

112 FERC ¶ 61,024
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 Nos. EL00-95-106
EL00-95-107

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 Nos. EL00-98-093
EL00-98-094

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued July 5, 2005)

1. The Commission issued an order on remand in this proceeding regarding the outage coordination procedures of the California Independent System Operator Corporation (CAISO) on June 22, 2004.¹ The CAISO subsequently sought rehearing. On December 21, 2004, the Commission issued an order providing a briefing schedule to obtain comments from interested parties concerning the appropriateness of exempting the California Department of Water Resources (DWR) from certain provisions of the CAISO outage coordination protocol.² In this order, we address the comments of the CAISO and

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

² *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 109 FERC ¶ 61,306 (2004) (December 21 Order).

DWR submitted in response to the December 21 Order. Based on our review of the comments, we will grant rehearing in part and allow the CAISO a degree of control over the outage schedule for DWR's facilities. This action benefits customers by balancing DWR's water management obligations with the CAISO's need to maintain reliability of the transmission system. In addition, we will require the CAISO to amend its compliance filing submitted on July 22, 2004.

Background

2. In April 2001, the Commission adopted a market monitoring and mitigation plan for wholesale power markets in California.³ Among the measures put in place were those intended to increase the CAISO's coordination and control over outages in order to ensure that sufficient generation capacity would be available to meet anticipated market needs. Since DWR operates a number of hydroelectric generation units and one geothermal unit in California, those procedures were to apply to DWR.

3. Another aspect of the mitigation plan was a requirement that generators with Participating Generator Agreements (PGAs) offer to the CAISO all of their capacity in real time during all hours if it was available and not already scheduled to run. This "must-offer" requirement was not applied to hydroelectric power "because of its multi-purpose limitations (*e.g.*, irrigation, recreation, 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) the CAISO's authority to control DWR's planned outages because all of its hydroelectric generation had water management and control as a primary purpose. DWR argued that it must balance a number of considerations when it establishes generator maintenance schedules and that allowing the CAISO to evaluate its outages did not take into consideration the efficient and reliable operation of California's water delivery and control. In an order on rehearing, issued June 19, 2001, the Commission affirmed that the CAISO has the authority to coordinate and control generation outage schedules for generators with PGAs (such as DWR).⁵ DWR filed a petition for review of the April and June 2001 Orders objecting that the Commission did not adequately respond to its position that the CAISO

³ See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 95 FERC ¶ 61,115 (April 2001 Order), *order on reh'g*, 95 FERC ¶ 61,418 (2001) (June 2001 Order).

⁴ June 2001 Order, 95 FERC at 62,551.

⁵ *Id.*

should not control DWR outages in the same way that it controls the outages of other generators.

5. On August 27, 2003, the United States Court of Appeals for the Ninth Circuit vacated and remanded in pertinent part the Commission's orders.⁶ 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 also found that the Commission had not explained why an exemption from the must-offer requirement for hydroelectric facilities was appropriate while not considering exemption from the outage coordination procedures for DWR.

6. The June 2004 Order exempted DWR's hydroelectric facilities from the CAISO outage approval requirements. In reaching this outcome, the Commission recognized the additional challenges DWR has in balancing multiple uses for its water. The Commission further explained that neither the CAISO nor any other party had stated that exempting DWR would place the reliability of the electric grid at risk, and noted that the CAISO has many options at its disposal to maintain reliability. The Commission concluded that DWR should be able to perform its primary water management mission without having to accommodate CAISO scheduling decisions. The June 2004 Order also directed the CAISO to revise its outage coordination provisions to exempt DWR's units.

7. The CAISO sought rehearing of the June 2004 Order, asserting that the Commission's decision to exempt DWR should be reversed because it threatens the reliability of the CAISO controlled grid and provides no particular water delivery-related benefit to DWR. The CAISO contended 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 the CAISO the authority to dictate on a daily basis whether a specific unit should be running or not. The CAISO further stated that neither it nor any other party had had the opportunity to address the issue of the appropriateness of granting an exemption to DWR's units.

8. In the December 21 Order, the Commission provided such an opportunity for comments on the outage coordination procedures before issuing a dispositive order on the CAISO's request for rehearing. The Commission noted that the CAISO had relied in part on documents and conversations that were not in the record in this proceeding, and had provided bare assertions that the exemption provided in the June 2004 Order would interfere with its ability to prevent and respond to system emergencies. Thus, the

⁶ *California Department of Water Resources v. FERC*, 341 F.3d 906 (9th Cir. 2003), *reh'g denied*, 361 F.3d 517 (9th Cir. 2004).

