

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	
)	Docket Nos. EL00-95-000, <i>et al.</i>
)	and EL00-98-000, <i>et al.</i>
v.)	
)	
Sellers of Energy and Ancillary Services)	
Into Markets Operated by the California)	
Independent System Operator and the)	
California Power Exchange, <i>et al.</i>)	
Respondents.)	
)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO
CALIFORNIA PARTIES' MOTION TO STRIKE THE CITY OF PASADENA,
CALIFORNIA'S "ALLOCATION OF OUT-OF-POCKET COSTS TO PURCHASE
EMISSIONS CREDITS" AND COMMENTS ON THE ANSWERS OF PASADENA
AND THE LOS ANGELES DEPARTMENT OF WATER AND POWER**

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") responds¹ to the California Parties' March 29, 2004 Motion to Strike the City of Pasadena, California's "Allocation of Out-of-Pocket Costs to Purchase Emissions Credits" ("Motion to Strike") and comments on the answers of the City of Pasadena, California ("Pasadena") and the Los Angeles Department of Water and Power ("LADWP") to the Motion to Strike.²

¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² Pasadena filed an answer to the Motion to Strike on April 5, 2004. LADWP filed an answer to the Motion to Strike on April 7, 2004.

I. BACKGROUND

On March 12, 2004, Pasadena filed with the Commission a pleading entitled “Allocation of Out-of-Pocket Costs to Purchase Emissions Credit” (“Pasadena Emissions Filing”). Pasadena explained that it was making this filing pursuant to the Commission’s direction that it recalculate its emissions offsets to reflect the Commission’s findings that Pasadena was not entitled to recover opportunity costs of emissions credits, and that Pasadena should allocate its emissions costs incurred during the refund period based on the relative MWh of sales to the ISO to non-native load sales. Pasadena stated that it was providing a calculation of its emissions offsets consistent with these requirements in this filing so “that the ISO and the participants in this proceeding will have the relevant calculations well in advance of the ISO’s refund calculations.” Pasadena Emissions Filing at 4.

On March 29, 2004, the California Parties filed their Motion to Strike the Pasadena Emissions Filing. Therein, the California Parties argued that Pasadena had no authorization to make this filing, and had failed to “avail itself of the appropriate mechanisms provided by the Commission for validly introducing such testimony.” Motion to Strike at 3. The California Parties contend that Pasadena could have introduced this information into the record at hearing, or filed a motion to reopen the record or for leave to allow the introduction of additional testimony. The California Parties also request that Pasadena’s Emissions Filing not be treated as a motion to reopen the record, because Pasadena has not presented a recommendation for an appropriate formal process for review of its calculations nor

provided a justification for a reopening of the record. Therefore, according to the California Parties, Pasadena is not entitled to its requested emissions offset.

On April 5, 2004, Pasadena filed an answer to the Motion to Strike ("Pasadena Answer"). Therein, Pasadena argues that under the Commission's orders, they are entitled to an emissions offset. Pasadena also maintains that its Emissions Filing was consistent with the compliance process contemplated by the Commission, in that it was made "in response to the Commission's guidance on compliance filings and the ISO's clear suggestion that it needed filings from the parties required to recalculate their emissions offsets." Pasadena Emissions Filing at 6. Pasadena also argues that there is no need to re-open the record in this proceeding because the Commission has clearly signaled its intent to proceed on this issue on a compliance filing basis, with an iterative process between the ISO and its participants, without more on-the-record hearings. Pasadena states that the Commission should simply instruct the ISO to use \$723,608 as its emissions offset, with the understanding that there would be the need to further allocate this figure between mitigated and unmitigated hours. Pasadena adds that if the Commission "wants to permit an interactive dispute process regarding Pasadena's calculations, this dispute process should take place informally "pursuant to the ISO's informal procedures required by the Commission because the ISO is ultimately tasked with the responsibility of performing the refund calculations." Pasadena suggests that the ISO could facilitate discussions between Pasadena and the California Parties and then make a decision as to the ultimate offset, and that any dissatisfied party could then protest the ISO's calculations in the procedures established by the Commission

for commenting on the ISO's compliance filing in the refund proceeding. Pasadena Emissions Filing at 9-10.

On April 7, 2004, LADWP also filed an answer to the Motion to Strike. In this answer, LADWP raised substantially similar points as made by Pasadena in its answer to the Motion to Strike. Namely, that Pasadena's Emissions Filing was appropriate, timely, and that there was no need for further hearing-type procedures in order for the Commission to consider emissions costs recalculations.

