

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Carol Smoots	Docket Nos. CE06-34-001
Bruce Alpert	CE06-65-001
Robert MacKenzie	CE06-67-001
Paul McIntosh	CE06-68-001

ORDER DENYING REQUEST FOR  
REHEARING OR CLARIFICATION

(Issued May 17, 2006)

1. California Department of Water Resources (DWR or Petitioner), pursuant to the Federal Energy Regulatory Commission's (Commission) rules of practice and procedure, Rules 212 and 713,<sup>1</sup> has requested the Commission to clarify its March 17, 2006 Order in the above-captioned proceedings or, if the Commission fails to clarify this order, the Petitioner seeks a rehearing. For the reasons stated below, the Petitioner's request shall be denied.

**Background**

2. By delegated order issued March 17, 2006,<sup>2</sup> the Deputy Director, Office of External Affairs, granted the requests of Carol Smoots, Bruce Alpert, Robert MacKenzie, and Paul McIntosh (the Recipients) for access to certain Critical Energy Infrastructure Information (CEII) submitted to the Commission by DWR in the hydroelectric relicensing proceeding, Docket No. P-2100 (Oroville Facilities Project).<sup>3</sup> Access to the

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<sup>1</sup> 18 C.F.R. § 385.212 and § 385.713 (2006).

<sup>2</sup> 114 FERC ¶ 62,271 (2006) (March 17 Order).

<sup>3</sup> The Commission notes that the requests of Mr. Alpert, Mr. MacKenzie and Mr. McIntosh, employees of Butte County, California, (the County), were inadvertently assigned two docket numbers. The Commission in its order of March 17, 2006, deemed Docket Nos. CE06-55-000 (MacKenzie), CE06-56-000 (Alpert), and CE06-57-000 (McIntosh) as withdrawn. Ms. Smoot is the legal representative for the County.

CEII was conditioned upon each of these requesters complying with the terms of a non-disclosure agreement (NDA) which, in part, restricts the requesters from discussing or disclosing the subject CEII (or copies thereof which then become CEII) with anyone other than another approved recipient who has been granted similar access to the CEII.

3. Petitioner's stated concerns encompass provisions of the NDA regarding: (1) securing the CEII (NDA at ¶ 7); (2) copying and distribution of the CEII (NDA at ¶¶ 3 and 7); and (3) return of CEII materials (NDA at ¶ 8). DWR further requests that any communications from the Recipients related to the CEII be directed to DWR's Chief, Engineering Branch.

4. First, DWR requests that the March 17 Order and/or the NDA be clarified or otherwise amended to require the Recipients to: (1) disclose to the Commission and DWR where and how the CEII will be secured and define procedures that will be put in place to prevent non-authorized access; (2) keep the CEII in a locked location when not in use; and (3) identify an authorized individual who is personally responsible for security of the CEII and require this person to sign a receipt of the CEII acknowledging his or her ongoing responsibility. *See* Petitioner's motion at 4.

5. DWR further requests that the March 17 Order and/or the NDA be clarified or otherwise amended to require the Recipients to notify the Commission and DWR whenever a copy of the CEII is made, provide an explanation for the duplication, and identify to whom the copy has been provided. Further, DWR seeks clarification that the Recipients are prohibited from disclosing or sharing any CEII information, in part or in whole, with any other persons, excepting the four named individuals specifically granted access in the March 17 Order. *See* Petitioner's motion at 5.

6. Third, Petitioner states a "strong preference" that the NDA be amended to require the return of the CEII and any copies thereof within 15 days upon written request from the CEII Coordinator and for each recipient to attest by affidavit that all CEII, including copies, has been returned. *See* Petitioner's motion at 5.<sup>4</sup>

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<sup>4</sup> Paragraph 8 of the NDA now requires the Recipients "to return or destroy the CEII within 15 days of a written request by the Commission's CEII Coordinator and provide an affidavit that to the best of his or her knowledge all CEII has been returned or destroyed and CEII notes have either been returned or destroyed or are being maintained by the recipient in accordance with [NDA] Paragraph 7." Paragraph 7 of the NDA requires that CEII be maintained by the Recipients in a secure place.

7. Lastly, Petitioner requests that any and all communications from the Recipients related to the CEII, including return of the information following request from the CEII Coordinator, be directed to DWR's Chief, Engineering Branch. *See* Petitioner's motion at 6.

8. On May 12, 2006, the County submitted a motion to answer and answer to the request for rehearing or clarification submitted by DWR. The County contends that DWR's request for rehearing or clarification contains the unfounded and erroneous implication that the Recipients will violate the terms and conditions of the NDA. The County further maintains that the above-captioned proceedings are an inappropriate forum to challenge the Commission's standard NDA.

### **Discussion**

9. The Commission's Rules of Practice and Procedure do not normally permit an answer to a request for rehearing, 18 C.F.R. §§ 385.213(a)(2) and 385.713(d)(1) (2006), and we are not persuaded to allow one here. The answer of the County to DWR's request for rehearing or clarification is therefore rejected.

10. While the Commission appreciates the Petitioner's concerns regarding the security of the CEII, the Commission believes that the NDA as now written and executed by the Recipients is sufficiently clear in both language and tone to reasonably afford sufficient safeguards against improper disclosure. To amend the terms of the NDA as Petitioner now desires would unreasonably impose additional burdens on both the Recipients and the Commission to little or no substantive effect.

11. In its March 17 Order, the Commission "concluded that the [Recipients] are legitimate requesters with a demonstrated need for the information requested." *See* 114 FERC ¶ 62,271 at ¶ 8. There is no reason to think, and no circumstances have been presented in Petitioner's request, or otherwise, to suggest, that the Recipients will not abide by the terms of the existing NDA and not undertake all adequate and appropriate measures and procedures to prevent improper disclosure or dissemination of the material at issue. For these reasons, DWR's request for rehearing or clarification is denied.

The Commission orders:

(A) DWR's request for rehearing or clarification is hereby denied; and

(B) The County's answer to DWR's request for rehearing or clarification is hereby rejected.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.