

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. EL00-95-085

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 and the
California Power Exchange

Docket No. EL00-98-085

ORDER ON REMAND

(Issued June 22, 2004)

1. This case is before the Commission on remand from a decision of the United States Court of Appeals for the Ninth Circuit¹ for consideration of whether the California Independent System Operator Corporation (CAISO) should have control over planned outages for the hydroelectric facilities of the California Department of Water Resources (DWR). The Commission finds that CAISO control over the planned outages of DWR's units is not necessary, and DWR will be exempted from certain provisions of CAISO's outage control protocol. This action recognizes the primacy of DWR's water management function.

¹ California Department of Water Resources, et al. v. FERC, 341 F.3d 906 (9th Cir. 2003), reh'g denied, 361 F.3d 517 (9th Cir. 2004).

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 from this "must-offer" obligation hydroelectric power, recognizing "the difficulty in applying the must-offer requirement . . . because of [hydro facilities'] multi-purpose limitations (e.g., irrigation, recreational, 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 informational requirements, it asserted that CAISO approval requirements should not

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 *Id.* at 61,357.

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. The order on rehearing, issued June 19, 2001, 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 affirmed in part⁶ and vacated and remanded in 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.

DISCUSSION

8. Upon further consideration, we will exempt DWR's hydroelectric facilities from CAISO outage approval requirements. 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

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).

⁶ DWR also charged that the Commission lacked jurisdiction under the Federal Power Act to subject DWR to CAISO's authority in this manner. The court found that DWR had not preserved that issue for judicial review and denied the petition for review on that matter.

water system, and that any changes to scheduled outages of these facilities could be disruptive to its primary mission. Nevertheless, DWR must still provide any information about the timing of its maintenance and forced outages that the CAISO requests and comply with any relevant reporting requirements.

9. Neither CAISO nor any other party has stated in the record in this proceeding that exempting DWR would place the reliability of the electric grid at risk. We believe that CAISO has a wide range of options at its disposal to maintain reliability and that DWR should be able to perform its primary water management mission without accommodating CAISO scheduling requests. While CAISO should continue to receive from DWR notification of the dates of any planned outages, as is the case with all other generators with PGAs, we agree that CAISO should not have the ability to schedule or prohibit maintenance at any of DWR's hydroelectric facilities. Accordingly, we will direct CAISO to file revised tariff sheets to implement this exemption.

The Commission orders:

CAISO is hereby directed to file revised tariff sheets within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.