

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	Docket No. EL00-95-291
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. EL00-98-263
Independent System Operator and the)	
California Power Exchange)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO THE CALIFORNIA PARTIES' PETITION FOR APPROVAL OF
SETTLEMENT OVERLAY CALCULATIONS AND RELATED RELIEF**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure,¹ the California Independent System Operator Corporation ("ISO") submits this answer in response to the California Parties' March 20, 2020 Petition for Approval of (1) Settlement Overlay Calculations (2) Final Payments of Amounts Owed and Owing, (3) Termination of the Activities of the California Power Exchange, and (4) Related Relief ("Settlement Overlay Filing"). The ISO appreciates the significant effort undertaken by the California Parties and their settlement counterparties to prepare the overlays. The ISO is not a party to the settlement agreements that prompted the need for the overlays,

¹ 18 C.F.R. § 385.213 (2019).

and therefore takes no position on the appropriateness of the adjustments made in the overlays to implement those settlement agreements. The ISO has no objection to the final clearing process proposed by the California Parties, subject to certain clarifications regarding the retention of records by the ISO and regarding the PX's records. Finally, the ISO agrees that a Commission order granting hold harmless protection to the ISO and PX is appropriate, and also emphasizes that it would not be liable for any shortfalls even barring a Commission grant of such protection.

I. BACKGROUND REGARDING SETTLEMENT OVERLAYS

A. Procedural History and the Role of Overlays

The filing of these proposed overlay adjustments is an encouraging sign that we are approaching the end of a nearly twenty-year-long proceeding. A summary of the relevant procedural history can be found in the ISO's May 4, 2016, compliance filing for the refund rerun, related financial adjustments and interest. This process began with the refund rerun, in which the ISO applied the mitigated market clearing prices to transactions during the refund period. The ISO completed the refund rerun in February 2005.² The ISO then implemented a series of Commission orders regarding offsets to those refunds meant to reflect the costs of emissions permits, fuel prices, and procurement costs, as well as orders implementing the Ninth Circuit's decision in *BPA v. FERC*.³

² See Compliance Filing of the California Independent System Operator Corporation Regarding Orders about Refund Rerun, Financial Adjustments and Interest, filed May 4, 2016 in Docket No. EL00-95 ("Compliance Filing"), p. 18.

³ See *id.* at 23-33.

While all of this was happening, the California Parties were, on a parallel track, entering into more than 60 settlement agreements with various entities that made sales into the ISO and PX markets during the relevant timeframe. In general, these settlement agreements provided that the settling parties would receive funds the PX was holding – funds that the PX had owed the supplier through either the ISO market or the PX’s own market but had not paid during the crisis period. The settlement agreements allocated the funds between the California Parties and other purchasers that opted into the settlement agreements (as refunds), and the settling supplier (as outstanding receivables payments). This allocation in each agreement reflected assumptions about the refunds that would ultimately be due from or owing to the settling market participant under the Commission’s orders, as implemented through the refund calculations of the ISO and PX.

The ISO’s 2016 Compliance Filing explained the relationship between the payments under these settlement agreements and the numbers in the compliance filing. In order to distribute the remaining funds from the PX and conclude the refund proceeding, the numbers in the compliance filings ultimately need to be adjusted to account for the settlement agreements. The ISO observed, among other things, that it was not in a position to calculate the adjustments that would result from those settlement agreements – which were at that time still being negotiated with some suppliers – because the ISO was not a party to those agreements and “the adjustments arising out of these settlement [agreements] are properly determined by the parties to those settlements, rather than by the ISO itself.”⁴

⁴ ISO Compliance Filing p. 9; *see also id.* at 55-56 (proposing a process for wrapping up this litigation, beginning with the settling parties calculating these overlay adjustments).

The Commission's order addressing the ISO and PX compliance filings recognized that the purpose of the overlay process would be to "reconcile the CAISO and CalPX calculations, as reflected in their Refund Rerun Compliance Filings, with the settlements."⁵ The Commission approved the ISO and PX compliance filings while indicating that the settlement overlay process should go forward.

B. The Refund Portions of the Settlement Overlays Were Calculated by the California Parties

The California Parties have now prepared a "settlement overlay" for every market participant in either the ISO or PX. Each settlement overlay shows the accounting adjustments necessary to implement the settlement agreements – *i.e.*, the difference between what the settling party owes under the Commission-approved ISO and PX compliance filings and the amount they paid or received under the settlement agreements.

The California Parties prepared the overlays in two phases. First, they worked collaboratively with the ISO and the PX to reconcile the charges and payments that were reflected in those entities' compliance filings down to the level of each settling counterparty's receivables balance, interest charges, and adjustments to the baseline numbers to reflect the resolution of disputes and other preparatory rerun items. The group also worked to reconcile records regarding any cash that flowed in conjunction with the various settlement agreements. This first phase was referred to as the "receivables" overlay.

