

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	Docket No. EL00-95-164
)	
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. EL00-98-184
Independent System Operator and the)	
California Power Exchange)	

**MOTION FOR LEAVE TO FILE RESPONSE AND RESPONSE OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR TO ANSWERS TO CALIFORNIA PARTIES'
MOTION FOR CLARIFICATION REGARDING ISSUE OF CALCULATING OF
NON-JURISDICTIONAL REFUND OBLIGATIONS**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,¹ the California Independent System Operator Corporation ("CAISO") submits this answer to various pleadings filed in this docket on December 4, 2007 in response to the California Parties' November 19, 2007 Second Request for Rehearing and Clarification of the Commission's October 19, 2007 Order On Remand ("Second Request for Rehearing").² This answer is limited to the issue of how the CAISO plans to determine the amount of refunds that would have otherwise been paid absent the Ninth Circuit's decision in *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 919 (9th Cir. 2005) ("*BPA*") for purposes of implementing the Commission's October 19 Order. The

¹ 18 C.F.R. § 385.213 (2001).

CAISO requests that the Commission accept the California Parties' motion for clarification on this issue, and reject arguments made by non-jurisdictional parties on this issue in response to the California Parties' Second Request for Rehearing.

The CAISO recognizes that, unless authorized by the Commission, the Commission's Rules of Practice and Procedures preclude an answer to an answer. However, the Commission has accepted answers that are otherwise prohibited if such answers clarify the issues in dispute, *Southwest Power Pool, Inc.*, 89 FERC ¶¶61,284 at 61,888 (2000); *Eagan Hub Partners, L.P.*, 73 FERC ¶¶ 61,334 at 61,929 (1995), or assist the Commission, *El Paso Electric Co.*, 72 FERC ¶¶ 61,292 at 62,256 (1995). The CAISO submits that this answer does both, and therefore respectfully requests that the Commission accept this answer.

I. BACKGROUND

In the October 19 Order, the Commission directed the CAISO to "complete the[] refund calculations including all entities that participated in the ISO/PX markets." October 19 Order at P 38. The Commission agreed that it would be "time intensive and unreasonable to recalculate all of the refund calculations in order to remove the non-public utility entities." *Id.* The Commission's earlier orders were vacated, however, "to the extent that they order non-public utilities to pay refunds." *Id.* at P 36. This will eventually require the CAISO to issue credits back to certain non-public utilities, and allocate the resulting shortfall of refunds to other parties. The Commission agreed with the CAISO that this should be done through "a simplified financial clearing." *Id.* at P 39.

² 121 FERC ¶¶ 61,067 (2007).

In its Thirty-Ninth Status Report on Refund Activity, filed with the Commission in this proceeding on November 13, 2007, the CAISO explained its plan to make adjustments to its refund calculations to reflect the Commission's directives in the October 19 Order. The CAISO explained that after refunds and offsets are finally calculated, but before it makes adjustments to account for the approved global settlements, the ISO will issue a credit to each party that the Commission has determined to be a non-public utility equal to the amount of the refunds "that otherwise would have been paid" by that party. *Id.* at P 39. This shortfall of refunds will be allocated to parties whose "final net refund position"³ is positive – *i.e.*, the net refunds and offsets totaled between the ISO and PX markets results in a payment to the party.

With respect to the determination of what refunds "otherwise would have been paid" by non-jurisdictional entities absent the *BPA* decision, the CAISO explained that it plans to calculate this amount based on net refunds between both the CAISO and PX markets over the entire refund period, and that this result appeared to be consistent with the focus of the *BPA* decision, which held that non-public utilities should not be required to "pay" refunds. The CAISO explained that it would require a great deal of work simply to calculate refunds on the basis of each party's sales of energy, before those sales are netted against energy purchased, by that party. The CAISO also explained that breaking down refunds into subcomponents could result in an imbalance in the PX

³ The ISO acknowledges that the result of this reading will be that the words "net refunds" will have a slightly different meaning for purposes of the October 19 Order in reference to "implement[ing the] simplified financial clearing," October 19 Order at P 39, than they do for purposes of the Commission's Order of May 12, 2006 in reference to "allocat[ing] the cost offset to those buyers who are compensated by the MMCP refund methodology through receiving refunds." 115 FERC ¶ 61,171, ¶ 28. In the context of this order, the words "net refunds" encompass offsets, where they do not in the context of the latter order. The ISO believes that this difference reflects the fact that "net refunds" is not a term of art that has the same meaning regardless of context, but merely a description of the different calculations and goals in the two orders.

market (and a resulting payment shortfall to all parties) that obviously is not contemplated by the October 19 Order.

