

THE UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company,	)	
Complainant,	)	
	)	
v.	)	Docket No. EL00-95-045
	)	
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 No. EL00-98-042
California Power Exchange	)	

**DECLARATION OF EAN O’NEILL CONCERNING TRANSACTIONS  
CLAIMED BY LOS ANGELES DEPARTMENT OF WATER AND POWER AS  
MADE PURSUANT TO SECTION 202(C) OF THE FEDERAL POWER ACT**

1. My name is Ean O’Neill, and I am currently employed by the California Independent System Operator (“ISO”) as the Federal Legislative Coordinator. I have provided both Direct and Rebuttal Testimony in this proceeding on behalf of the ISO on the issue of which transactions were entered into pursuant to the emergency orders issued by the Secretary of Energy during the period December 14, 2000 through February 6, 2001 (“DOE Orders”).
2. The purpose of this declaration is to respond to the Presiding Judge’s request that the ISO advise the Presiding Judge and participants “whether the ISO, on further consideration,” in light of the information contained on

Exhibit DWP-21, “believes that the LADWP transactions claimed for section 202(c) relief, which may be disputed in whole or in part by the ISO, on reflection meet the ISO's criteria and qualify for 202(c) treatment.”

3. On February 15, 2002, the ISO responded to a data request from Commission Trial Staff (Staff/ISO-114) stating that the ISO, based on a review of its settlements records, concurred with the price and quantities for the Out-of-Market (“OOM”) transactions that the Los Angeles Department of Water and Power (“LADWP”) has claimed were made pursuant to section 202(c), except for HE 2 and HE 5-14 on January 18, 2001. The ISO stated that its settlements records indicated that these particular transactions had been entered into with CERS (i.e. the California Energy Resource Scheduler), rather than the ISO.
4. After this data response had been provided, pursuant to a request from LADWP, the ISO re-checked its settlements files concerning these transactions. In doing so, it discovered that those sales had been entered into by the ISO, and not CERS, as the ISO originally believed.
5. The ISO amended its data response to Staff to reflect this information. This amended response has been entered into the record as Exhibit DWP-21.
6. The amended information contained in Exhibit DWP-21 does not change my position with respect to whether LADWP’s transactions were made pursuant to section 202(c). I still continue to believe that LADWP has not provided convincing evidence that its transactions, including the

transactions referenced in DWP-21, were entered into pursuant to section 202(c).

7. As I explained in my Rebuttal Testimony, LADWP and the ISO had in place, prior to the issuance of the DOE Orders, Schedule 13 of the Interconnected Control Area Operating Agreement, which provides a mechanism for LADWP and the ISO to assist each other during emergency conditions. I believe that this is one possible reason, other than the DOE Orders, that LADWP might have been supplying energy to the ISO during the period December 14, 2000 through February 6, 2001 ("DOE Order period"). I also explained in my Rebuttal Testimony, and continue to believe, that significant sales made by a number of entities, including LADWP, on days immediately preceding and subsequent to the DOE Order period, as well as on certification days during the DOE Order Period, indicates that the high prices being commanded during this period also constituted a strong incentive for entities such as LADWP to make sales to the ISO, regardless of the existence of the DOE Order. Because of these reasons, it was reasonable for the ISO not to assume that all sales made by LADWP to the ISO during this period were made pursuant to the DOE Orders.
8. I submit that the best test for whether sales were made pursuant to the DOE Orders is whether "it was clear to the ISO that suppliers were providing energy based on the ISO's request for excess energy pursuant to the terms of the DOE Order." Ex. ISO-21 at 7:4-10. I believe that this

test can be satisfied by evidence showing that: (1) a supplier explicitly indicated that energy was being provided pursuant to the DOE Orders; or (2) ISO real-time operations personnel contacted a supplier and requested that it deliver the energy that it had identified was available as “excess.”

9. To date, the only evidence that I have seen that satisfies this test is the notations on the ISO’s OOM Sheets and transcripts provided by Portland General Electric and the Northern California Power Agency which indicate that an explicit reference to the DOE Order was made when those transactions were entered into.
10. None of the transactions entered into between the ISO and LADWP during the DOE Period, including those referenced in DWP-21, were noted on the ISO’s OOM Sheets as having been made pursuant to the DOE Orders, and LADWP has provided no evidence that indicates that it was supplying energy pursuant to the DOE Orders, as described in the preceding two paragraphs. Therefore, I continue to maintain that LADWP’s transactions should not be considered to have been made pursuant to section 202(c).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2002.

---

Ean O'Neill