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March 12, 2004

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

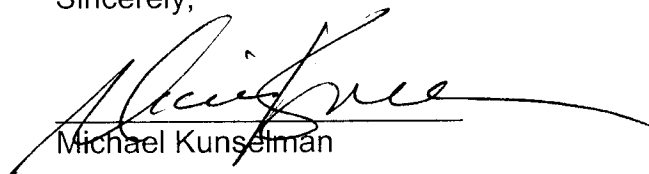
**Re: San Diego Gas & Electric Co., et al.
Docket Nos. EL00-95-081, et al.**

Dear Secretary Salas:

Enclosed please find one original and fourteen copies of the Motion of the California Independent System Operator Corporation for Clarification of the Commission's Order On Rehearing Dated October 16, 2003

Also enclosed are two extra copies of this cover letter to be time/date stamped and returned to us by the messenger. Thank you for your assistance. Please contact the undersigned if you have any questions regarding this filing.

Sincerely,



Michael Kunselman

Counsel for the California
Independent System Operator Corporation

Enclosures

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	
v.)	Docket Nos. EL00-95-081
)	EL00-95-074
Sellers of Energy and Ancillary Services)	EL00-95-086
Into Markets Operated by the California)	
Independent System Operator and the)	
California Power Exchange,)	
Respondents.)	
)	
Investigation of Practices of the California)	
Independent System Operator and the)	Docket Nos. EL00-98-069
California Power Exchange)	EL00-98-062
		EL00-98-073

**MOTION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION FOR CLARIFICATION OF THE COMMISSION'S ORDER ON
REHEARING DATED OCTOBER 16, 2003**

The California Independent System Operator Corporation ("CAISO") seeks clarification of Paragraph 177 of the Commission's Order on Rehearing dated October 16, 2003, 105 FERC ¶ 61,066 ("Order on Rehearing"). In that paragraph, the Commission stated that the circumstances of Public Utility District No. 2 of Grant County Washington's ("Grant County") sales between November 17, 2000 and December 13, 2000, provided the Commission "with neither personal jurisdiction over Grant County nor subject matter jurisdiction over its CAISO sales." The CAISO is informed that the California Power Exchange ("PX"), in the context of its ongoing bankruptcy proceeding, may seek to use the Commission's ruling to support an objection to Grant County's claim against the PX's estate based on those sales, and an argument that Grant

County's recourse is against the CAISO. The CAISO seeks clarification that in this passage the Commission was referring only to its lack of jurisdiction to *mitigate the prices* Grant County received for these sales, and did not intend to undermine the fundamental principle that the *obligation of payment* for the sales by Grant County rests where the obligation of payment for all energy contracted for by the CAISO rests, *i.e.*, with the Scheduling Coordinators¹ on whose behalf the CAISO made the purchases. The CAISO seeks this clarification in order to confirm that Grant County's claim for redress based on its failure to receive full payment for its sales is solely against the Scheduling Coordinators who have failed to pay the amounts invoiced to them by the CAISO for the months in which Grant County made those sales, in particular the PX.

I. BACKGROUND

In earlier orders in this proceeding, the Commission acknowledged that as a general matter it lacks jurisdiction under the Federal Power Act to determine the justness and reasonableness of sales of energy by governmental entities, but asserted jurisdiction to mitigate sales by governmental entities into the CAISO's single-price auction markets. 97 FERC ¶ 61,275 (2001) at 62,181-83. Grant County, a governmental entity, sought rehearing from the Commission's order of March 26, 2003, 102 FERC ¶ 61,317 (2003), on that point. The Commission granted Grant County's request, noting that Grant County had not made any sales into the CAISO's single-

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

price auction markets and had not signed a Scheduling Coordinator Agreement or Participating Generator Agreement with the CAISO acknowledging the Commission's jurisdiction over its sales to the CAISO. Order on Rehearing at P. 177.

As the Commission is aware, not all Scheduling Coordinators have paid all invoices from the CAISO covering the refund period (*i.e.* October 2, 2000 through June 20, 2001), including specifically the period in which Grant County made its sales. The PX, which is one of those Scheduling Coordinators, is in bankruptcy. Because it (along with other sellers during these periods) has not been paid in full, Grant County is pursuing a claim in the PX bankruptcy proceeding.² The PX has advised the CAISO that it may contest Grant County's claim on the ground that Grant County's recourse is against the CAISO and not the PX, in light of the reasoning stated in the Commission's Order on Rehearing. The CAISO seeks clarification of that Order on Rehearing in order to avoid what it believes would be a misapplication of that order by the PX which, if successful before the bankruptcy court, could expose the CAISO to significant monetary claims. The CAISO submits that the Commission should act to head off the PX's attempt to convert a purchase made by the CAISO on behalf of the PX and other Scheduling Coordinators into one made by the CAISO on its own account. The PX knows full well that the CAISO had no need for the energy on its own account but only as a means to serve the needs of the PX and other Scheduling Coordinators who failed to make their own arrangements to serve their loads in real time.