Commission invited comments on the issues raised in the CAISO's rehearing request and laid out a schedule for their submission.

9. DWR sought rehearing of the December 21 Order, asserting that the Commission lacked reasoned decision making to the extent that it rested on the CAISO's assertion that it had no prior opportunity to comment on an exemption for DWR's units. The Commission dismissed the request for rehearing in an order issued February 14, 2005,⁷ finding that rehearing did not lie under the Commission's regulations because the December 21 Order was not a "final Commission decision or other final order."⁸

Compliance Filing

10. On July 22, 2004, the CAISO submitted a compliance filing revising its tariff to exempt DWR from the outage approval provisions, in accordance with the June 2004 Order. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 47,137 (2004), with comments, protests and interventions due on or before August 12, 2004. None was filed. This filing is pending before the Commission.

Comments

CAISO's Initial Comments

11. In its initial comments, the CAISO states that, while the outage coordination procedures of its tariff provide it with additional control over outage schedules, the circumstances in which the CAISO can exercise that control remain limited. Specifically, under these procedures, it is the participating generator, not the CAISO, that in the first instance schedules outages, and the participating generator may submit changes to its schedule. The CAISO tariff also allows for scheduling an outage as little as 72 hours before the event. The CAISO must approve the outage unless it is likely to have a detrimental effect on the efficient use and reliable operation of the CAISO controlled grid. Once the outage is approved, the CAISO can cancel the outage only if necessary to maintain system reliability. The CAISO therefore argues that these tariff restrictions act as safeguards for the participating generator, such as DWR. The CAISO also asserts that an exemption would give DWR a market advantage over other generating unit owners, implying that DWR might schedule its outages to impact prices through supply availability.

⁷ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 110 FERC ¶ 61,153 (2005) (February 14 Order).

⁸ 18 C.F.R. § 385.713 (2004).

12. The CAISO continues to believe that requiring DWR to coordinate its outage scheduling with the CAISO will not prevent DWR from fulfilling its water management obligations. The CAISO asserts that DWR remains largely in control of its outages. The CAISO contends that its procedures simply require hydroelectric units to submit their outage schedules to the CAISO, and allow the CAISO to modify those schedules only if it determines that a modification is necessary to protect the reliable and efficient operation of the grid. The CAISO notes that out of a total of 746 DWR outages that were scheduled in the past 23 months, only two had been cancelled pursuant to its outage coordination authority. In addition, the CAISO mentions that its tariff ensures that the CAISO will not abuse its authority in connection with hydroelectric units, such as those operated by DWR.

13. The CAISO notes that there is currently 8,593 MW of non-participating thermal generation within the CAISO controlled grid. In addition, DWR operates 1,926 MW of generation on the grid and there is 2,368 MW of generation operated by municipalities that could claim exemptions similar to that of DWR. The CAISO states that, if DWR resources remain exempt from the CAISO coordination authority, it is likely that these other municipalities will also request exemptions, which would mean a total of 4,294 MW of generation would become exempt from the CAISO's outage coordination authority. The CAISO concludes that, when added to the non-participating thermal MWs, nearly 13,000 MW of generation would fall outside its outage coordination authority.

14. In response to questions posed in the December 21 Order, the CAISO argues that it is economically improper and operationally unworkable for the CAISO to attempt to coordinate outages of generating units on a unit-by-unit basis. The CAISO states that coordinating unit outages on a unit-by-unit basis will disrupt the long-range outage coordination planning process as currently implemented by the CAISO.

15. Also in response to the December 21 Order, the CAISO asserts that the need for the outage coordination procedures remains generally unchanged since they were first imposed in 2001, and that exempting DWR's units would pose a reliability problem. The CAISO states that the major reliability challenges that faced the CAISO in managing the grid in 2001 still exist today. One of the challenges that the CAISO continues to face is the tight margin between supply and demand. Another challenge the CAISO still faces is the numerous transmission constraints in California. According to the CAISO, the outage coordination procedures provide it with critical flexibility to ensure that sufficient generation and transmission assets are available for reliable operation of the grid at all times. Allowing DWR to exempt its resources from the CAISO's outage coordination planning process will disadvantage other Market Participants by disrupting the CAISO's long range outage plan when a DWR outage is taken that conflicts with other planned outages or affects transmission path limitations, further undermining the CAISO's authority to coordinate outages.

