

110 FERC ¶ 61,386
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

La Paloma Generating Company, LLC

Docket No. EL05-54-000

v.

California Independent System Operator Corporation

ORDER DENYING COMPLAINT

(Issued March 29, 2005)

1. In this order, we address a complaint filed by an exempt wholesale generator, La Paloma Generating Company, LLC (La Paloma), against the California Independent System Operator Corporation (CAISO), seeking the release of collateral posted with the CAISO as a condition for participating in the CAISO-operated markets. Specifically, we deny La Paloma's complaint because there is no ground for the requested relief. We find that the CAISO's retention of the collateral in question is lawful and does not violate the CAISO's tariff.
2. This order benefits customers because it enforces the applicable provisions of the Commission-approved CAISO tariff and ensures that the CAISO has sufficient funds for allocating refunds.

Background

3. In order to perform transactions in the CAISO-operated market, La Paloma engaged Scheduling Coordinator services of NEGT Energy Trading-Power, L.P. (ET), which posted a cash collateral with the CAISO on La Paloma's behalf. The cash collateral was first posted in December 2002, and increased in March 2003. Currently, the amount of the cash collateral is \$6,414,540.

4. Subsequent to ET's filing for bankruptcy under Chapter 11 of the Bankruptcy Code,¹ La Paloma and ET executed an assignment agreement under which ET assigned to La Paloma all of its rights in the cash collateral posted with the CAISO. This assignment agreement was approved by the Bankruptcy Court.

5. In July 2003, when ET ceased providing scheduling coordinator services to La Paloma, it requested the return of the posted collateral. The CAISO refused to release the collateral. The CAISO again refused a request to release the collateral in October 2004. On January 11, 2005, La Paloma filed this complaint seeking a Commission ruling requiring the return of the collateral.

Complaint and Reply Pleadings

6. In its complaint, La Paloma alleges that the CAISO's refusal to release the collateral is in violation of the CAISO's tariff. La Paloma explains that the collateral was posted with the CAISO for the single purpose of enabling generation from La Paloma to be scheduled in the CAISO's markets. La Paloma further contends that the CAISO mistakenly attributes to La Paloma transactions entered into during the Refund Period (*i.e.*, October 2, 2000 through June 20, 2001) by La Paloma's Scheduling Coordinator, ET, while La Paloma was not a market participant at any time during the Refund Period and has no potential refund liability. La Paloma further argues that the Commission precedent requires the release of the collateral when the collateral is not being retained in connection with the refund liability.²

7. In its answer to La Paloma's complaint, the CAISO argues that the complaint misrepresents material facts and fails to discuss applicable agreements and CAISO tariff provisions, and requests summary disposition of La Paloma's complaint. The CAISO contends that its retention of the collateral is strictly in accordance with the terms of its tariff. It explains that the collateral at issue was in fact posted by La Paloma's Scheduling Coordinator, ET. The CAISO further states that according to the tariff, it is the Scheduling Coordinator, not its clients, who has the primary responsibility to the CAISO, as principal, for all Scheduling Coordinator payment obligations under the CAISO's tariff. Therefore, it was ET's responsibility to submit collateral to the CAISO. The CAISO further states that it refused to release the collateral submitted by ET because ET participated in the CAISO's markets during the Refund Period and, according to the CAISO's calculations, will likely have significant refund liability. The CAISO explains that, pursuant to the CAISO's tariff, the collateral can be released only when the CAISO is satisfied that no sums remain owing. The CAISO also argues that the collateral in question secures all ET obligations and not merely the portion of them

¹ 11 U.S.C. § 1101 *et seq.* (2004).

² La Paloma cites to *Constellation Power Source, Inc.*, 100 FERC ¶ 61,380 (2002).

relating to the transaction scheduled on behalf of La Paloma. The CAISO further contends that La Paloma cannot demand the release of the collateral on the basis of the assignment agreement because when La Paloma signed that agreement, it knew that the collateral secured all of ET's obligations, not only those relating to La Paloma. The CAISO adds that La Paloma's complaint is premature because La Paloma failed to comply with the CAISO tariff requirement that all disputes must first proceed through the CAISO-established mandatory Alternative Dispute Resolution (ADR) process.

8. In response, La Paloma argues that the CAISO always knew that it was La Paloma that was responsible for posting the collateral and bore all financial expenses associated with it. According to La Paloma, the CAISO knew that the collateral was provided through La Paloma's funds for the sole purpose of enabling La Paloma to schedule its generation in the CAISO's market. La Paloma further argues that the CAISO's tariff is unjust and unreasonable to the extent it requires the retention of the collateral in question. It also states that for this reason the instant dispute is not required to be submitted to the CAISO's ADR.

Notice, Motions to Intervene, and Protest

9. Notice of La Paloma's complaint was published in the *Federal Register*, 70 Fed. Reg. 3,688 (2005), with comments, protests, or interventions due on or before February 2, 2005. Timely motions to intervene were filed the California Parties,³ Modesto Irrigation District, and the Cities of Redding and Santa Clara, California.

