

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

San Diego Gas & Electric Company,)	
)	
Complainant,)	
)	
v.)	Docket No. EL00-95-000
)	
Sellers of Energy and Ancillary Service Into)	
Markets Operated by the California)	
Independent System Operator Corporation)	
and the California Power Exchange,)	
)	
Respondents.)	
)	
)	
Investigation of Practices of the California)	Docket No. EL00-98-000
Independent System Operator and the)	
California Power Exchange)	
)	
California Independent System Operator)	Docket No. ER03-746-000
Corporation)	

**COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION ON
“OPEN ISSUES” IN THE FERC REFUND PROCEEDING**

Pursuant to the request of Commission Staff, the ISO provides the following comments addressing “open issues” raised at the technical conference held in the above captioned docket on July 26, 2004 (“Refund Conference”). Included as Attachment A to these comments is a list of items awaiting Commission action that impact the refund rerun process.

I. COMMENTS

A. ISO's Request for Interest Treatment Similar to the PX

One of the issues as to which Staff requested additional comments was the ISO's request for interest treatment similar to that afforded to the PX by the Commission. In its May 12 Order on Requests for Rehearing and Clarification, 107 FERC ¶ 61,159 (2004), the Commission permitted the PX to satisfy its interest obligation from earnings accrued (in other words to pay at the "earned rate" rather than the FERC rate) in its Settlement Trust account rather than using the interest rate set forth in Section 35.19a of the Commission's regulations. May 12 Order at P 34. In its Motion for Clarification and Request for Rehearing of that order, the ISO requested that the Commission clarify that the ISO would be accorded similar treatment with respect to any excess CT 485 penalties that the ISO collected from Generators during the refund period.¹ These excess CT 485 penalties represent the difference between the amount of CT 485 penalties already collected from Generators, and the final amount of CT 485 penalties that the ISO calculates that Generators owe for the Refund Period after applying the mitigated price. The CT 485 penalties that the ISO has already collected from Generators have been deposited in an escrow account, which is earning interest at approximately 1.00% per annum, a rate that is less than the Commission's rate.

As the ISO explained in its Motion for Clarification and Request for Rehearing of the May 12 Order, as with the PX Settlement Trust Account, it would be unfair to charge Market Participants additional interest on the CT 485 penalty amounts that the ISO has already collected. Likewise, it would be inappropriate to require the ISO itself to make

¹ To be clear, the ISO is only requesting similar treatment to the PX with respect to excess CT 485 amounts. With respect to all other refunds and amounts unpaid during the Refund Period, the ISO intends to calculate interest at the Commission's rate.

up the difference between the escrow rate and the Commission's rate, because, as a cash-neutral entity, the ISO would ultimately need to raise this additional amount by charging its Market Participants.² For these reasons, the ISO requested that the Commission clarify that interest on any excess CT 485 amounts currently held by the ISO will be paid out at the rate being earned on the escrow account in which those funds are currently being held, instead of the FERC rate.³

B. Procedures for Resolution of Disputes Regarding the Preparatory and Refund Reruns

In its most recent status report to the Commission on the rerun process, the ISO indicated that it did not plan to entertain Good Faith Negotiations (“GFNs”) with respect to disputes relating to the preparatory rerun process.⁴ Instead, the ISO contemplated that any such disputes would be raised as comments on the preparatory rerun compliance filing. This issue was the subject of considerable discussion at the Refund Conference. Based on those discussions, and additional internal consideration of this issue on the part of the ISO, the ISO has revised its proposal as to the best process for treating any ongoing disputes relating to the preparatory rerun period.⁵ First, the ISO proposes *not* to cut off GFNs with respect to preparatory rerun disputes. That is, the ISO proposes to permit Market Participants to utilize the standard Tariff dispute

² Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

³ This request is currently pending before the Commission.

⁴ Sixth Status Report of the California Independent System Operator Corporation

⁵ The term “ongoing dispute” is used here to mean disputes that the ISO has denied during the preparatory rerun, which parties wish to continue to challenge. As indicated at the Refund Conference, the ISO will make a determination with respect to all “open” disputes prior to filing its preparatory rerun compliance filing.

resolution mechanisms⁶ to resolve any preparatory rerun disputes that parties wish to continue to press. The ISO strongly encourages any Market Participants that do wish to continue to pursue a dispute through the GFN process to notify the ISO immediately. It will be far easier for the ISO to reflect the results of any GFNs that are filed and resolved earlier. Moreover, it may be difficult, or impossible, for the ISO to reflect the results of GFNs after a certain point in time, due to the unavailability of funds and to bankruptcies in the ISO Market.