In their Second Request for Rehearing, the California Parties noted that they agree with the CAISO's approach as set forth in the Thirty-Ninth Status Report and requested that the Commission clarify that the amount of the refunds that the ISO and PX will under-collect as a result of *BPA* is equal to the actual amount of net refunds that non-jurisdictional entities would have paid pursuant to the existing refund methodology. Second Request for Rehearing at 7-8. In the alternative, the California Parties requested rehearing on this issue.

On December 4, 2007, several parties to this proceeding filed answers to the California Parties' Second Request for Rehearing, in which they took issue with the California Parties' request for clarification regarding the calculation of refunds that non-jurisdictional entities would have owed absent *BPA*.⁴ Therein, these parties (the "non-jurisdictional entities") argue that there are two possible approaches to "netting" as discussed by the CAISO and California Parties. The first type of netting, which the non-jurisdictional entities do not take issue with, consists of netting sales and purchases within specific settlement intervals. The second form of netting, which the non-jurisdictional entities argue is inappropriate, consists of netting among settlement intervals within the Refund Period. The non-jurisdictional entities contend that this second form of netting is prohibited because it would effectively impose upon them a

⁴ Answers addressing this issue were filed by the following parties: Cities of Anaheim, Azusa, Banning, Colton and Riverside ("Southern Cities"); the City of Santa Clara, Modesto Irrigation District and the Sacramento Municipal Utility District; and the "Indicated Public Entities" consisting of the Northern California Power Agency and Sacramento Municipal Utility District.

refund obligation, in contravention of BPA, and in any event, is not necessary to allow expeditious completion of the CAISO's refund calculations.

II. RESPONSE

A. **The Netting Approach Advocated by the Non-Jurisdictional Parties Would Require Substantial Effort on the Part of the CAISO, and is Thus Inconsistent with the Commission's Finding that BPA Would be Implemented Based on a Simplified Financial Clearing Approach**

At the outset, the CAISO clarifies that its approach, as set forth in its Thirty-Ninth Status Report, is essentially the "second form" of netting described by the non-jurisdictional entities in their answers to the California Parties. That is, the CAISO does not intend to analyze each settlement interval during the Refund Period to determine the level of refunds that would have been owed by a non-jurisdictional entity absent *BPA*. The non-jurisdictional entities suggest that the CAISO's calculations are based on data for each settlement interval, and thus, it should not be difficult for the CAISO to do so by simply "zero[ing] out the imputed 'refunds owed' amounts for settlement intervals in which a governmental entity was a net seller."⁵ Unfortunately, this process is more complicated than the non-jurisdictional parties contend. In order to implement the netting approach endorsed by the non-jurisdictional parties, CAISO personnel would be required to perform a largely manual process of disaggregating data to the interval level, analyzing that data in order to determine what, if any, credit should be provided to non-jurisdictional entities that participated in the CAISO's markets during that interval, and

⁵ Southern Cities at 4.

re-aggregating it in order to perform the allocation step of the Commission's methodology.

The CAISO estimates that this process would take approximately five months to perform. This estimate includes time to hire and train additional settlements analysts. Additional personnel would be necessary because the CAISO's existing settlements personnel are heavily involved in work relating to implementing the CAISO's new MRTU market design. Also, this five month estimate assumes a best-case scenario in which no other demands are made on CAISO settlements personnel in the near future. Otherwise, five months could prove insufficient if, for example, additional unforeseen issues arise with respect to MRTU implementation.

