation units and remanded for further consideration of the matter.

8. On June 22, 2004, the Commission issued an order on remand exempting DWR's hydroelectric facilities from CAISO outage approval requirements. In reaching this outcome, the Commission stated:

We recognize the additional challenge DWR has, above and beyond other generators, in balancing multiple uses for its "fuel," the water that it must control and deliver. DWR persuades us that releasing and pumping water within coordinated time frames is essential to maintaining the operational integrity of the water system, and that any changes to scheduled outages of these facilities could be disruptive to its primary mission.

⁵ Specific outage coordination provisions were accepted by the Commission in a compliance proceeding. *See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 97 FERC ¶ 61,066 (2001), *reh'g denied*, 98 FERC ¶ 61,204 (2002).

June 22 Order, 107 FERC ¶ 61,294 at P 8. The Commission further explained that neither CAISO nor any other party had stated that exempting DWR would place the reliability of the electric grid at risk, noting that CAISO has many options at its disposal to maintain reliability and that DWR should be able to perform its primary water management mission without having to accommodate CAISO scheduling requests. The Commission directed that DWR must still provide any information about the timing of its maintenance and forced outages that the CAISO requests and must comply with any relevant reporting requirements.

Request for Rehearing

9. CAISO timely sought rehearing of the June 22 Order. CAISO asserts that the Commission's decision to exempt DWR should be reversed because it threatens the reliability of the ISO controlled grid and provides no particular water delivery-related benefit to DWR. CAISO contends that its outage coordination does not interfere in any material manner with DWR's water delivery function because the outage coordination tariff provisions do not give CAISO the authority to dictate on a daily basis whether a specific unit should be running or not. CAISO contends that the April 26 Order and June 19 Order were sound and supported by the record, and thus it concludes that the Commission's justification for reversing its earlier decision does not comport with reasoned decision-making.

10. CAISO further states that neither it nor any other party "had occasion to address the issue of the appropriateness of granting an exemption to [DWR's] units."⁶ CAISO notes that the issue first arose in DWR's request for rehearing of the April 26 Order and that the Commission did not provide any opportunity for parties to submit comments on the issue before issuance of the June 22 Order.

11. Subsequently, on August 5, 2004, CAISO filed a clarification of its request for rehearing in order to correct and clarify its understanding regarding certain of DWR's hydro units.

Discussion

12. We will provide an opportunity for comments on this matter before issuing a dispositive order on CAISO's request for rehearing. The Commission will not entertain rehearing of any other issues relating to CAISO's outage coordination. We note that CAISO relies in part on documents and conversations that are not in the record in this proceeding,⁷ and provides only bare assertions that the exemption provided in the June 22 Order will interfere with its ability to prevent and respond to System

⁶ Request for rehearing at 18.

⁷ *See Id.* at 16.

Emergencies. Therefore, we invite CAISO, DWR, and any other interested parties to comment on the issues raised in CAISO's rehearing request and to provide any supporting material that will assist the Commission in ruling on these issues. Initial comments shall be submitted by January 14, 2005, and reply comments shall be due on or before January 31, 2005. We invite the parties to comment on, among other pertinent topics, whether it would be feasible to examine the need for outage coordination on a unit-by-unit basis, and whether conditions affecting CAISO grid reliability have changed appreciably since we first imposed the outage coordination requirements in 2001. We believe that this approach will best address factual uncertainties and will ensure due process for all involved.

The Commission orders:

CAISO, DWR, and any other interested parties are hereby directed to submit comments on the issues raised in this proceeding related to CAISO outage coordination over DWR's hydroelectric facilities, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.