Additionally, the ISO proposes that the Commission defer ruling on the preparatory rerun compliance filing until such time as it reviews and issues an order on the ISO's refund rerun compliance filing. Thus, rather than issuing two separate orders on the preparatory rerun and refund rerun compliance filings, the Commission would issue one blanket order after the filing of the refund rerun compliance filing addressing issues concerning both compliance filings.

The ISO believes that this process is the best solution to the question of how to deal with disputes relating to the preparatory rerun period. First and foremost, by relying on the dispute resolution process in the ISO Tariff to handle preparatory rerun disputes, this process will avoid burdening the Commission with disputes that may be of a relatively minor nature, and that the Commission is ill-prepared to address, due to a lack of access to ISO data and expertise with ISO settlement systems. Also, this proposal will allow the ISO to immediately begin the refund rerun at the conclusion of the preparatory rerun, and therefore, to complete the refund rerun process in the most expeditious manner possible.

⁶ The ISO's dispute resolution process is set forth in Section 13 of the ISO Tariff.

With respect to disputes concerning the refund rerun, the ISO, at this time, believes that the best option to reach an expeditious but accurate resolution to the refund rerun process would be to adopt an ongoing informal dispute-resolution mechanism, rather than a formal dispute resolution period. During the refund rerun process, the ISO proposes to establish a central telephone hotline or email address through which Market Participants may submit inquiries or suggestions to the ISO. These communications will be reviewed by ISO Settlements Staff. In the case of questions, ISO Settlements Staff will make every effort to answer each Market Participant query. In instances in which Market Participants take issue with the data presented by the ISO, ISO Settlements Staff will make every effort to research all of these items, and will take whatever action they deem most appropriate. Again, this process will take place in concert with the refund rerun production process. The ISO does not believe that it will be necessary to extend its current schedule to accommodate this informal process.

C. Fuel Cost Allocation Issues

In the Commission's May 12 Order Addressing Fuel Cost Allowance Issues, 107 FERC ¶ 61,160 (2004) ("Fuel Cost Order") the Commission granted the California Generators' clarification that excess fuel costs are recoverable during all instances in which "a unit is mitigated, even if the MMCP is greater than the MCP," provided that such effect can be "tangibly demonstrated." *Id.* at P 54, 56. The Generators explained that this clarification was necessary because, due to the existence of soft caps in the ISO Markets, there are intervals in which a unit will be mitigated even though the MCP

was lower than the MMCP. The Commission also adopted the California Parties proposed condition that regardless of whether there was a soft cap in effect, Generators are not permitted to recover more than the pre-mitigated amount. *Id.* at P 55-56

At the Refund Conference, the issue was raised as to whether parties planning to claim a fuel cost allowance needed data from the ISO identifying which intervals constituted “mitigated intervals” in order to complete these calculations. Mr. Fuller, the ISO’s Director of Billing and Settlements, suggested that once the preparatory rerun was complete, parties would have all of the necessary data, in the form of their historical transaction prices and the list of MMCPs. Representatives for the Generators suggested that additional data would be needed, which implied that the Generators were reading the Fuel Cost Order to mean that they would be permitted to claim a fuel cost allowance in any interval in which *any* unit was mitigated, even if their own units were not mitigated during that interval.

For example, assume that during a particular interval, the soft cap in place was \$150/MWh,⁷ and the MMCP for that interval is \$200/MWh. Also assume that two generators sold energy to the ISO during that interval -- Generator A for \$300/MWh, and Generator B for \$175/MWh. Under the soft cap methodology, both Generator A and Generator B would have been paid their full bid prices. However, only Generator A will be mitigated, because its price (\$300/MWh) is greater than the MMCP. Generator B’s price is less than the MMCP, and therefore, not mitigated.

⁷ The soft cap operated by setting the maximum MCP for each interval. Generators that bid above the soft cap, and whose bids were accepted, were paid as-bid. However, bids above the soft cap did not set the MCP.

Under the Fuel Cost Order, Generator A would be eligible to claim a fuel cost allowance because its price will be mitigated. However, the issue that arose during the Refund Conference is whether Generator B would be eligible to recover a fuel cost allowance for this interval. The Generators' theory appears to be that Generator B would be eligible, even though Generator B's sale will not be mitigated, because *some* unit during that interval will be mitigated (*i.e.* Generator A). Such an interpretation is flatly inconsistent with the Commission's orders addressing the fuel cost allowance, which make clear that Generators are only eligible to claim a fuel cost allowance for instances in which specific units are actually mitigated, regardless of whether units owned by other parties are mitigated. In the Fuel Cost Order, the Commission agreed with the California Parties that "for all intervals of the Refund Period, regardless of whether there was a soft cap in effect, the fuel cost allowance should not result in generators recovering more than the pre-mitigated amount." Fuel Cost Order at P 55-56. This, however, is precisely what Generators appear to be asking for. If, in the above example, Generator B is permitted to seek a fuel cost allowance, it will be recovering more than the pre-mitigated amount of \$100/MWh for that specific interval.

