

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

San Diego Gas & Electric Company,)	
Complainant,)	
)	Docket No. EL00-95-045
)	
v.)	
)	
Sellers of Energy and Ancillary Services)	
Into Markets Operated by the California)	
Independent System Operator and the)	
California Power Exchange,)	
Respondents)	
)	
Investigation of Practices of the California)	Docket No. EL00-98-042
Independent System Operator and the)	
California Power Exchange)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO REQUESTS FOR CLARIFICATION OF
MAY 12 ORDER AND PUGET’S ANSWER TO THE ISO’S BRIEF ON
GRANT COUNTY TRANSACTIONS**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2001), The California Independent System Operator Corporation (“ISO”)¹ hereby submits its Answer to requests for clarification of the Commission’s May 12 orders² filed by the Automated Power Exchange (“APX”) and California Generators

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² On May 12, 2004 the Commission issued two orders in this proceeding: an Order on Requests for Rehearing and Clarification, 107 FERC ¶ 61,159 (2004) (“May 12 Order”) and an Order Addressing Fuel Cost Allowance Issues, 107 FERC ¶ 61,160 (2004) (“Fuel Cost Order”).

(“Generators”) in this proceeding on June 14, 2004,³ as well as Puget Sound Energy’s (“Puget”) answer to the ISO’s May 24, 2004 brief on Grant County transactions.

I. ANSWER

A. The ISO Proposes to Include in its Schedule for Completion of the Refund Process a Dispute Period Relating to the Refund Rerun, and a Financial Clearing After the Commission Issues its Order Addressing the ISO’s Compliance Filing

In the May 12 Order, in addressing the schedule for completion of the refund process, the Commission stated that it understood that during this process, the ISO would share with Scheduling Coordinators the process and results of the preparatory and refund reruns, and that at each of these rerun stages, there will be a dispute period. The Commission explained that after the ISO files its refund compliance filing, that filing will be noticed with opportunity for comment, and the Commission will issue an order on that filing. At this point, Scheduling Coordinators and other Market Participants have an opportunity to raise any concerns with the Commission. The Commission also described a phase that it referred to as the “Financial Settlement Phase,” or “Final Financial Phase” which will “reflect a culmination of all that comes before.” May 12 Order at P 23. The Commission also stated that Scheduling Coordinators would have two weeks after the Final Financial Phase to reconcile statements with the Market

³ APX styles its pleading a “Request for Clarification, or in the Alternative, Request for Rehearing.” The Generators entitle their pleading a “Request for Rehearing and Clarification.” However, this answer only addresses portions of these pleadings that are indicated as requests for clarification. Although the Commission’s rules normally prohibit answers to requests for rehearing, there is no prohibition on answers to motions or requests for clarification. *Compare* Rule 213 (a)(2), 18 C.F.R. § 385.213(a)(2) *with* Rule 213 (a)(3), 18 C.F.R. §§ 385.213(a)(3).

Participants behind those statements, if such period is not specified in a relevant tariff, and submit compliance filings to the Commission. *Id.*

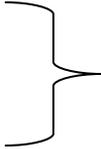
Two parties raise important issues with respect to the schedule for completion of the refund process. First, in its Request for Clarification, or in the Alternative, Rehearing, APX states that this portion of the May 12 Order is not clear in terms of the process that the Commission intends to follow for compliance purposes. Specifically, APX notes that it is unclear as to whether the Commission intends that this “Final Financial Phase” will occur prior to the point at which the Commission addresses any issues that parties raise with respect to the ISO’s compliance filing. APX at 2-3. APX states that it agrees with a process that would proceed as follows: (1) the ISO submits a compliance filing showing “who owes what to whom;” (2) parties have an opportunity to comment on the ISO’s compliance filing; (3) the Commission issues a final order on the compliance filing; (4) APX submits its compliance filing 60 days after the date of the Commission’s final order. *Id.* at 3. If this is not the process the Commission intended, then APX requests that the Commission clarify the correct process. *Id.*

