

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	
v.)	Docket Nos. EL00-95-291
)	
Sellers of Energy and Ancillary Services into)	EL00-98-263
Markets Operated by the California)	
Independent System Operator Corporation and)	
the California Power Exchange Corporation,)	
Respondents.)	

**JOINT MOTION OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR, CALIFORNIA POWER EXCHANGE, AND CALIFORNIA
PARTIES TO NARROW DISPUTES AND FOR AN ORDER ON ISO AND PX
REFUND RERUN COMPLIANCE FILINGS**

I. MOTION

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ the California Independent System Operator Corporation (“ISO”), the California Power Exchange Corporation (“PX”), and the California Parties² jointly move for an order of the Commission addressing the refund rerun compliance filings (“Refund Rerun Compliance Filings”) filed by the ISO and PX two years ago.³ As explained in this motion, subsequent

¹ 18 C.F.R. § 385.212 (2017).

² For purposes of this pleading, the California Parties are the People of the State of California, *ex rel.* Xavier Becerra, Attorney General, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison Company.

³ California Power Exchange Corporation Refund Rerun Compliance Filing, Docket Nos. EL00-95-000, EL00-98-000, *et al.* (May 5, 2016) (“PX Compliance Filing”); Compliance Filing of the California Independent System Operator Corporation Regarding Orders About the Refund Rerun, Financial Adjustments and Interest, Docket Nos.

developments, particularly the Commission’s recent approval of settlements,⁴ have considerably narrowed the scope of disputed issues raised in the comments on the Refund Rerun Compliance Filings. As discussed below, eleven of the sixteen issues raised about the compliance filings are now either undisputed or have been resolved. With respect to the remaining five issues, the Parties agree that they do not need to be resolved at this time in order for the Commission to rule on the Compliance Filings. The Parties therefore request that the Commission reserve these remaining issues, with the matters to be subsequently addressed if they remain unresolved. Prompt Commission action on the compliance filings, approving the undisputed issues and allowing the parties to proceed to resolution of the other remaining issues in the overlay process, is crucial for concluding the California energy crisis litigation that has stretched over 17 years.

II. BACKGROUND

A. Compliance Filings and Comments.

The Refund Rerun Compliance Filings generally addressed the calculation of refunds based on the mitigated market clearing price (“MMCP”) established in these dockets, various offsets to those refunds, and certain related issues. Responding to Commission orders, the ISO and PX applied the MMCP to calculate refunds for transactions that took place during the Refund Period—October 2, 2000 through June 20,

EL00-95-000, EL00-98-000, *et al.* (May 4, 2016) (“ISO Compliance Filing”). The ISO provided additional information related to its Compliance Filing on August 29, 2016. *San Diego Gas & Elec. Co.*, Notice of Compliance Filing, Docket No. EL00-95-263 (Aug. 31, 2016).

⁴ *San Diego Gas & Elec. Co.*, 163 FERC ¶ 61,083 (2018) (Order approving uncontested settlement with Shell Energy North America (US), L.P.) (“Shell Settlement Order”); *San Diego Gas & Elec. Co.*, 163 FERC ¶ 61,087 (2018) (Order approving uncontested settlement with Bonneville Power Administration and Western Area Power Administration) (“BPA/WAPA Settlement Order”).

2001. The ISO and PX then calculated certain offsets to refunds directed by the Commission to arrive at net financial positions that reflect Commission-mandated adjustments for each entity that participated in the California energy markets during the Refund Period. The Refund Rerun Compliance Filings also include calculations of interest on both refunds and past due receivables. The Refund Rerun Compliance Filings are an indispensable, but not final, step in determining who owes what to whom and directing a final distribution of cash among Refund Period market participants.

The California Parties submitted comments on both Refund Rerun Compliance Filings on September 23, 2016 (“California Parties’ Initial Comments”).⁵ Those comments identified sixteen issues with the ISO and PX Compliance Filings.⁶ Other parties submitted comments on various compliance filing issues.⁷

The ISO filed its Reply Comments on October 24, 2016⁸ addressing many of the issues that the California Parties raised. The ISO filed Supplemental Reply Comments on November 30, 2016, to address three issues on which the ISO and California Parties reached agreement.⁹ On November 4, 2016, the PX filed an Answer¹⁰ responding to the California Parties’ Initial Comments as well as other comments.

⁵ California Parties’ Comments on ISO and PX Refund Rerun Compliance Filings, Docket Nos. EL00-95-291, *et al.* (Sept. 23, 2016) (“Initial Comments”).

⁶ *Id.* at 6-38. Each of the sixteen issues is addressed briefly below.