The ISO believes that given the straightforward language in Paragraphs 55 and 56 of the Fuel Cost Order, this issue is not complicated or ambiguous. Nevertheless, in order to prevent additional delay in the calculation of fuel cost allowances, the ISO believes that it would be appropriate and helpful for the Commission to clarify that Generators are entitled to a fuel cost allowance for fuel consumed only with respect to the specific unit or units whose sales are mitigated during a particular interval, regardless of whether other units (whether they be other units owned by that same

Generator, or units owned by another Generator) during that same interval are or are not mitigated.

Another issue concerning fuel cost allowances that was discussed at the Refund Conference was the ISO's preferred timeline for completion and submittal to the ISO of those allowances. The ISO will need to receive this data by the middle of October, 2004, in the proper format, so that it can incorporate these costs into the financial adjustment phase, which is scheduled to begin on November 5, 2004.⁸ If fuel cost allowance data is not available by that time, then any delay in receiving this data will likely result in an equal delay to the ISO's timeline for completion of the financial adjustments and the filing of the refund rerun compliance filing, which is currently scheduled for December 17, 2004.

D. Emissions Offsets

On May 24, the ISO filed in this docket, in response to the Commission's directive in the May 12 Order, a status report detailing the form and content of the emissions cost data that it needs to complete its refund calculations.⁹ In that report, the ISO explained that it understood that, pursuant to the Commission's decision in the October 16 Order that emissions offsets are only permitted for mitigated sales, all parties would need to recalculate and submit their emissions offset claims, including those parties whose emissions costs had previously been approved by the Commission. The ISO noted that in order to perform that calculation, parties would need a list of

⁸ In the next two weeks, the ISO plans to file with the Commission its proposed methodology for allocating fuel allowance costs, along with a proposed format for submission of those costs to the ISO.

⁹ Status Report of the California Independent System Operator Corporation on Emissions Offsets and Fuel Cost Allowances, Docket No. EL00-95, et al. (filed May 24, 2004)

MMCPs along with a list of non-mitigated transactions that took place during the Refund Period. The ISO has provided both of those items to parties in this proceeding.

In terms of the format of data to be provided, the ISO indicated that it only needed one total approved emissions offset figure for each party claiming emissions offsets in order to perform the Commission-mandated allocation. Once it has all of these offsets, the ISO will aggregate all of the approved offsets and allocate this aggregate amount pro rata to all Market Participants based on Control Area Gross Load during the Refund Period. As with the fuel cost allowances, in order to maintain the ISO's current schedule, the ISO will need to have approved emissions offset data by the middle of October, 2004.

E. Marketer Cost-Based Filings

At the Refund Conference, several parties raised questions as to when the ISO would propose to reflect any approved marketer cost-based filings, as permitted by the Commission in cases where a marketer's revenue, post-mitigation, is not sufficient to cover its costs on a portfolio-wide basis. The ISO first notes that the Commission has yet to determine a methodology for allocating any such amounts that it approves by way of these cost-based filings. The ISO will need direction from the Commission on this issue prior to implementing any approved cost-based filings. Reiterating what the ISO stated at the Refund Conference, the ISO would prefer to have a Commission decision on all cost-based filings (as well as a methodology for allocating those filings) by the middle of October, 2004. As with the fuel cost allowance and emission offsets, the ISO believes that it would be most expedient to account for any amounts relating to marketer

cost-based filings at the time it performs its financial adjustment phase. If the ISO is required to account for these costs at a later point, then there is the risk that implementing these costs will require a further rerun, or, at a minimum, numerous additional adjustments. Either will result in significant costs to the ISO, in both fiscal and human resources. For this reason, the ISO encourages marketers to work closely with other Market Participants and the Commission to resolve this issue as soon as possible.

F. CERS

At the Refund Conference, there was a brief discussion concerning the ISO's treatment of CERS transactions during the Refund Period. At the conclusion of the conference, Staff indicated that it would like parties to address this issue in their written comments.

Given the Commission's direction in the May 12 Order, the ISO currently plans to mitigate all CERS transactions as part of the refund rerun. Additionally, the ISO has been directed by the Commission to develop a surcharge for imposition after the conclusion of the refund rerun in order to address any improper accounting that will result from mitigating CERS transactions. In its Motion for Clarification and Request for Rehearing of the May 12 Order, the ISO explained that it was currently in the process of completing a self-audit of its Imbalance Energy records in order to identify what, if any, transactions in those records fall under the two categories that the Commission directed the ISO to include in the surcharge, and requested that the Commission clarify that if there are no such transactions, then there is no need to develop a surcharge as

directed in the May 12 Order. One party, the Indicated Generators, challenged the ISO's request for clarification on this issue, and the ISO responded to that challenge in a pleading filed on July 14, 2004.

