

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

San Diego Gas & Electric Company,)	Docket No. EL00-95-000
Complainant,)	
)	
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. EL00-98-000
Independent System Operator and the)	
California Power Exchange)	

**ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO
MOTION FOR ORDER DIRECTING RELEASE OF AMOUNTS OWED
FOR ENERGY SALES BY A DATE CERTAIN AND RESPONSE TO ANSWER IN
SUPPORT**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the California Independent System Operator Corporation (“ISO”) hereby answers the “Motion of Indicated Governmental Entities for Order Directing Release of Amounts Owed for Energy Sales by a Date Certain,” filed in this proceeding on March 16, 2010. In their motion, the Indicated Governmental Entities¹ request that the Commission order the ISO to file its updated compliance filing reflecting preparatory rerun adjustments, which the ISO has committed to making by the end of April, by a date certain in “early April,” (later specified as April

¹ For purposes of this motion, the Indicated Governmental Entities consist of the Sacramento Municipal Utility District, Turlock Irrigation District, Modesto Irrigation District, City of Burbank, City of Pasadena, City of Glendale, City of Santa Clara, City of Redding, and Arizona Electric Power Cooperative, Inc.

7). The Commission should deny this motion because the Indicated Governmental Entities provide no explanation as to why it would make any material difference for the ISO to file two to three weeks earlier than it otherwise might. Moreover, the ISO believes that granting this request could foreclose meaningful review by affected parties of data relating to dispute resolution calculations recently distributed by the ISO, which are a necessary input to the updated compliance filing.

The ISO also responds to the answer of Avista Energy, Inc. (“Avista”), filed on March 30, in which Avista requests that the Commission also establish a timeline for completing the “final refund compliance filing.” As explained below, Avista’s request is based on the mistaken premise that a “final refund compliance filing” can be completed without awaiting further input from other parties and the Commission.

I. BACKGROUND

In its October 19, 2007 Order on Remand,² the Commission concluded that governmental entities, which the Ninth Circuit determined FERC could not order to pay refunds in this proceeding, should receive any unpaid principal amounts for sales they made into ISO and California Power Exchange (“PX”) markets during the Refund Period. The Commission also agreed with the ISO that such a disbursement must be made based upon preparatory rerun data, as finalized upon the completion of alternative dispute resolution matters that are currently pending. The Commission stated that it would direct the disbursement on unpaid principal amounts to

² 121 FERC ¶ 61,067 (2007) (“October 19 Order”)

governmental entities after it ruled on filings made by parties seeking designation as a governmental entity.³

In its November 20, 2008 order on rehearing of the October 19 Order,⁴ the Commission clarified that it would not direct the disbursement of unpaid amounts owed to governmental entities for sales they made in the ISO/PX spot markets during the Refund Period until after it: (1) approved compliance filings submitted by the ISO and PX that reflect preparatory rerun adjustments, including dispute resolution matters, and (2) ruled on the filings by those entities that seek a designation as a non-public utility.⁵ The Commission issued its order regarding non-public utility designations on December 18, 2008.⁶

In its status reports filed in this proceeding, the ISO has included information regarding the status of various ADR matters that could impact the preparatory and/or refund rerun calculations. In its most recent status report, filed on March 10, 2010, the ISO informed parties that the last two outstanding ADRs affecting preparatory rerun transactions had been resolved, and that the ISO was preparing to circulate to affected parties data on adjustments necessary to implement the resolution of the one remaining ADR matter that requires adjustments. The ISO explained that, after the review period ended, it would file its updated preparatory rerun compliance report, which would occur by the end of April 2010.

³ *Id.* at P 57.

⁴ 125 FERC ¶ 61,214 (2008).

⁵ *Id.* at P 27.

⁶ 125 FERC ¶ 61,297 (2008).

II. DISCUSSION

A. Indicated Governmental Entities' Motion Should be Denied

In their motion, Indicated Governmental Entities acknowledge the ISO's commitment to file the updated preparatory rerun compliance filing by the end of April, but nevertheless request that the Commission "bind the ISO to its representations" and direct the ISO to file the updated compliance filing by a "date certain in early April,"⁷ which they later indicate should be taken to mean April 7.⁸ This request is problematic in two respects. First, if the Commission were to "bind the ISO to its representations," per the Indicated Governmental Entities' literal request, it would order the ISO to file the updated preparatory rerun compliance filing by the *end* of April, not by April 7. More importantly, the ISO has a good reason for choosing the end of April as a deadline for making this filing: to provide affected parties a meaningful opportunity to review calculations implementing the resolution of the last outstanding ADR disputes affecting the preparatory rerun period.

As noted above, the ISO's March 2010 status report explained that the ISO was preparing to circulate data to affected parties for validation. The ISO circulated this data to affected parties on March 22 and requested that those parties provide any comments or corrections by April 5. If the ISO were to make the updated preparatory rerun compliance filing by April 7, as the Indicated Governmental Entities request, it would be unable to incorporate into the updated compliance filing any corrections resulting from the review by affected parties.⁹ Although the ISO does not anticipate any such issues

⁷ Indicated Governmental Entities Motion at 3-4.

⁸ *Id.* at 7.

⁹ For instance, if a party was to provide information to the ISO on the April 5 deadline for submitting comments that required corrections to the ADR calculations, it is extremely unlikely that the ISO could

arising, the opportunity for party review of the calculations would be of no practical value without time in the schedule to actually address any issues that might be raised, regardless of whether they ultimately result in changes to the data.

