

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

California Independent System Operator Corporation)	Docket No. ER01-889-012
)	
California Independent System Operator Corporation)	Docket No. ER01-3013-004
)	
San Diego Gas & Electric Company,)	Docket No. EL00-95-059
)	
Complainant,)	
)	
v.)	
)	
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange,)	
)	
)	
Respondents)	

STATUS REPORT

To: The Honorable Carmen A. Cintron
Chief Administrative Law Judge

The California Independent System Operator Corporation (“ISO”) respectfully submits this status report on behalf of the active parties to this proceeding,¹ pursuant to the Order of Chief Judge Continuing to Hold Proceeding in Abeyance and Ordering Status Report on December 12, 2016. That order directs the parties to identify and

¹ To the best of the ISO’s knowledge, the only remaining active parties to the instant proceeding are the ISO itself and the California Parties. This is due to many suppliers reaching settlement agreements with the California Parties that resolve any and all liability they may have during the crisis period. The California Parties is a group that consists of the California Energy Resource Scheduling Division of DWR, the People of the State of California *ex rel.* Kathleen A. Kenealy, Acting Attorney General, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company (“PG&E”), and Southern California Edison Company (“SCE”).

define any issues that remain in this proceeding, and propose how to resolve them. As explained below, only one party, Pacific Gas & Electric Company, has identified an issue that may remain. The one issue identified by PG&E involves a potential re-allocation of costs amongst the California Parties group, which includes PG&E. The California Parties have commenced settlement discussions to attempt to resolve this issue, and to that end propose that the proceeding remain in abeyance for a further six weeks.

The ISO supports this recommendation and requests, on behalf of the active parties, that the Chief Judge issue an order holding the proceeding in abeyance for an additional six weeks, with a further status report to be submitted on or before February 28, 2017, indicating that the one remaining issue identified by PG&E has been resolved, or proposing further procedures to address this issue if necessary.

I. BACKGROUND: ISSUES AND THE SUSPENSION OF PROCEEDINGS

This case concerns the accounting for transactions during the California energy crisis of 2000 and 2001 – specifically, the net amount owed by the California Department of Water Resources (“DWR”) for transactions in the ISO market. The issue of DWR’s balance is intertwined with and affected by the California refund proceeding (Docket EL00-95), which will change the balances of all parties in the ISO market, including DWR. For that reason, this matter has been suspended, awaiting developments in EL00-95, as follows:

Initial Suspension of Proceedings by Chief Judge Wagner

On November 7, 2001, the Commission issued an order in this docket that required the ISO to invoice DWR for all transactions that DWR entered into on behalf of

the net short positions of PG&E and SCE (collectively, the "IOUs") during the period January 17, 2001 through July 31, 2001, within 15 days of the date of that order. The ISO submitted its compliance filing on November 21, 2001. On March 27, 2002, the Commission issued an order requiring that the ISO "re-invoice those gross amounts owed by DWR for all ISO transactions DWR entered into on behalf of the non-creditworthy [IOUs] . . . and provide a transparent means by which this Commission and other parties can determine whether the invoiced amounts were properly calculated." In response, the ISO submitted its compliance filing along with the gross invoices of PG&E and SCE, the net invoices of DWR, and a worksheet and summary of these invoices.

On November 25, 2002, the Commission issued an order in which it determined that the ISO's compliance filing was deficient in explaining whether or not it had properly calculated the amounts invoiced to DWR on behalf of the net short position of the IOUs. The Commission based this decision on a finding that the ISO had failed to provide "adequate supporting documentation that would allow for transparency" in determining whether the ISO had properly calculated the amounts invoiced to DWR. Therefore, finding that there were material issues of fact as to whether the ISO had properly calculated amounts invoiced to DWR, the Commission set for hearing the following issues:

an accounting and explanation to determine how the CAISO calculated that DWR owed \$3.6 billion (as the creditworthy party for the IOUs) to the CAISO markets for the period January 17, 2001 through July 31, 2001; an accounting and explanation to determine how the CAISO calculated that DWR was owed \$2.7 billion during this time period; how much interest, if any, is included in these amounts due; a determination on whether DWR has fully paid all of the CAISO invoiced amounts; and any other issues that might affect the calculation of the amount that the CAISO should have invoiced DWR.

After several months of discussing a possible negotiated resolution to these proceedings, the ISO, on February 18, 2003, filed an unopposed motion to temporarily suspend the procedural schedule to allow the parties to focus on reaching a complete settlement and preparing an offer of settlement to file with the Commission. Chief Administrative Law Judge Wagner granted the ISO's request and, on February 25, 2003, suspended the procedural schedule until "otherwise ordered."