The Generators request that the Commission clarify that the ISO must provide a dispute period and process for the refund rerun that will allow Market Participants a “meaningful opportunity to review, comment on, and dispute the CAISO’s calculations in the refund rerun, before the CAISO submits its refund re-run compliance filing.” Generators at 10. The Generators state that such clarification is necessary in light of the ISO’s statement in its February 9, 2004 Status Report that “because parties will have the opportunity to comment on the compliance filing ordered by the Commission . . . the ISO no longer believes that a discrete dispute period for the refund re-run is

necessary.” *Id.* The Generators maintain that the ISO should be “obligated to replicate the preparatory rerun dispute process during the refund rerun process.” *Id.* at 12.

The ISO supports the earliest possible resolution of this proceeding, including the final financial clearing of the refund obligations. In its monthly rerun status reports provided to the Commission, the ISO has suggested an accelerated schedule for the financial clearing portion of this proceeding that would result in an earlier distribution of funds, subject to a later true-up to conform with the Commission’s order on the ISO’s compliance filing. Additionally, the ISO’s current schedule does not provide for a separate dispute period relating to the refund rerun. While this process might theoretically return monies earlier if approved by the Commission, the May 12 Order suggests that the Commission envisioned a process that included a separate refund rerun dispute period and that financial clearing would not occur until after the Commission rules on the ISO’s compliance filing.⁴ Further, a successful conclusion to the ongoing settlement discussions between the Cal Parties and various sellers will satisfy the objective of the earlier transfer of monies. For these reasons, the ISO proposes the following revised schedule for providing its compliance filing to the Commission. Compared to the most recent schedule provided by the ISO in its status report of June 10, 2004, this schedule proposes that the filing of the ISO’s compliance filing will be delayed by six weeks in order to provide Market Participants with a refund rerun dispute period. Additionally, under this schedule, actual financial clearing will be implemented as directed by the Commission following the compliance filing.

⁴ Also, in its October 16 Order on Rehearing, the Commission noted that “once the Commission has also had the opportunity to review [the ISO and PX] compliance filings and comments to these filings, we will direct how refunds will flow to customers.” 105 FERC ¶ 61,066 (2004) at P 139.

Activity	Duration	Overall Schedule
Completion of Refund Rerun Production, Currently Planned for Early November, 2004		T = Early November 04.
Refund Rerun Dispute Window for Market Participants	3 Weeks	T+ 3 Weeks
ISO Refund Rerun Dispute Research and Adjustment Phase	3 Weeks	T+ 6 Weeks
ISO work to complete: <ol style="list-style-type: none"> 1) Interest calculations 2) Fuel price adjustments 3) Adjustments for global settlements between Cal Parties and sellers 4) Preparation and filing of compliance filing 	 6 Weeks	T+12 Weeks

With respect to the dispute period for the refund rerun, the ISO proposes a 15 business day (3 week) dispute period, rather than the 30 business day dispute period used for the preparatory rerun. The ISO believes that a shorter dispute window is appropriate for the refund rerun portion of this process because the refund rerun will be less complex than the preparatory rerun. The refund rerun will involve only the application of the mitigated prices to appropriate transactions and penalties, while the preparatory rerun includes corrections to price and quantity associated with seventeen individual issues, ranging from corrected meter data to mislogging. It will therefore be easier for Market Participants to review refund rerun statements, and consequently, Market Participants will not need as much time as they did with the preparatory rerun to submit any disputes to the ISO concerning the refund rerun statements.