⁷ *See* Comments of Midway Sunset Cogeneration Company on Refund Rerun Compliance Filings, Docket Nos. EL00-95-291, *et al.* (Sept. 9, 2016); Comments of Shell Energy North America (US), L.P., Docket Nos. EL00-95-000, *et al.* (Sept. 23, 2016); Comments of APX, Inc., Docket Nos. EL00-95-291, *et al.*, (Sept. 23, 2016).

⁸ Reply Comments of the California Independent System Operator Regarding Compliance Filings, Docket Nos. EL00-95-291, *et al.* (Oct. 24, 2016) (“Reply Comments”).

⁹ Supplemental Reply Comments of the California Independent System Operator Corporation Regarding Compliance Filings, Docket Nos. EL00-95-000, *et al.* (Nov. 30, 2016) (“November 30, 2016 Supplemental Comments”).

¹⁰ Answer of The California Power Exchange Corporation, Docket Nos. EL00-95-291, *et al.* (Nov. 4, 2016) (“PX Answer”).

The California Parties submitted supplemental comments on December 19, 2016,¹¹ which the ISO answered on January 9, 2017.¹² Both sets of comments noted that some of the issues arising in the Refund Rerun Compliance Filings had been resolved among the parties.¹³ No further action on the Refund Rerun Compliance Filings has occurred since early 2017.

B. Settlements.

After the ISO and PX submitted their respective Refund Rerun Compliance Filings, the California Parties settled with Shell and with BPA and WAPA. Those settlements resolve several of the issues raised in the California Parties' comments on the Refund Rerun Compliance Filings.

1. Shell Settlement

On October 19, 2017, the California Parties and Shell submitted a Joint Offer of Settlement to resolve claims over Shell's sales in the ISO and PX markets during the energy crisis period.¹⁴ The Commission approved the Shell Settlement on May 3, 2018,¹⁵ and became effective on May 11, 2018.¹⁶

Notably, the Shell Settlement resolves issues over Shell's cost offset liability, which was a significant source of the issues that the California Parties raised in their

¹¹ California Parties' Motion for Leave to File and Supplemental Comments on ISO and PX Refund Rerun Compliance Filings, Docket Nos. EL00-95-291, *et al.* (Dec. 19, 2016).

¹² Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Supplemental Comments of California Parties, Docket Nos. EL00-95-291, *et al.* (Jan. 9, 2017) ("January 9, 2017 Supplemental Comments").

¹³ *See generally* January 9, 2017 Supplemental Comments at 1-2; California Parties' Motion for Leave to File and Supplemental Comments on ISO and PX Refund Rerun Compliance Filings at 2, 4-16.

¹⁴ Joint Offer of Settlement, Docket Nos. EL00-95-305, *et al.*, (Oct. 19, 2017) ("Shell Settlement").

¹⁵ *San Diego Gas & Elec. Co.*, 163 FERC ¶ 61,083.

¹⁶ Shell Settlement § 1.85

comments on the Refund Rerun Compliance Filings. The Settlement establishes an agreed-upon cost offset for those who opt into the Settlement,¹⁷ and the California Parties' objections to the Shell cost offset filing (including challenges to Shell cost offset claims embodied in the Refund Rerun Compliance Filings) are resolved now that the Settlement is effective.¹⁸

Approval of the Shell Settlement also eliminates the need for the Commission to address Shell's comments on the Compliance Filings, which had raised questions about the calculation of the interest shortfall.¹⁹

2. BPA/WAPA Settlement

The California Parties entered into a settlement with BPA and WAPA that the parties submitted to the Commission on February 8, 2018.²⁰ The BPA/WAPA Settlement resolves all outstanding refund litigation issues between the California Parties, on the one hand, and BPA and WAPA, on the other hand.²¹

As noted in the Initial Comments, a source of issues arising from the Refund Rerun Compliance Filings involves the calculation and allocation of the so-called *Bonneville* Shortfall, which arises because the Commission cannot order governmental entities to pay refunds.²² Now that the BPA/WAPA Settlement has been approved, the California Parties will no longer pursue those issues.

¹⁷ *Id.* § 5.2.3.

¹⁸ *Id.* § Art. VII.

¹⁹ See Comments of Shell Energy North America (US), L.P., Docket Nos. EL00-95, *et al.*, at 10-12.

²⁰ Joint Offer of Settlement, Docket Nos. EL00-95-309, *et al.*, (Feb. 8, 2018) ("BPA/WAPA Settlement").

²¹ See BPA/WAPA Settlement Art. VII.

²² See Initial Comments at 3-4.

