

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

California Independent System)
Operator Corporation)

Docket No. ER08-1317-___

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO
REQUEST FOR REHEARING OF OPTISOLAR**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the California Independent System Operator Corporation (“CAISO”) hereby moves for leave to answer the request for rehearing filed by OptiSolar in this proceeding. The CAISO files this brief answer only to point out that OptiSolar’s rehearing request addresses an issue not before the Commission in this proceeding and is a collateral attack on the Commission’s order denying OptiSolar’s rehearing request in Docket No. ER08-960.

I. MOTION FOR LEAVE TO ANSWER REHEARING REQUEST

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the CAISO moves for leave to answer OptiSolar’s request for rehearing of the Commission’s September 26, 2008 order in this proceeding.¹ Rule 213(a)(2), 18 C.F.R. §385.213(a)(2), of the Commission’s Rules of Practice and Procedures generally precludes an answer to a request for rehearing. However, the Commission has discretion to accept such answers if they assist the

¹ *California Independent System Operator*, 124 FERC ¶ 61,292 (2008) (“GIPR Order”).

Commission in its decision-making process.² This answer should be accepted because it brings to the Commission’s attention the procedural deficiency of OptiSolar’s rehearing request in this docket.

II. BACKGROUND

On May 15, 2008, as the first formal step in reforming its generator interconnection process, the CAISO filed a petition (“Waiver Petition”) in Docket No. ER08-960 seeking a one-time waiver of certain provisions of the existing CAISO Tariff governing generator interconnections. The Waiver Petition commenced the process of clearing the existing backlog of Interconnection Requests in the CAISO’s queue by, *inter alia*, allowing the CAISO to focus its resources on completing Interconnection Studies and related activities for pending “late stage” and other priority Interconnection Requests, defined in the Waiver Petition as the “Serial Study Group.” Interconnection Requests assigned to the Serial Study Group will continue to be studied serially pursuant to existing LGIP timelines.

As part of the Waiver Petition, the CAISO asked the Commission to approve three specific criteria for determining which projects would be included in the Serial Study Group.³ OptiSolar protested the Waiver Petition, arguing that the CAISO’s

² See, e.g., *Pacific Gas & Electric Company*, 125 FERC ¶ 61,045 at n.9 (2008); *Mid-Continent Area Power Pool*, 123 FERC ¶ 61,177 (2008); *Strategic Transmission, LLC v. PJM Interconnection, LLC*, 122 FERC ¶ 61,108 at P 6 (2008).

³ The CAISO elected to define late stage Interconnection Requests as those that either: (1) had met specific advanced milestones in the current LGIP Interconnection Study process, (2) had a power purchase agreement (“PPA”) approved, or pending approval, by the CPUC or Local Regulatory Authority, or (3) were next in queue order to interconnect to any transmission project that has received land use approvals from any local, state, or federal entity, as applicable, up to the capacity studied by the CAISO.

proposal would unfairly give priority to a lower queued project that sought to interconnect at the same location as one of OptiSolar's projects.⁴

On July 14, 2008, the Commission issued an order in Docket No. ER08-960 granting the CAISO's Waiver Petition, approving all three Serial Study Group criteria, and expressly rejecting OptiSolar's protest regarding its project's exclusion from the Serial Study Group.⁵ OptiSolar requested rehearing of the Waiver Order on the same issue. The Commission denied OptiSolar's request for rehearing of the Waiver Order in a September 26, 2008 order, issued contemporaneously with the GIPR Order.⁶

OptiSolar now requests rehearing of the GIPR Order, raising precisely the same issue that was addressed in the Waiver Order and the Waiver Rehearing Order: the criteria for inclusion in the Serial Study Group.

III. ANSWER

OptiSolar's request for rehearing of the GIPR Order deals only with its desire to be included in the Serial Study Group.⁷ The composition of the Serial Study Group was dealt with entirely in the waiver proceeding. The Commission twice considered OptiSolar's arguments in that proceeding and twice rejected them. OptiSolar now requests rehearing of the GIPR Order raising the same issue. That issue, however, was not before the Commission in the GIPR proceeding, a fact the Commission pointed out to OptiSolar in the GIPR Order:

⁴ See *California Independent System Operator*, Docket No. ER08-960, Motion for Leave to File Supplemental Comments and Supplemental Comments of OptiSolar (June 17, 2008).

⁵ *California Indep. System Operator*, 124 FERC ¶ 61,031 at PP 50-53, 58-59, 77-83 (2008) ("Waiver Order").

⁶ *California Indep. System Operator*, 124 FERC ¶ 61,293 (2008) ("Waiver Rehearing Order").

⁷ The CAISO does not address the merits of OptiSolar's argument here because it has done so to the Commission's satisfaction twice before in Docket No. ER08-960.

The argument is the same as Optisolar makes in its request for rehearing of the July 14 Order in Docket No. ER08-960-001 The Commission declines to reconsider here the July 14 Order. Optisolar and PG&E have both submitted requests for rehearing in Docket No. ER08-960-001 regarding this issue. We are issuing an order contemporaneously with this order that addresses Optisolar and PG&E's arguments.⁸

The Waiver Rehearing Order in ER08-960, to which the Commission referred in this passage, denied OptiSolar's rehearing request on this issue. Therefore, OptiSolar's attempt to raise this issue in a request for rehearing of the GIPR Order constitutes a collateral attack on the Waiver Rehearing Order and should be denied.

III. CONCLUSION

For the reasons explained above, the Commission should reject OptiSolar's request for rehearing of the GIPR Order.

Respectfully submitted,

/s/ Michael Kunselman

Michael Kunselman
Christopher R. Jones
Alston & Bird LLP
The Atlantic Building
950 F Street, N.W.
Washington, DC 2004
Tel: (202) 756-3300
Fax: (202) 756-3333

Nancy Saracino
General Counsel
Sidney M. Davies
Assistant General Counsel
Michael D. Dozier
Senior Counsel
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630

*Counsel for the California Independent
System Operator Corporation*

Dated: November 10, 2008

⁸ GIPR Order at P 226.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 10th day of November, 2008.

/s/ Daniel Klein
Daniel Klein