Because the "within interval" netting process, as described by the non-jurisdictional entities would require a substantial amount of time performing manual evaluations on the part of CAISO personnel, the CAISO submits that such a process is inconsistent with the October 19 Order. Therein, the Commission agreed with the CAISO that it would be "time intensive and unreasonable to recalculate all of the refund calculations in order to remove the non-public utility entities," and instead mandated that the implementation of the *BPA* decision should be done on the basis of a "simplified financial clearing." October 19 Order at PP 38-39. Although the "within interval" netting approach would not require the CAISO to conduct a full systems rerun to implement, it would still require a "time intensive" process of manual analysis, and is certainly not akin to a "simplified financial clearing," which necessarily involves netting at a level higher than settlement intervals.

Also, as explained in the Thirty-Ninth Status Report, restricting netting to the interval level could result in certain PX transactions in the CAISO markets being treated differently than the corresponding transactions would be treated within the PX markets. Depending on the Commission's decision on the PX's motion for clarification of the October 19 Order, the PX could be required to credit back amounts to non-public utility suppliers for transactions in which the PX acted as their Scheduling Coordinator in the CAISO real-time market. In the CAISO markets, however, these sales were made by the PX, which is a regulated public utility. The sales are therefore fully mitigated, and thus, the PX would be crediting back these accounting entries but receiving no corresponding credit from the CAISO. This problematic result can be avoided by maintaining a focus on net refunds to be paid through the simplified financial clearing. However, as the CAISO stated in its response to the PX's motion for clarification of the October 19 Order, if the Commission requires this differential treatment between the CAISO and PX markets, and requires the CAISO to provide a credit to the PX to reflect this differential treatment, as the PX requested in its motion for clarification, then the Commission must determine an allocation methodology by which the CAISO can recover the cost of such a credit from its market participants.

Finally, restricting netting to individual settlement intervals will create an incongruity between the methodology for determining the credit to non-jurisdictional entities and the methodology adopted by the Commission for allocating that credit, which is to be performed on a net basis. This incongruity would result in net sellers being entitled to the full amount of their gross refunds based on the MMCP, whereas net buyers would not.

B. Netting on a Level Higher than Settlement Intervals Does is Not Inconsistent with BPA

The non-jurisdictional parties also contend that netting on a level higher than settlement intervals would violate *BPA* because doing so will inappropriately result in a reduction in the amount of refunds that they otherwise would have been owed, thus indirectly requiring them to pay refunds. The non-jurisdictional entities misunderstand the fundamental operation of the Commission's methodology, as interpreted by the CAISO and California Parties. In the October 19 Order, the Commission adopted a logical and reasonable financial clearing approach to implementing BPA which involves removing all net refund obligations, consistent with the command of *BPA*. 422 F.3d at 920. The non-jurisdictional entities will not be directed to pay any refunds, and they do not claim that.

The non-jurisdictional entities do complain that the adjustment as described in the October 19 Order fails to maximize the refunds they might receive, and will actually reduce the refunds received by some non-jurisdictional purchasers. But they are no different than other parties in this respect. Once these refunds are backed out, the CAISO markets must remain in balance. In order to ensure this, the Commission has ordered that the net refund obligations that otherwise would have been the responsibility of non-jurisdictional entities will be allocated to net refund recipients. Thus, in this respect, non jurisdictional entities will be treated just like every other refund recipient. All buyers – jurisdictional or not – will have their refunds reduced as a result of the adjustment. A non-jurisdictional entity that bought and sold in near-equal amounts will not have to pay refunds. That is akin to a jurisdictional utility that bought and sold in

near-equal amounts: neither will be required to pay money back to the CAISO markets at the end of the day. Therefore, non-jurisdictional entities are not being singled out for a reduction in refunds received. To the contrary, the CAISO's proposed implementation of the October 19 Order, because it involves netting on both sides of the ledger, will ensure that all participants are allocated some share of the overall reduction in refunds owed as a result of *BPA*.

III. CONCLUSION

For the reasons set forth herein, the CAISO requests that the Commission grant the California Parties' motion for clarification on the issue of how the CAISO will calculate the amount of refunds that would otherwise have been owed absent BPA, and reject arguments made by non-jurisdictional parties in response to the California Parties' Second Request for Rehearing that seek to restrict netting to a settlement interval basis.

Respectfully submitted,

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