C. Hafslund

Hafslund Energy Trading (“Hafslund”) was the only other significant net supplier during the Refund Period that had not settled with the California Parties at the time of the Refund Rerun Compliance Filings. As noted in the Initial Comments, a set of issues related to cost offset claims of Hafslund and Shell was the subject of a separate appeal to the United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”).²³ On October 11, 2016, the Commission sought voluntary remand of the cost offset issues,²⁴ which the Ninth Circuit granted on October 12, 2016.²⁵ On January 23, 2017, the Commission set the Shell and Hafslund cost offsets for hearing.²⁶

As noted above, the Shell Settlement resolves cost offset issues related to Shell. Issues related to the Hafslund Refund Period cost offset will be decided in the ongoing hearing process, but it appears that the Hafslund cost offset will be eliminated. Hafslund has represented that it will no longer participate in the refund proceedings before the Commission,²⁷ and it has remained faithful to that representation. On February 6, 2018, the California Parties filed a Joint Motion for Summary Disposition against Hafslund seeking, among other relief, rejection of Hafslund’s cost offset claim in its entirety.²⁸ Commission Trial Staff joined in that motion supporting the California Parties argument

²³ Initial Comments at 4.

²⁴ Unopposed Motion of Respondent Federal Energy Regulatory Commission for Partial Voluntary Remand, Case No. 01-71934 (9th Cir. Oct. 11, 2016).

²⁵ *CPUC v. FERC*, Case No. 01-71934 (9th Cir. Oct. 12, 2016).

²⁶ *San Diego Gas & Elec. Co.*, 158 FERC ¶ 61,055 (2017).

²⁷ See Joint Motion for Summary Disposition, Docket No. EL00-95-307 at 3-5 (Feb. 6, 2018) (motion for summary disposition against Hafslund presenting evidence of efforts to contact Hafslund, Hafslund’s responses, and its failure and refusals to participate in this litigation).

²⁸ *Id.* at 5-10.

that Hafslund has abandoned its claim to a cost offset.²⁹ The motion remains pending before Presiding Administrative Law Judge Young. Once it is granted, the Hafslund cost offset claim will be dismissed.

Furthermore, the Commission's May 3, 2018 Order on Compliance Filing Issues³⁰ rejected Hafslund's cost offset claim for the Summer Period (May 1, 2000 through October 1, 2000).³¹ The Commission found that Hafslund did not provide adequate justification for its cost calculations, and "Hafslund's cost offset claim makes it impossible to verify the cost numbers it presented."³² The California Parties' position is that Hafslund's Refund Period cost offset claim suffers from the same flaws and impermissibly relied on costs it incurred in committing tariff violations,³³ and it cannot justify any reduction in refund liability.

Assuming the Presiding Administrative Law Judge and the Commission agree with the California Parties, eliminating the Hafslund cost offset will require a revision to some of the balances determined in the ISO and PX Refund Rerun Compliance Filings, but that revision can be readily implemented after approval of those filings, and need not hold up Commission action now.

²⁹ *Id.* at 3 n.7.

³⁰ *San Diego Gas & Elec. Co.*, 163 FERC ¶ 61,080 (2018).

³¹ *Id.* at P 42.

³² *Id.*

³³ *See generally* Memorandum in Support of Motion for Summary Disposition, Docket No. EL00-95-307, Ex. No CA-001 (Declaration of Dr. Romkaew P. Broehm) ¶¶ 5-7, 9 (Feb. 6, 2018).

D. Settlement Overlay Process.

Working with the ISO and PX, the California Parties have begun the settlement overlay process. The California Parties have entered into more than 60 settlements with suppliers. Those settlements resolved amounts owed and owing among multiple parties at compromise levels that differ from the refunds calculated under the Refund Rerun Compliance Filing process, and hundreds of millions of dollars in payments were flowed from the ISO and PX to implement those compromises. Because the settlements flowed principal and interest amounts that were different from the calculated amounts in many respects, there is a need for an accounting—the “settlement overlay”—to reconcile the ISO and PX calculations, as reflected in their compliance filings made in this proceeding, with the settlements.³⁴

The settlement overlay process is ongoing. It is time consuming, because each settlement affects entries involving multiple other parties, and thus implementation of all the settlements requires consideration of a complex array of such interactions. The ISO, the PX, and the California Parties cannot complete the settlement overlay without Commission action on the Refund Rerun Compliance Filing issues.³⁵

³⁴ A more detailed discussion of the settlement overlay is included in the Initial Comments, at 5-6.

³⁵ The comments of Midway Sunset Cogeneration Company sought clarification that the relevant numbers on which final cash clearing would be based would incorporate the settlements, and thus the settlement overlay process. *See* Comments of Midway Sunset Cogeneration Company on Refund Rerun Compliance Filings at 1-2. The California Parties and ISO and PX agree. There is no dispute that the settlement overlay process needs to be incorporated into the results, as is further discussed below.

