

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	
v.)	Docket Nos. EL00-95-000
)	
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)	
Independent System Operator and the)	Docket Nos. EL00-98-000
California Power Exchange)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTION OF THE CITY OF LOS ANGELES
DEPARTMENT OF WATER AND POWER FOR ORDER DIRECTING
DISBURSEMENT OF PAST DUE PRINCIPAL AMOUNTS**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.213, the California Independent System Operator Corporation (“ISO”) submits this answer to the above-described motion, filed by the Los Angeles Department of Water and Power (“LADWP”) on May 6, 2004 (“the Motion”).

I. BACKGROUND

In the Motion, LADWP “requests that the Commission order the immediate disbursement of payments made by SCE, PG&E, and any other ISO or PX debtor for past due principal amounts as invoiced by the ISO and PX for Refund Period transactions.”¹ Motion at 3. LADWP contends that disbursement is required by the ISO and California Power Exchange Corporation (“PX”) tariffs, consistent with two recent Commission orders refusing to require the ISO to hold defaulted receivables in escrow pending the conclusion of the refund proceedings, and in the public interest because it would prevent a continued rise in the cost of energy during the Refund Period due to accrual of interest. Motion at 4-8. LADWP suggests that disbursement of these principal amounts would not interfere with the orderly conclusion of the refund proceedings, including the determination of interest owed on the principal amounts. *Id.* at 3-4, 8-10.

Finally, LADWP contends that funds are immediately available to pay past due principal amounts owed to ISO and PX creditors. LADWP points to a \$99 million payment to the ISO by Southern California Edison Company (“SCE”) in 2002; \$1.2 billion in the PX Settlement Clearing Account, which, according to LADWP, “presumably” includes an \$875 million payment to the PX by SCE in 2002; and \$1.6 billion deposited into an escrow by Pacific Gas and Electric Company (“PG&E”) when it emerged from bankruptcy proceedings. *Id.* at 13. LADWP says it does not know whether the ISO has disbursed the \$99 million received from SCE; if it has, LADWP seeks an accounting for the disbursement.

¹ The Refund Period consists of the period from October 2, 2000 through June 20, 2001.

Id. at 10-11, 13. As to the amounts in the PX Settlement Clearing Account and in the escrow set up by PG&E, LADWP suggests the Commission can issue orders pursuant to which those funds would ultimately be disbursed to creditors in the ISO and PX markets. *Id.* at 11-13.

II. ANSWER

1. The ISO takes no position concerning the amounts due to creditors in the PX markets, or the ability of the Commission to require, at this time, disbursement of amounts held in the PX Settlement Clearing Account or the escrow established by PG&E.

2. In its Motion, LADWP cited the ISO's status report on the rerun process filed April 12, 2004, in which the ISO included a schedule indicating a final accounting by November 2004. Motion at 7 and n. 11. For the information of the Commission and the parties, the ISO notes that, after LADWP filed its Motion, the ISO filed a new status report, on May 7, 2004, indicating an estimated completion in December 2004. In addition, on May 19, 2004, the ISO filed a further report in which it explained the reasons for its changes to the estimated completion dates over the course of its several status reports filed since February 2004 and noted that it is conducting a review of its rerun processes and the requirements imposed by the Commission "in order to identify any opportunities that might exist for expediting either the rerun or any other phase of the refund process."²

² *California Independent System Operator Corp.*, Docket Nos. ER03-746-001, *et al.*, and *San Diego Gas & Electric Co.*, *et al.*, Docket Nos. EL-00-95-081, *et al.*, Status Report of the

3. The ISO can provide the following information concerning the invoicing to and disbursement of funds received from the PX, SCE and PG&E for trade months during the Refund Period, which shows that the Commission need issue no order to the ISO in response to the Motion:

- The ISO has collected and disbursed to Market Participants *all principal amounts* invoiced to either SCE or PG&E for the Refund Period. Interest on all principal amounts from the payment dates (*i.e.*, the due date for invoices) to the dates of collection, at the FERC interest rates as required by FERC order, will be included on the special “refund invoices” to be issued at the conclusion of the refund proceedings.

- Except for interest owing from the PX, as mentioned later in the text, the ISO has collected all interest billed under the ISO Tariff for the Refund Period, including all interest billed to SCE and PG&E. The ISO is holding some \$5.2 million in collected interest in its market reserve account, awaiting a response from the Commission on the treatment of this interest proposed by the ISO in a recent filing.³

- In its Motion, LADWP asked the Commission to direct the ISO to disburse or to account for the disbursement of \$99 million paid to the ISO by SCE in March 2002. Motion at 10 (and n. 20), 13. The ISO can fully account as follows for this money: First, \$81 million of the \$99 million was remitted by SCE

California Independent System Operator Corporation on CERS Surcharge and Explanation of the ISO's Most Recent Estimate for Completion of the Refund Process, at 6 (filed May 19, 2004).

³ See *California Independent System Operator Corporation*, Docket No. ER02-651-002, Request for Clarification or, in the Alternative, Rehearing and Motion for Expedited Consideration of the California Independent System Operator Corporation (filed May 3, 2004).

for and applied by the ISO to SCE's past due invoices for reliability must-run generation. The remaining \$18 million was remitted by SCE as payments on market invoices. Updated ISO calculations at the time showed that SCE actually owed only \$13 million: \$12 million in principal on the market invoice from January 2001, and \$1 million in interest. The ISO therefore returned \$5 million to SCE as an over-payment. The ISO disbursed the \$12 million for January 2001 to the market in November 2003, along with other amounts that had been collected on past-due invoices for November 2000 through January 2001. The \$1 million in interest is part of the \$5.2 million in interest being held in the market reserve account, as discussed under the previous bullet.

- For the Refund Period, the PX has not paid approximately \$2.5 billion invoiced to it by the ISO, which amount includes some \$7.1 million in interest billed under the ISO Tariff. Interest on the unpaid principal amount, at the FERC interest rates, will be included on the ISO's "refund invoice" to the PX at the conclusion of the refund proceedings.

III. CONCLUSION

For the reasons discussed above, the ISO submits that no order as to it is necessary or appropriate in response to the Motion.

Respectfully submitted,

Charles F. Robinson
Gene L. Waas
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7147

/s/ J. Phillip Jordan
J. Phillip Jordan
Michael Kunselman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
Tel: (202) 424-7500

Dated: May 21, 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 compiled by the Secretary in this proceeding.

Dated at Folsom, CA, on this 21st day of May, 2004.

/s/ Gene Waas
Gene L. Waas