The ISO's audit of its Imbalance Energy records is still ongoing. However, the ISO expects to complete its review shortly. At that time, it will communicate its findings to the Commission. If necessary, the ISO will also provide the Commission at that time with its anticipated timeline for submitting a surcharge compliance filing after the completion of the refund process.

II. CONCLUSION

The ISO wishes to thank the Commission and Staff for the opportunity provided by the Refund Conference to discuss important issues relating to the resolution of this proceeding. The ISO hopes that these written comments will prove helpful to the Commission and its Staff in resolving these issues.

Respectfully submitted,

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ATTACHMENT A

LIST OF ISSUES AWAITING CLARIFICATION/REHEARING AFFECTING RERUN PROCESS

Issue	Citation to Relevant ISO Document(s) Discussing Issue	When Action Needed
<p>1. CERS Surcharge:</p> <p>ISO's request for clarification that, if its Imbalance Energy records do not contain any of the two types of CERS transactions identified by the Commission in the May 12 Order as being subject to surcharge, no surcharge is necessary.</p>	<p>Motion for Clarification and Request for Rehearing of the California Independent System Operator Corporation, Dockets EL00-95-045, <i>et al.</i> (filed June 14, 2004)</p>	<p>As soon as possible. The ISO requires this clarification in order to go forward with formulation of a surcharge methodology, if one is needed</p>
<p>2. Dispute Resolution Process for Preparatory and Refund Reruns:</p> <p>ISO has proposed to permit GFNs relating to the preparatory rerun and to conduct an informal dispute resolution process with respect to the refund rerun.</p>	<p>Attached comments</p>	<p>As soon as possible.</p>
<p>3. Refund Compliance Filing Timing:</p> <p>ISO's request for clarification that it will not be required to file its refund compliance filing by August 31, 2004</p>	<p>Motion for Clarification and Request for Rehearing of the California Independent System Operator Corporation, Dockets EL00-95-045, <i>et al.</i> (filed June 14, 2004)</p>	<p>As soon as possible</p>
<p>4. Grant County Transactions:</p> <p>Whether Grant County's transactions with the ISO during the refund period should be mitigated.</p>	<p>Brief of the California Independent System Operator Corporation as to Grant County Transactions, Dockets EL00-95-087, <i>et al.</i> (filed May 24, 2004)</p>	<p>Prior to commencement of refund rerun production</p>

<p>5. April 1 Interest Order:</p> <p>ISO's request for clarification/rehearing of the Commission's April 1 Order on treatment of interest for the month of January, 2001 that the ISO is not required to re-allocate and re-distribute interest prior to the completion of the refund rerun process, and that the ISO is permitted to disburse the interest amounts currently held in its Market Reserve account to pay outstanding creditor balances for the refund period.</p>	<p>Request for Clarification, or, in the Alternative Rehearing and Motion for Expedited Consideration of the California Independent System Operator Corporation, Docket ER02-651-002 (filed May 3, 2004)</p>	<p>As soon as possible (no later than commencement of financial adjustment phase)</p>
<p>6. CT 485 Allocation:</p> <p>ISO and California Parties' joint request for clarification or, if necessary, reconsideration of Paragraph 82 of the October 16 Order concerning the allocation of CT 485 penalties.</p>	<p>Motion of the California Independent System Operator Corporation, California Parties, and SDG&E for Clarification, and, if Necessary, Reconsideration of Paragraph 82 of the Commission's October 16 Order on Rehearing, Dockets EL00-95-081, <i>et al.</i> (filed June 18, 2004)</p>	<p>Prior to commencement of financial phase adjustments</p>
<p>7. Interest on Excess CT485 Amounts:</p> <p>ISO's request for clarification that it will be permitted to pay interest on any excess CT485 funds that it refunds to generators at the interest rate being earned on the escrow account in which those amounts are currently held, instead of the FERC rate</p>	<p>Motion for Clarification and Request for Rehearing of the California Independent System Operator Corporation, Dockets EL00-95-045, <i>et al.</i> (filed June 14, 2004)</p>	<p>Prior to commencement of financial phase adjustments</p>
<p>8. Possible PX Interest Shortfall:</p> <p>ISO's request for clarification that it will be permitted to allocate any shortfall in interest received from the PX, based on the Commission's decision that the PX can pay interest based on what it is actually earning, pro rata to debtors and creditors in the ISO Markets during the refund period.</p>	<p>Motion for Clarification and Request for Rehearing of the California Independent System Operator Corporation, Dockets EL00-95-045, <i>et al.</i> (filed June 14, 2004)</p>	<p>Prior to commencement of financial phase adjustments</p>