III. ARGUMENT

All of the sixteen issues that California Parties raised in their comments on the Refund Rerun Compliance Filings are now undisputed, have been resolved as a result of the recently approved settlements, or need not be decided in order to rule on the Refund Rerun Compliance Filings. As noted above, approval of the Shell Settlement obviates the need for the Commission to address the Shell cost offset. Approval of the BPA/WAPA Settlement obviates the need for the Commission to address the issues that were raised about the *Bonneville* Shortfall.

The other remaining contested issues involve matters that can, if necessary, be addressed later by the Commission. It is possible that the parties may be able to be resolve some of these issues during the settlement overlay process. Alternatively, some may be presented to the Commission for resolution during that process. However, none of these issues needs to be addressed by the Commission in order to issue a ruling on the Refund Rerun Compliance Filings. Thus, to facilitate market clearing, the Commission should defer rulings on the issues that need not be addressed in the Refund Rerun Compliance Filings, and affirm the agreed-upon resolution of the other Refund Rerun Compliance Filing issues.

A. The Current Status of the Issues

The following summarizes the status of the issues that the California Parties raised in their comments on the Refund Rerun Compliance Filings:

1. ISSUE ONE: Whether the Commission Should Approve the Results of the ISO and PX's MMCP Calculations.

All parties agree on this point. There is no dispute on this issue.

2. ISSUE TWO: Whether the Commission Should Approve the Results of the ISO and PX's MMCP Mitigation Calculations.

All parties agree on this point. There is no dispute on this issue.

3. ISSUE THREE: Whether the Commission Should Confirm that the ISO's Distribution of Funds Associated with Generator Fines Does Not Reduce or Eliminate Amounts Owed between the ISO and Generators for Those Fines or the Accrual of Interest Owed on Such Amounts.

The ISO has addressed this issue to the California Parties' satisfaction, thereby resolving this issue.³⁶

4. ISSUE FOUR: Whether the Commission Should Direct the ISO to Credit Fuel and Emissions Offsets of Three Municipal Sellers in the Manner that Commission-Approved Settlements Require.

This issue remains unresolved with respect to the ISO and the California Parties. They agree, however, that this issue does not need to be resolved as part of the Commission's ruling on the Refund Rerun Compliance Filings. Thus, the ISO and the California Parties request that the Commission reserve this issue to be addressed at a later time, if the parties cannot resolve it through mutual agreement during the settlement overlay process.

³⁶ See November 30, 2016 Supplemental Comments at 4.

5. ISSUE FIVE: Whether Coral/Shell's Cost Offset is Non-Compliant.

Approval of the Shell Settlement moots all objections to the Shell cost offset claim. Parties that decline to participate in the Shell Settlement will have their refunds reduced by the full amount of the Shell cost offset filing; participants in the settlement will bear the agreed-upon cost offset. Thus, the Commission does not need to address this issue.

6. ISSUE SIX: Whether The Commission Should Direct the ISO and PX to Calculate the *Bonneville* Shortfall Based on Hourly Refunds Netted Across All Markets.

Now that the Commission has approved the BPA/WAPA Settlement, the California Parties will withdraw their objections to the methodology for computing the *Bonneville* Shortfall. Thus, this issue is resolved.

7. ISSUE SEVEN: Whether the ISO and PX Improperly Sequence the *Bonneville* Shortfall and Various Offsets in a Manner that is Inconsistent with Prior Commission Orders and Common Sense.

Because the Shell and BPA/WAPA Settlements have been approved, the California Parties will withdraw their objection to the sequencing of offsets, thereby resolving this issue.

8. ISSUE EIGHT: Whether the PX Incorrectly Allocates Fuel Cost Allowances Based on Refunds Rather than Gross Purchases.

Because the Shell and BPA/WAPA Settlements have been approved, the California Parties will withdraw their objections to the methodology for allocating fuel cost allowances, thus resolving this issue.

9. ISSUE NINE: Whether the ISO (for All Activity) and PX (for Real-Time Activity) Incorrectly Allocate the *Bonneville* Shortfall on a Period-Wide Basis.

Now that the Shell and BPA/WAPA Settlements are approved, the California Parties will withdraw their objection to the allocation of the *Bonneville* Shortfall, thus resolving this issue.