The ISO has provided similar opportunities for data review throughout this proceeding, and strongly believes that process has yielded benefits for all parties. This process has also been endorsed by the Commission, which highlighted the importance of providing this sort of transparency during the refund calculation process.¹⁰ The Indicated Governmental Entities provide no justification for why the ISO and Commission should abandon this procedure with respect to the ADR calculations. Indeed, the Indicated Governmental Entities provide no reason why the ISO should be required to provide the updated preparatory rerun compliance filing by the beginning of April, rather than the end of that month, other than general frustration with the overall timeframe. Although the ISO appreciates the desire of the Indicated Governmental Entities to receive their outstanding principal amounts as soon as possible, the ISO ultimately believes that, if any issues requiring correction to the data do arise, two to three weeks additional time is well worth it. In such circumstances, a far greater delay would result from making the compliance filing and then having to revise and re-submit that filing again, than by providing several additional weeks to ensure that any such issues can be accounted for in the compliance filing from the outset.

Within these constraints, the ISO will of course file its updated compliance filing on the preparatory reruns as soon possible. In particular, if the ISO does not receive by

make such corrections and revise the overall preparatory rerun data in time to file the updated preparatory rerun compliance filing two days later (*i.e.* by April 7).

¹⁰ See, *e.g.*, *San Diego Gas & Electric Co., et al.*, 105 FERC ¶ 61,066 (2003) at P 106.

April 5 comments on the ADR data that need to be addressed, the ISO plans to make its compliance filing by no later than the second week of April.

In addition, the ISO also wishes to convey its understanding regarding a statement made by Indicated Governmental Entities that the ISO is concerned could be misunderstood. In the conclusion to their motion, the Indicated Governmental Entities state that the Commission should direct the ISO to “complete its *final refund calculations* by no later than April 7, 2010.” (emphasis added). Although the preparatory rerun compliance filing will represent a significant milestone in the completion of all refund-related calculations, it will not contain the “final refund calculations,” which must also take into account, at a minimum, the re-allocation of governmental entity refunds, the impact of various multi-party settlements, and interest. The ISO has confirmed with counsel for the Indicated Governmental Entities that they did not mean to suggest that all refund calculations should be completed by April. Their counsel agreed that the motion should be read as requesting only that the *preparatory rerun* calculations be completed in April.

B. Avista’s Request for a Timeline for a Final Compliance Filing Should be Denied

In its answer to Indicated Governmental Entities’ motion, Avista contends that not only should the Commission grant the request to establish a date certain for filing the updated preparatory rerun compliance filing, but also requests that the Commission “establish a timeline for the final compliance filing that will allow jurisdictional sellers . . . to be paid.”¹¹ Avista contends that after making the preparatory rerun compliance filing, the ISO has stated that “the only additional work required before making the final

¹¹ Avista Answer at 2.

compliance filing showing ‘who owes what to whom’ relate to interest issues and settlements already filed at FERC.”¹²

This statement is not entirely accurate. In addition to issues related to interest and implementing global settlements, the ISO must also back out refunds that would otherwise have been owed by governmental entities absent the *BPA* decision and allocate that shortfall to net refund recipients. More importantly, Avista’s request appears to be based on the faulty premise that the ISO can unilaterally complete all of the necessary calculations and make a “final compliance filing” that will provide the sole foundation for jurisdictional sellers that have not settled to receive any amounts still unpaid (minus any refund liability). This assumption overlooks two crucial issues. First, it fails to recognize the fact that much of the amounts still unpaid relate to transactions in the California Power Exchange (“PX”) markets. No final accounting of “who owes what to whom” can take place without the PX finalizing its own calculations and making its compliance filing.

Moreover, as the ISO has identified in its status reports, there are still outstanding issues that must be resolved before the ISO can make a final compliance filing relating to its own markets. Perhaps the most significant is the resolution of the proceeding relating to the Ninth Circuit’s remand directing the Commission to provide refunds relating to energy exchange and non-spot transactions, and to consider evidence regarding the possibility of overcharges during the summer 2000 period. In its decision on remand, the Commission established hearing procedures to address these issues, but suspended the proceeding to allow the opportunity for parties to pursue settlement, which is where it remains currently. It is therefore presently unknown

¹² *Id.*

whether and to what extent the Ninth Circuit's decision will require revisions or additions to the ISO's current refund calculations. Until those questions are answered by the Commission, the ISO cannot make a compliance filing that definitively establishes, even for its own markets, "who owes what to whom" for the Refund Period.¹³

Finally, it should be understood that implementation of the multi-party settlements reached in this proceeding is not a task that the ISO can undertake on its own. As the ISO has noted in its status reports, this process will require direction from the parties to those settlements to ensure that their terms are properly reflected.

In summary, Avista's suggestion that the ISO alone can proceed with a final compliance filing that establishes "who owes what to whom" during the Refund Period, without the need for input from other parties and the Commission, is in error. Therefore, the Commission should reject Avista's request to establish a definitive timeline for the ISO to make its final compliance filing in this proceeding.

III. CONCLUSION

The ISO will act as quickly as possible to make its updated compliance filing on the preparatory rerun issues, and continue to use its periodic status reports to outline the path toward resolving all remaining issues under the ISO's control. However, for the reasons explained above, the Commission should deny Indicated Governmental Entities' request that the ISO provide its updated preparatory rerun compliance filing by April 7, as well as Avista's request to establish a definitive timeline for the filing of the ISO's final refund compliance filing.

¹³ There is also an outstanding issue as to whether, for purposes of allocating cost recovery offsets, the ISO and PX should determine "net refunds" based solely on the results of the application of MMCPs, or whether "net refunds" should also include offsets for fuel and emissions costs. The ISO has identified this issue in several of its prior status reports.

Respectfully submitted,

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Dated: March 31, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document on the email listserv established by the Commission for this proceeding

Dated at Washington, D.C. this 31st day of March, 2010.

/s/ Michael Kunselman
Michael Kunselman