Then, on the foundation of these receivables overlays, the California Parties prepared "refund overlays" to reflect the impact of the settlement agreements with

⁵ 164 FERC ¶ 61,019 at P 16 (2018).

respect to refunds owed and owing. One of the inputs for this phase was a set of adjustments and reclassifications to the ISO's refund calculations made at the direction of the California Parties based on the California Parties' interpretation of their settlement agreements. These adjustments and reclassifications are discussed in FN 34 on page 10 of the Settlement Overlay Filing. Other than these specific inputs, the California Parties prepared the refund overlays, not the ISO.

II. ANSWER

A. Overlays

The ISO does not object to the proposed accounting adjustments insofar as they collectively net to zero with respect to ISO market participants – *i.e.*, for each credit that is received, there is a corresponding charge to another party. This ensures that the market as a whole remains revenue neutral.

Otherwise, the ISO takes no position regarding the appropriateness of the adjustments in the settlement overlays. As the ISO has consistently explained throughout the refund compliance process, the ISO is not a party to any of the settlement agreements, and therefore must necessarily defer to the parties to the agreements (or, if need be, the direction of the Commission) about how to implement them. Except for noting that the receivable portions of the overlays are based on correct ISO accounts and calculations and reflect all payments in and out of the ISO, the ISO did not verify that the California Parties' adjustments properly apply any aspect of the settlement agreements and cannot do so.

The ISO understands from the California Parties' filing that the California Parties have shared calculations and adjustments with settlement counterparties and

addressed a number of issues and disputes raised by such parties. The ISO is encouraged by this exchange because it will hopefully expedite the Commission's review of the overlay proposal by narrowing (and possibly even eliminating) issues and disputes that might otherwise require consideration. The ISO takes no position on any disagreements between the California Parties and their settlement counterparties that may remain unresolved.

B. Proposed Final Clearing Process

The ISO believes that the process for clearing the PX and addressing potential defaults, as outlined in Section V of the Settlement Overlay Filing, is a sound approach. The establishment of a default fund, in addition to properly ensuring that any default is adequately covered, has the added advantage of avoiding any continued obligation by the PX to be involved with default collection efforts, which will allow the PX to wind down.

A necessary supporting element of the overall approach is the proposed hold harmless treatment for the ISO and PX. The ISO supports this treatment, and notes that it is consistent with the ISO's tariff in effect at the relevant time which provided that, in the event of a payment default, the ISO is not liable to market creditors who are short-paid.⁶ The clearing approach proposed by the California Parties departs from the ISO tariff, as necessitated by implementing the Commission's direction that the PX "should clear cash on a combined basis with the" ISO.⁷ But it reaches the same result, insofar

⁶ See, e.g., *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 109 FERC ¶ 61,218 (2004), at P. 72.

⁷ See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 138 FERC ¶ 61,092, P. 27. Indeed, the California Parties' proposed approach goes beyond this, insofar as it results in not only clearing cash on a combined basis, but combining the market positions of ISO and PX participants for purposes of determining final liabilities and credits.

as any collection shortfalls are addressed by limiting the funds available for payment, and the ISO is not liable for the shortfall.

C. Record Retention

One of the issues raised by the final clearing and wind-down of the PX is the disposition of records relating to this proceeding. With respect to the ISO's own records, the ISO plans to retain records relevant to this proceeding until after a final order has been issued in this docket and in the proceedings described in subsections B, C and D of Section VIII of the California Parties' filing (which relate to Docket Nos. EL02-60, EL02-62, EL02-71 and the Ninth Circuit appeals of orders in EL01-10 and EL09-56).

By "final order," the ISO means a Commission order that has the effect of ruling on any remaining disputes before it, and that has not been reversed, stayed, modified or amended. Moreover, an order would be final only if time to appeal or seek review or rehearing has expired with no appeal or petition for review or rehearing sought or, if appeal, review, rehearing or certiorari has been sought, the order has been affirmed and the time to request further review, rehearing or certiorari has expired.

The ISO believes this approach is consistent with the Commission's regulations in 18 CFR §125. Because these events occurred twenty years ago⁸ – long past the longest of the regulatory retention periods that could even potentially apply – the only applicable requirement is in section 125.2(l), which requires a public utility "involved in pending litigation, complaint procedures or governmental proceedings" to "retain all

⁸ In the years since the crisis, the ISO has also created records about the events underlying this litigation as part of its legal case file. The Commission's regulations specify that these records need not be retained. See 18 CFR § 125.2(a)(4) ("Records other than those listed in the schedule may be destroyed at the option of the public utility or licensee").

relevant records.” The ISO believes that this requirement will be satisfied once final orders have been entered in the proceedings described above, as at such a point these proceedings would no longer be “pending.”

The California Parties’ filing also notes that the PX must institute a process for the retention and ultimate destruction of its books and records. See Section VI.C. The ISO agrees that such a process is necessary and that it should be handled by the PX. One reason this process is necessary is because the ISO cannot accept custody of the PX’s records and, to ensure it remains in compliance with its own legal obligations, the ISO would not agree to do so.

III. CONCLUSION

The ISO respectfully requests that the Commission consider these comments in its review of the overlay filing, and act as soon as practically possible so that market participants can have regulatory finality and financial certainty with respect to crisis-era transactions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, pursuant to the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, this 23rd day of April, 2020.

/s/ Martha Sedgley

Martha Sedgley