During the intervening years, the ISO, in response to orders from Chief Judge Wagner, filed several status reports indicating that although all parties believed that settlement was the preferred means of resolving the issues set for hearing by the Commission in this proceeding, negotiating such a settlement would be greatly facilitated by awaiting the conclusion of the compliance process in the California refund proceeding before attempting to conclude and file a settlement in this proceeding. This was based on a recognition by the parties that it would be extremely difficult to finalize a settlement addressing whether the ISO correctly calculated the amounts that were owed to and owed by DWR during the period January 17, 2001 through July 31, 2001 while re-calculations that would impact DWR's balances were still taking place as part of the broader California refund proceeding.² In those status reports, the ISO noted that DWR's balances would change in the refund proceeding as a result of the application of the market-wide price mitigation formula directed by the Commission, as well as the Commission's requirement that the ISO recalculate interest owed and owing to all market participants during this period. Based on these ongoing revisions, the ISO, on behalf of the active parties at the time, requested that the ER01-889 proceeding remain

² The California refund proceeding involves the period from October 2, 2000 through June 20, 2001 (referred to herein as the "refund period").

suspended until such time as the Commission issued an order approving the ISO's compliance filing in the California refund proceeding.³ The Chief Judge granted this request in an order issued on May 21, 2004.

Continuation of Suspension by Chief Judge Wagner in 2008

On February 12, 2008, Presiding Judge Nancy convened a prehearing conference to determine the status of the instant proceeding. At that conference, the ISO reported that calculations were still ongoing in the California refund proceeding, and that the remaining parties still felt that the compliance process in the California refund proceeding should be completed before concluding and filing a settlement in the instant proceeding. On December 12, 2008, the Chief Judge issued an order finding that it was in the public interest to continue the suspension of the procedural schedule in this case pending a final Commission determination in the California refund proceeding that “establishes the final balances of the entities that participated in the markets operated by the ISO during the refund period.”⁴ The Chief Judge directed the ISO to file further status reports every 90 days, the most recent of which the ISO filed on May 16, 2016. After the filing of each of these reports prior to the May 16 report, the Chief Judge issued an order continuing the suspension of this proceeding and directing the ISO to file further status reports. In these status reports, the ISO explained that no events had occurred subsequent to the December 12 order that would make a case for resuming the procedural schedule in this proceeding.

³ Joint Status Report, Docket Nos. ER01-889, *et al.* (May 14, 2004).

⁴ *Order of Chief Judge Continuing Suspension of Proceedings and Ordering Status Reports*, Docket Nos. ER01-889, *et al.* (2008) at P3.

Recent Orders by Chief Judge Cintron

After filing the May 16 report, Chief Judge Cintron convened a status conference on June 9, 2016, indicating that the decision to continue or terminate the suspension of the proceeding would be deferred pending the outcome of the status conference. On June 10, the Chief Judge issued an order continuing to hold the proceeding in abeyance for another six months, and directed the ISO to continue to file status reports every 90 days, with these reports “to provide greater detail and elaboration than the most recent filings.” Pursuant to this directive, the ISO filed its most recent status report on December 7, 2016, in which the ISO requested that the Chief Judge continue to hold the proceeding in abeyance until January 17, at which time a further status report would be filed identifying any issues that might remain in this proceeding and what those issues are. The Chief Judge issued an order on December 12, 2016, continuing to hold the proceeding in abeyance and directing the parties to file a status report by January 17 “that identifies and defines any issues that remain in the proceeding and includes a proposal for how to resolve those issues.”

II. STATUS REPORT

Subsequent to the Chief Judge’s order of December 12, the ISO sent an email to the parties listed on the Commission’s service list for this proceeding. Therein, the ISO requested that any party that believes there are issues that should remain in this proceeding identify such issues in an email to the service list by no later than Friday, January 13, 2017. The only party to respond was PG&E, which indicated the following:

PG&E identifies the following issue: “Whether the ISO mistakenly billed the [California Power Exchange] (through Scheduling Coordinator ID PXC1) rather than [DWR] for certain charges relating to real-time purchasing in the ISO market to serve PG&E and SCE retail customers,

for the period on or after January 17, 2001 hour 22 [through February 28, 2001].”⁵ Such a mistake would potentially alter the allocation of costs among the California IOUs. The California Parties are currently engaged in settlement discussions to address this issue, with the goal that they would resolve the mis-allocation of costs (if any) among them. To allow those settlement discussions to proceed, the California Parties propose that the proceeding be deferred an additional six weeks, with a further report to be submitted on or before February 28, 2017 as to whether the issue is resolved, or proposing further procedures concerning the issue.

This issue is significantly narrower than the issues originally designated for hearing, as it is limited to allegedly erroneous charges in invoices issued to a single scheduling coordinator, and only for a limited period constituting a subset of the period originally designated for hearing.

The active parties continue to strongly believe that it would be wasteful and inefficient to both the remaining parties and the Commission to attempt to litigate this proceeding, and believe that settlement discussions may be successful, particularly given the fact that only one issue has been identified as potentially remaining.

Therefore, on behalf of the active parties, the ISO requests that the Chief Judge issue an order continuing to hold the proceeding in abeyance until February 28, 2017, and directing the parties to file an additional status report on or before this date indicating that the one remaining issue identified by PG&E has been resolved, or proposing further procedures to address this issue if necessary.

⁵ Although not explicitly mentioned in its email to the service list, PG&E subsequently clarified that the period affected by this issue ends on February 28, 2001.

III. CONCLUSION

The ISO, on behalf of the active parties to this proceeding, respectfully requests that the Chief Judge accept the enclosed status report and issue an order as requested above.

Respectfully submitted,

/s/ Michael Kunselman

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Dated: January 17, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the service list established by the Commission for this proceeding.

Dated at Washington D.C. this 17th day of January, 2017.

/s/ Michael Kunselman

Michael Kunselman