

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

California Independent System Operator Corporation

Docket No. EL02-45-003

ORDER DISSOLVING STAY

(Issued March 24, 2006)

1. This order grants the California Independent System Operator Corporation's (ISO) request to dissolve the stay imposed by the ISO Tariff to permit the implementation of an arbitration award in favor of Pacific Gas & Electric Company (PG&E).

Background

2. In the first order in this proceeding, the Commission denied the ISO's petition for review of an arbitrator's award that granted PG&E's claim for reimbursement of \$14,172,337.08, the amount PG&E paid to the ISO for ancillary services during the period between April 1998 and April 1999.¹ In the second order in this proceeding, we denied the ISO's request for rehearing.² In the second order, we also addressed the ISO's argument that an automatic stay of the implementation of the arbitration award was in effect. Specifically, the ISO argued that under section 13.4.4 of the ISO Tariff, the arbitrator's award requiring the ISO to reimburse PG&E \$14,172,337.08, plus interest, for ancillary services was automatically stayed pending an appeal. However, PG&E responded that the stay under section 13.4.4 of the ISO Tariff only applied during the period of time when the arbitrator's award was pending an appeal, and that the May 2004 Order was the order on appeal.³

¹ California Independent System Operator Corporation, 107 FERC ¶ 61,152 (2004) (May 2004 Order) .

² *California Independent System Operator Corporation*, 111 FERC ¶ 61,078 at P 20 (2005) (April 2005 Order).

³ *Id.* at P 12, P 14.

3. Section 13.4.4 of the ISO Tariff states that: “Implementation of the award shall be deemed stayed pending an appeal unless and until, at the request of a party, the FERC or the court of competent jurisdiction to which an appeal has been filed, issued an order dissolving, shortening, or extending such stay.” In the second order, we explained that, in context, especially given the reference to the stay potentially being dissolved by “the court of competent jurisdiction to which an appeal has been filed,” the phrase “pending an appeal” meant not just the appeal of the arbitrator’s award to the Commission but any subsequent appeal of the Commission’s orders to “the court of competent jurisdiction.” We added that section 13.4.5 of the ISO Tariff expressly provided that “FERC orders resulting from appeals shall be subject to judicial review pursuant to the FPA.” We concluded that taken together these provisions in the ISO Tariff contemplated that the stay would remain in effect (unless dissolved or shortened) until after “the court of competent jurisdiction” ruled.⁴

4. On January 3, 2006, the ISO filed an appeal of the May 2004 Order, the April 2005 Order, and a subsequent order⁵ in *California Independent System Operator Corporation v. FERC*, No. 06-1002 (D.C. Cir. Jan. 3, 2006). This appeal is pending.

Motion To Dissolve Stay

5. On February 7, 2006, the ISO filed a motion to dissolve the stay imposed by ISO Tariff 13.4.4. The ISO states that it plans to implement the arbitrator’s award in this proceeding, but that it cannot because of the stay imposed under section 13.4.4 of the ISO Tariff. Thus, the ISO asks that the Commission dissolve the stay which, the ISO argues, the Commission has ruled otherwise applies throughout the appellate review process. The ISO notes that no other party in this proceeding has sought review of the Commission’s orders. The ISO also states that it plans to ask that the D.C. Circuit hold its appeal in abeyance pending the implementation of the arbitration award, and that it will pursue its appeal in the D.C. Circuit only if necessary to implement the award. The ISO adds that, if implemented, the ISO will dismiss the appeal before the D.C. Circuit as moot.

6. No party filed in opposition to the ISO’s motion.

Discussion

7. In the May 2004 and April 2005 Orders, we upheld the arbitrator’s decision in favor of PG&E in this proceeding. In its motion, the ISO asks the Commission to

⁴ *Id.* at P 25.

⁵ *California Independent System Operator Corporation*, 113 FERC ¶ 61,133 (2005) (November 2005 Order).

dissolve the stay of the arbitrator's award imposed by the ISO Tariff. The United States Court of Appeals for the District of Columbia Circuit has granted the ISO's request to hold the appeal in abeyance so that the ISO may implement the arbitration award. Therefore, we will grant the ISO's request to dissolve the stay.

The Commission orders:

The ISO's motion to dissolve the stay is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.