16. Finally, the CAISO argues that the exemption of hydroelectric facilities from the must-offer requirement does not equate to a need for an exemption for those entities from the CAISO's outage coordination authority. The CAISO states that the Commission exempted hydroelectric facilities from the must-offer obligation because of perceived difficulties in applying such requirements due to the multi-purpose limitations of hydroelectric facilities. As such, hydroelectric units would have had to surrender to the market their control over the ability to increase and curtail generation as necessary to perform their other functions. In contrast, according to the CAISO, outage coordination is a planning function; it occurs primarily on an annual basis.

DWR's Initial Comments

17. DWR first argues that in no instance in the periods of crisis prior to the imposition of the outage coordination requirement and in the periods of CAISO reliability failures after the Ninth Circuit vacated the outage coordination requirement applied to DWR, can the CAISO cite any reliability problem relating to the CAISO's lack of outage control over DWR's facilities.

18. DWR states that the CAISO claim that DWR operations are indistinguishable from those of other hydroelectric generators is wrong and directly contradicts the Court's holdings. DWR notes that the Court found that DWR's dedicated-purpose water operations differ significantly from other generators subject to CAISO outage coordination. Further, DWR states that it is not like any other hydroelectric generator because it has unique responsibilities to meet requirements intended to maintain and restore parts of the California's ecology (i.e., salinity of its water resources) and because it must coordinate outages of its numerous facilities over 650 miles in California. DWR also claims that, because of reductions to its specialized maintenance crews, outage schedules must be carefully coordinated across all of the more than 150 DWR units.

19. DWR argues that the CAISO's claim that its tariff provisions provide certain protections in connection with hydro electric units is meaningless. DWR states that considerable evidence calls into doubt the CAISO's willingness or ability to implement those tariff provisions. According to DWR, CAISO operational personnel have provided sworn evidence that they operate the grid with no familiarity with the CAISO tariff.

20. Lastly, DWR argues that the Federal Power Act is limited to regulating public utilities, such as the CAISO, and does not allow regulation of transmission customers, such as DWR. Thus, DWR concludes that nowhere does the FPA authorize regulation of DWR water management resources. Additionally, DWR states that its outage control is exempted from Commission regulation by virtue of FPA section 201(f), which provides

that the Act does not apply to “. . . a State or any political subdivision of a state, or any agency, authority, or instrumentality . . .” thereof.⁹

CAISO’s Reply Comments

21. In its reply comments, the CAISO states that DWR continues to misapprehend, or misrepresent, the nature of the CAISO’s outage coordination authority. The CAISO reiterates that the participating generator, or in this case DWR, creates and provides the CAISO its outage schedules, and the participating generator may submit changes to its schedule. The CAISO tariff also allows for scheduling an outage as little as 72 hours before the event. Under the tariff, the CAISO must approve the outage unless it is likely to have a detrimental effect on the efficient use and reliable operation of grid. The CAISO states that once an outage is approved, it can cancel the outage only if necessary to maintain system reliability.

22. The CAISO also states that DWR misses the point when it claims that the CAISO has failed to cite to any reliability problems relating to the CAISO’s lack of outage control over DWR facilities. The CAISO comments that the reliability problems that resulted from the CAISO’s lack of authority to coordinate the outages were not due to the inability to coordinate the outages of one, or several participating generators, but the absence of authority to coordinate outages on a system-wide basis. Given that the CAISO has shown that it is necessary to have systemic authority to coordinate general outages on the grid, the CAISO asserts that it should be DWR’s burden to demonstrate that it requires an exemption from that authority, not the CAISO’s burden to show that its authority should apply to each individual participating generator separately.

23. The CAISO states that DWR provides no new evidence that it requires an exemption from the CAISO outage coordination authority.

DWR’s Reply Comments

24. DWR contends in its reply comments that experience contradicts the CAISO’s claim that its tariff ensures that it will not abuse its authority in connection with hydroelectric units. DWR states that the CAISO has rejected any responsibility or interest in environmental and related concerns of resources it deploys.

25. DWR states that, contrary to the CAISO’s claim, exempting DWR’s 1,926 MW of hydro generation from outage control will not cause nearly 13,000 MW of generation to fall outside of the CAISO’s outage coordination procedures. Regarding the 2,368 MW of generation operated by municipalities which the CAISO states could claim exemptions

⁹ 16 U.S.C. § 824(f) (2000).

similar to that of DWR, DWR notes that no other party has sought such an exemption, nor has even commented in this proceeding.