10. California Parties filed a protest urging the Commission to deny La Paloma's complaint. They state that the Commission has already rejected an identical complaint regarding ET's collateral held by the California Power Exchange Corporation (PX).⁴ The California Parties also contend that La Paloma violated the CAISO's tariff by filing this complaint without first submitting the dispute to the CAISO's ADR procedures.

³ The California Parties are the People of the State of California *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison Company

⁴ The California Parties cite to *PG&E Energy Trading-Power, L.P. v. California Power Exchange Corporation*, 102 FERC ¶61,091 (2003) (*ET Order*).

Discussion

Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2004), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding. In addition, La Paloma filed an answer to the CAISO's answer to the complaint. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a), prohibits an answer to an answer unless otherwise permitted by the decisional authority. We accept La Paloma's answer to the CAISO's answer because it has assisted in our decision-making.

Commission Determination

12. We deny La Paloma's complaint for the following reasons. We find that no contractual relationship exists between the CAISO and La Paloma, as far as the collateral is concerned.⁵ The collateral at issue was posted by ET in accordance with the CAISO tariff requirement that Scheduling Coordinators provide an acceptable form of credit support to cover all applicable outstanding and estimated liabilities.⁶ It is the Scheduling Coordinator, not its clients, that has the primary responsibility to the CAISO, as principal, for all Scheduling Coordinator payment obligations under the CAISO tariff.⁷ ET participated in the CAISO's markets during the Refund Period and faces a significant refund liability, which has not been finalized at this time. The collateral in question is retained by the CAISO to secure all ET's obligations, not only those arising from La Paloma's transactions. In addition, the Commission has previously rejected ET's request for release of its collateral retained by the PX on the ground that the Refund Proceeding has not been yet completed and that only after its completion will the liabilities of each supplier be determined.⁸

13. In addition, La Paloma's contention that because ET has assigned all of its rights in the collateral to La Paloma, the latter can now demand the release of the collateral on the ground that it has no refund liability is misplaced. The collateral was posted to secure ET's outstanding and estimated liabilities and thus can be returned only after ET's

⁵ The assignment agreement between ET and La Paloma conferred upon La Paloma the right in the collateral, it did not result in substitution of ET by La Paloma in scheduling coordinator contracts between the CAISO and ET.

⁶ CAISO Tariff 2.2.3.2.

⁷ CAISO Tariff 2.2.1.

⁸ See *ET Order*.

obligations to the CAISO are satisfied. ET's potential refund liability is not extinguished by virtue of transferring ET's rights in the collateral to La Paloma. The rights that La Paloma received to the collateral under the assignment agreement are exactly the same as ET's rights. For these reasons, we deny La Paloma's complaint because that it fails to assert grounds for relief.

The Commission orders:

La Paloma's complaint is hereby denied.

By the Commission. Chairman Wood concurring.

(S E A L)

Commissioner Brownell dissenting with a separate statement attached.

Linda Mitry,
Deputy Secretary.

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Nora Mead BROWNELL, Commissioner *dissenting*:

Today's order extends the already questionable logic of the Commission's line of California collateral cases to new inequitable heights. La Paloma's generating unit came on line in January 2003. La Paloma retained ET as its Scheduling Coordinator, which then posted an initial \$5.7 million and a subsequent additional \$10 million in cash collateral with the CAISO. CAISO's own exhibits indicate that it was fully aware that the collateral was necessitated by La Paloma's transactions and was being provided by La Paloma. ET then filed for bankruptcy and La Paloma retained a different Scheduling Coordinator. In May, 2003, CAISO returned \$9.3 million of the collateral but retained \$6.4 million. In April 2004, the bankruptcy court approved the assignment to La Paloma of all of ET's rights in the remaining \$6.4 million of collateral. It is the release of this \$6.4 million, and only this collateral, that La Paloma now seeks. As the CAISO's motion for summary disposition demonstrates, there is no dispute over these facts. However, the CAISO argues, and the majority agrees, that these facts are irrelevant and, as a matter of law, CAISO is allowed to retain this collateral to pay off ET's refund obligations.

The majority bases its decision on *PG&E Energy Trading Power, L.P. v. California Power Exchange Corporation*, 102 FERC ¶61,091 (2003), which construed language in the PX tariff as allowing the conversion of collateral posted to ensure settlement of accounts into a guaranty for payment of any future-ordered refunds in the California crisis proceeding. While I dissented from that case, at least the complainant there had significant potential refund liability and had posted the collateral in question to cover its own transactions during the California crisis. In contrast, the collateral at issue here was posted well after the California crisis by an entity that did not even exist during the crisis. Even if the literal language of the CAISO tariff permits the CAISO to use this collateral in this manner, a point I dispute, application of that language in this case clearly leads to an unjust and unreasonable result. Thus, I would have granted La Paloma's complaint.

Nora Mead Brownell