II. ANSWER AND COMMENTS

In its Motion to Strike, the California Parties state that if the Commission is inclined to permit Pasadena to justify its emissions recalculations, it should require Pasadena to follow “an appropriate and ordinary method of requesting a process for the proper introduction and evaluation of such testimony.” Motion to Strike at 5. Pasadena replies that it would not be appropriate to re-open the record in this proceeding, stating that if the Commission “wants to permit an interactive dispute process regarding Pasadena’s calculations” this process should take place “informally pursuant to the ISO’s informal procedures required by the Commission because the ISO is ultimately tasked with the responsibility of performing the refund calculations.” Pasadena Answer at 9. LADWP, in its answer, notes that if the California Parties have substantive concerns with Pasadena’s Emissions Cost Filing, that Pasadena has proposed an iterative process between the ISO and Market Participants that has already been approved by the Commission, for resolving any such concerns.

The ISO appreciates and supports the California Parties' desire for a process by which parties can examine and test the emissions recalculations of Pasadena and other parties. Moreover, if the parties and/or the Commission wish for that process to be conducted through less-formal mechanisms, the ISO is not opposed. However, the ISO should not be responsible for overseeing discussions between the parties on this issue and then making a determination as to the correctness of a party's emissions calculations, as suggested by Pasadena. First, there is nothing in any of the Commission's orders in this proceeding that suggest that the ISO, as part of its process to "help market participants better understand the adjustments that it intends to make,"³ has the responsibility for acting as a mediator and decision-maker with respect to emissions calculations issues. Indeed, the Commission's direction to the ISO to assist market participants in understanding the ISO's adjustments solely addressed the ISO's settlement and financial calculations, which involve ISO data and ISO calculations, not the determination of emissions offsets, which involve data and calculations performed by the parties themselves. In addition, the ISO has no authority, under its Tariff, to perform such functions, and the Commission cannot simply delegate this responsibility to the ISO under the Federal Power Act. There is no statutory authority under which it may do so. The Congress assigned the responsibility for this type of inquiry to the Commission. It must carry out this responsibility, and if it requires reopening the record in this proceeding, then so be it.

³ Order on Rehearing, 105 FERC ¶ 61,066 (2004) at P 194.

Moreover, the ISO has no particular expertise on emissions issues, such that it would even be qualified to perform such a role. For this reason, the ISO submitted no testimony, nor presented any arguments on brief, addressing the substance of emissions offsets issues in the refund proceeding. Those parties with appropriate expertise on emissions matters should bear the responsibility of facilitating the resolution of these issues, and, likewise, it should be the Commission that acts as the decision-maker, not the ISO. The ISO is already expending a great deal of effort in order to complete, as expeditiously as possible, the items in the preparatory and refund reruns that the Commission has explicitly tasked the ISO with performing. It would significantly increase the ISO's existing burden, and potentially lead to further delays in this process, if the Commission was to expand the ISO's role by requiring it to bear the responsibility of facilitating negotiations and making decisions with respect to this issue, especially given the ISO's lack of expertise.

The ISO also maintains, contrary to Pasadena's suggestion, that it is more appropriate to resolve this type of emissions calculation issue prior to the filing of its final compliance filing in the refund proceeding (which will consist of a final accounting of "who owes what to whom"), rather than incorporating into that filing offset figures that may still be the subject of dispute. Given that the rerun process is currently ongoing, the most logical solution would be for the Commission to institute whatever process it feels is appropriate to deal with emissions calculations issues, and then issue a decision or decisions as to what, if any, additional emissions costs the ISO should offset against the refund liabilities of parties in this proceeding. This would not only expedite the rerun process, but would also remove an issue of

potential dispute from the compliance process. Therefore, the Commission should clarify that issues relating to emissions calculations will be resolved prior to the ISO making its final compliance filing in the refund proceeding.

III. CONCLUSION

For the reasons explained above, the ISO respectfully requests that the Commission not make the ISO responsible for facilitating discussions and deciding the appropriate emissions costs to be included as offsets against refund liabilities in this proceeding. Additionally, the ISO asks that the Commission clarify that emissions calculations issues will be resolved prior to the final ISO compliance filing in the refund proceeding.

Respectfully submitted,

/s/ Michael Kunselman

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Dated: April 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 13th day of April, 2004.

/s/ Gene L. Waas
Gene L. Waas