Discussion

26. First, we will explain the current process by which a Generator can plan an outage pursuant to the CAISO's tariff. By October 15 of each year, each participating generator provides the CAISO with a proposed outage schedule for each of its generating units for the following calendar year. Each participating generator also provides the CAISO with quarterly updates of its annual outage schedule which must identify known changes to any previously planned generating unit outages and any additional outages anticipated over the next twelve months from the time of the quarterly update. In addition to changes made in quarterly outage submittals, each participating generator notifies the CAISO of any known changes to an outage scheduled within the next ninety days. A participating generator may also submit changes to its planned maintenance outage schedule at any time. The tariff specifies that requests to schedule outages and changes to approved outages are evaluated on the basis of whether they are likely to have a detrimental effect on "the efficient use and reliable operation of the ISO Controlled Grid."¹⁰ According to the Outage Coordination Protocol, approvals for changes to outage schedules may be withheld "only for reasons of System Reliability or security."¹¹ Another provision of the Outage Coordination Protocol specifies that the Outage Coordination Office "shall have the right to reject such modified request for reasons of System Reliability, system security or market impact, because of the complexity of the modifications proposed, or due to insufficient time to assess the impact of such modifications."¹²

27. If conditions require, a participating generator may, upon seventy-two hours advance notice, schedule with the CAISO Outage Coordination Office a maintenance outage affecting any of its units. The CAISO will not approve an outage request made within seventy-two hours of the requested outage start time unless it could not have been reasonably foreseen and scheduled through the outage coordination process and it will not compromise reliability of the CAISO controlled grid. Finally, the CAISO Outage Coordination Office may at any time request a maintenance outage or a change to an approved maintenance outage from a generator if the requested outage or change is required to secure the efficient use and reliable operation of the CAISO controlled grid.

28. Based on the comments filed in this proceeding, the Commission finds that DWR's water management responsibilities will not be compromised by adhering to the

¹⁰ CAISO FERC Electric Tariff, Volume No. II, section 2.3.3.5.1.

¹¹ CAISO FERC Electric Tariff, Outage Coordination Protocol, section 2.2.4.

¹² *Id.* at section 4.3.4.

CAISO's requirement for the submission of a proposed outage schedule for each calendar year, and subsequent quarterly updates thereto. Whereas the must-offer requirement requires a commitment of resources in real-time, at which point hydroelectric generators may not have the flexibility to adjust their output, the submission of a proposed outage schedule a year in advance, subject to CAISO approval, should not interfere with DWR's other responsibilities. DWR has not argued that its operations are so unique that it cannot comply with the annual proposed outage scheduling requirement, and we do not foresee that yielding such control to the CAISO would, in fact, compromise DWR's primary water delivery mission.

29. However, we do believe that the CAISO's ability to cancel DWR's approved outages should be more limited than currently allowed in some provisions of the Outage Coordination Protocol and the tariff. Given the importance of maintaining the integrity of the water system and DWR's additional challenges in balancing multiple uses of its water, we will not allow the CAISO to deny an outage request or cancel DWR's approved outages in order to secure the "efficient use" of the CAISO controlled grid (in other words, for economic reasons) or for reasons of "market impact;" such actions will only be permitted in order to ensure system reliability. Further, if DWR determines that an action of the Outage Coordination Office will result in a violation of any law affecting hydroelectric operations (such as minimum and maximum dam reservoir levels and in-stream flow levels) or compromise DWR's ability to deliver water to its customers, then the CAISO must first use every other option at its disposal to avoid a reliability problem before rejecting an outage request or requiring DWR to cancel any approved outage. These restrictions should be reflected in CAISO's Outage Coordination Protocol and section 2.3.3 of the CAISO Tariff.

30. DWR challenges for the first time on rehearing this Commission's jurisdiction over its operations. DWR should have raised this issue on rehearing of the April 2001 Order in order to reserve the argument. The Commission's authority to impose any outage coordination requirements on DWR was not questioned before the Ninth Circuit and was not remanded to the Commission for further analysis. Accordingly, this issue is beyond the scope of this proceeding at this stage, and we will dismiss the rehearing issue.

31. Since we are now requiring additional changes to the outage coordination provisions, we direct the CAISO to amend the compliance filing initially filed on July 22, 2004, within thirty days of the date of this order, consistent with our findings in this order.

The Commission orders:

(A) The CAISO's request for rehearing of the June 2004 Order is hereby granted in part, as discussed in the body of this order.

(B) The CAISO is hereby directed to amend its July 22, 2004 compliance filing within thirty days of the date of this order, as discussed in the body of this order.

By the Commission. Commission Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.