10. ISSUE TEN: Whether it is Premature for the Commission to Approve or Adopt Any Set of Interest Calculations.

In its November 30, 2016 Supplemental Comments, the ISO agreed that its interest numbers are not final, and that it was asking only for a ruling on its interest methodology.³⁷ The PX and the California Parties support the ISO methodology and agree that the final calculation and reconciliation of interest is premature and will be updated in the settlement overlay. There is no dispute on this issue.

11. ISSUE ELEVEN: Whether Interest Shortfalls Should be Calculated Based Upon Combined ISO and PX Markets.

This issue remains in dispute. The parties agree, however, that because this issue pertains to the calculation of interest shortfalls, it does not need to be resolved as part of the Commission's ruling on the Refund Rerun Compliance Filings. The ISO, the PX and the California Parties ask that the Commission reserve this issue to be addressed at a later time. If it continues to be unresolved it will need to be presented to the Commission.

12. ISSUE TWELVE: Whether the Commission Should Include Summer Period Amounts in the Calculation of Refund Period Interest Shortfalls.

This issue remains in dispute. Like the preceding issue, the parties agree that this issue does not need to be resolved in order for the Commission to rule on the Refund

³⁷ November 30, 2016 Supplemental Comments at 5-6.

Rerun Compliance Filings. Similarly, the ISO, PX and the California Parties request that the Commission reserve this issue to be addressed in the future, if it remains unresolved, to ensure that the settlement overlay is implemented in accordance with Commission direction.

13. ISSUE THIRTEEN: Whether Miscellaneous Categories of Interest Identified in the Compliance Filings Should Be Applied to the Interest Shortfalls.

The ISO's January 9, 2017 Supplemental Comments reflect that the California Parties agreed with the ISO that the Commission need not address this issue in its review of the Refund Rerun Compliance Filings.³⁸ Thus the Commission should reserve this issue for resolution at a later time, if necessary.

14. ISSUE FOURTEEN: Whether the PX Must Credit the Enron Interpleader in its Accounting.

In its November 4, 2016 Answer the PX explained its proposed treatment of the issue,³⁹ which is acceptable to the California Parties. The PX proposed to implement its approach to the Enron Interpleader funds as part of the settlement overlay, which has resolved this issue.

15. ISSUE FIFTEEN: Whether the PX Must Correct its Allocation of Proceeds of Energy Sales from Block Forward Contracts.

In its November 4, 2016 Answer, the PX agreed to the allocation proposed by the California Parties.⁴⁰ Therefore, all parties agree on this issue, and the issue is resolved. The Commission should accept the agreed allocation.

³⁸ January 9, 2017 Supplemental Comments at 10-11.

³⁹ PX Answer at 16.

⁴⁰ *Id.* at 16-17.

16. ISSUE SIXTEEN: Whether Summer Period Refunds Should be Incorporated into the Remaining Steps of the Refund Process and Market Clearing.

In its November 30, 2016 Supplemental Comments, the ISO noted that the California Parties agreed with it that this issue need not be addressed now as part of the Refund Rerun Compliance Filings review.⁴¹ The ISO, the PX and the California Parties ask that the Commission reserve this issue to be addressed at a later time, if necessary.

B. Next Steps.

To achieve final market clearing, the California Parties propose the following steps. These proposals are simpler than those proposed in the Initial Comments because most objections to the Refund Rerun Compliance Filings have been resolved, because of the Commission's recent rulings, and because the settlement overlay process will address the remaining issues.

1. The Commission should approve the MMCPs and MMCP refund calculations, and approve the interest calculation methodology, while recognizing that the numbers themselves will change through the accruals and reconciliation of interest, and that all refund calculations are subject to adjustment through the settlement overlay;
2. The Commission will address Hafslund's cost offset. Assuming it is revised or eliminated, the ISO and PX will develop an adjustment to reflect

⁴¹ November 30, 2016 Supplemental Comments at 6.

that, but its approval of the Refund Rerun Compliance Filings need not await that determination;

3. Using numbers approved by the Commission, the California Parties, with the assistance of the ISO and PX, will continue their work on the settlement overlay, and Commission guidance may be sought if necessary during this process. Upon completion of the settlement overlay, the California Parties will file it with the Commission for approval;
4. The ISO and PX will file with the Commission, and permit market participants to comment on, any further adjustments required by the Commission, including calculations to bring interest current to a cash clearing date, subject to the Commission's approval; and
5. Cash clearing and any necessary collection efforts.

IV. CONCLUSION

For the foregoing reasons, the ISO, PX, and the California Parties respectfully request that the Commission promptly approve the undisputed issues in the Refund Rerun Compliance Filings, and defer the remaining issues to be addressed at a later date, if necessary, as discussed above.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the ListServ established in Docket No. EL00-95.

Dated at Washington, D.C. this 16th day of May, 2018.

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