B. The Commission Should Confirm that the Obligation of Payment for Transactions Entered into by the ISO Rests with the Scheduling Coordinators, and Not Directly with the ISO Itself, Despite Puget's Arguments to the Contrary

In its response to the ISO's brief addressing Grant County transactions, Puget contends that, as a matter of agency law, the ISO is "personally liable" for the "bilateral purchases" that it made during the Refund Period. Puget at 7. Puget reasons that this is the case because the ISO did not adequately disclose the principals on whose behalf it entered into those transactions. *Id.* This is incorrect. Section 2.2.1 of the ISO Tariff makes clear that the ISO does not purchase energy on its own account. "In contracting for Ancillary Services and Imbalance Energy the ISO will not act a principal but as agent for and on behalf of the relevant Scheduling Coordinator." (emphasis added). Puget, however, contends that the ISO has not disclosed to Puget or any other "bilateral seller" the identities of these Scheduling Coordinators, therefore preventing Puget from enforcing its right to payments for transactions made with the ISO during the Refund Period. Puget at 7. Again, Puget is mistaken. The identity of ISO Scheduling Coordinators has been a matter of public record before, during, and after the Refund Period.⁵ In addition, the ISO provides a monthly certification to Market Participants that identifies the specific ISO Debtors for any outstanding obligations.

What Puget actually seems to be suggesting is that, in order for liability to rest solely with the principals to a transaction (*i.e.* the Scheduling Coordinators) rather than the ISO as agent, the ISO, *at the time it entered into each transaction*, would have been required to name a precise Scheduling Coordinator or subset of Scheduling

⁵ A list of certified Scheduling Coordinators is available on the ISO's website at <http://www.caiso.com/docs/2004/01/02/200401021316541143.pdf>.

Coordinators that would constitute the principal or principals associated with those transactions. Puget offers no authority to support such a far-fetched requirement. Moreover, accepting this strained interpretation of agency law would make it impossible for any ISO that operated a central market such as the CAISO to transact solely as an agent, without liability as a principal. The ISO does not know which specific Scheduling Coordinators' load will be served as a result of a particular transaction, because there is no "matching" between individual buyers and sellers in the ISO Markets. Instead, the ISO uses meter data to determine the amount of energy consumed by each Scheduling Coordinator and assigns financial liability to those Scheduling Coordinators based on the price of the energy during the intervals/hours that energy was consumed, in accordance with the process detailed in the ISO Tariff. Both the ISO Tariff and the list of Scheduling Coordinators are matters of public record. For these reasons, the Commission should reject Puget's misguided attempt to show that the ISO did not "disclose" the identity of the Scheduling Coordinators on whose behalf it entered into transactions.⁶

In any event, with respect to the specific transactions made between Puget and the ISO, Puget's arguments are entirely undermined by the fact that Puget is itself an ISO Scheduling Coordinator. In entering into a Scheduling Coordinator Agreement, Puget agreed that it would "abide by, and will perform all of the obligations under the ISO Tariff placed on Scheduling Coordinators in respect of all matters set forth therein including, without limitation, all matters relating to the scheduling of Energy and Ancillary Services on the ISO Controlled Grid, ongoing obligations in respect of . . .

⁶ These arguments apply with equal force to transactions entered into between the ISO and Grant County, and support the ISO's request that the Commission clarify that the ISO is not liable as a principal

Settlement, . . . billing and payments” Scheduling Coordinator Agreement Section 2.A. In particular, Puget has agreed to Section 11 of the ISO Tariff (ISO Settlements and Billing), which limits the ISO’s payment obligation to the amounts collected from other Scheduling Coordinators, thereby precluding any claim that the ISO itself is responsible for unpaid amounts. Moreover, Puget would have been aware that, under the ISO Tariff, the ISO transacts not as a principal, but as an agent on behalf of the Scheduling Coordinator. Accordingly, Puget’s claim that the ISO did not disclose to Puget its status as an agent on behalf of the Scheduling Coordinators in the ISO Markets is a red herring. The Commission should therefore reject Puget’s arguments, and clarify, as requested by the ISO in its brief on Grant County transactions, that its orders in this proceeding do not modify the fundamental principle that the *sole obligation of payment* for transactions entered into by ISO rests where the obligation of payment for all energy contracted for by the ISO rests, *i.e.*, with the Scheduling Coordinators on whose behalf the ISO made the purchases.

to those transactions.

II. CONCLUSION

Wherefore, the ISO requests that the Commission rule consistent with the ISO's positions as expressed in the foregoing sections.

Respectfully submitted,

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