² Another Scheduling Coordinator, Pacific Gas & Electric Company ("PG&E"), is also in bankruptcy. The CAISO understands that both the PX and Grant County have duplicative claims against PG&E to recover the same amounts that Grant County has claimed against the PX. At the same time, the PX has advised CAISO of its belief that, under the Commission's Order on Rehearing, the PX is not obligated to Grant County. All of this underscores the need to clarify that the payment obligation rests with the CAISO's Scheduling Coordinators, rather than the CAISO.

II. REQUEST FOR CLARIFICATION

The CAISO asks the Commission to confirm that, in the Order on Rehearing, it did not intend to change the principle, embodied in the ISO Tariff and specifically expressed by the Commission in approving that tariff, that the CAISO does not purchase energy on its own account, but for the account of the Scheduling Coordinators who represent the load that uses that energy. Section 2.2.1 of the ISO Tariff states: “In contracting for Ancillary Services and Imbalance Energy the CAISO will not act a principal but as agent for and on behalf of the relevant Scheduling Coordinator.” This section was specifically addressed by the Commission in one of the orders issued at start-up of the CAISO. One of the intervenors in that proceeding contended that this section should be changed to require the CAISO to procure on its own behalf rather than as agent for the Scheduling Coordinators. The Commission ruled as follows:

We also reject EPUC/CAC’s recommended change to Section 2..2.1 of the ISO Tariff. The ISO should not be deemed to procure ancillary services on its own behalf since the ISO is not a participant in the market place. The ISO is appropriately securing the necessary ancillary services on behalf of Scheduling Coordinators since it is the Scheduling Coordinators who will utilize these services.

81 FERC ¶ 61,122, at 61,496.

This tariff provision, as well as the Commission’s explicit characterization of it and rejection of any change to it, make clear that when the CAISO contracted with Grant County for energy – just as when it transacted with any other seller – it did so not on its own account but rather as agent for Scheduling Coordinators, including the PX. The obligation to pay Grant County, therefore, is the obligation *of the principals to the*

transaction, i.e., the Scheduling Coordinators. This relationship among a seller, the CAISO as agent, and the Scheduling Coordinators as buyer-principals, has been well understood by all who sell to the CAISO and all who use the energy, since start-up. This relationship goes to the very heart of the CAISO's business – the markets it operates, its billing and invoicing system, and its very ability to continue its operations the benefits of which everyone, including both the PX and Grant County, has accepted. Moreover, the PX, as a Scheduling Coordinator, signed a Scheduling Coordinator Agreement in which it agreed to abide by the terms of the ISO Tariff,³ which includes the provision that the CAISO, when contracting for Imbalance Energy, is doing so not on its own account but for the benefit of Scheduling Coordinators.

If the Scheduling Coordinators are the principals on whose behalf the CAISO contracts for energy, it follows that if one of those Scheduling Coordinators fails to pay its portion of the cost of the energy for which the CAISO contracted, the recourse of the seller is against that Scheduling Coordinator and not the CAISO. Moreover, nothing in the ISO Tariff suggests that the CAISO, in acting as agent, is to be inserted between the seller and the defaulting Scheduling Coordinator: the right to payment is the seller's against the Scheduling Coordinator, and the obligation to pay is the Scheduling Coordinator's to the seller.

³ Section 2.B of the ISO's Scheduling Coordinator Agreement provides that a Scheduling Coordinator will:

abide by, and will perform all of the obligations under the ISO Tariff placed on Scheduling Coordinators in respect of all matters set forth therein including, without limitation, all matters relating to the scheduling of Energy and Ancillary Services on the ISO Controlled Grid, ongoing obligations in respect of scheduling, Settlement, system security policy and procedures to be developed by the ISO from time to time, billing and payments, confidentiality and dispute resolution.

Both the Commission's orders and the CAISO Tariff itself reinforce the point in the previous paragraph, which already is clear from the portion of Section 2.2.1 quoted above. In the same order in which it approved Section 2.2.1, the Commission rejected another proposed change to Section 2.2.1 that would have obligated the CAISO to pursue defaulting Scheduling Coordinators on behalf of sellers. The Commission stated as follows:

Southern Cities /Azusa and Banning contend that the ISO should be responsible for the collection of Scheduling Coordinator's debts and that this should be included as a general obligation on the ISO under ISO Tariff Section 2.2.1. . . .

With regard to Southern Cities/Azusa and Banning's recommendation, we agree with the ISO that the ISO's duties should not be expanded to include the collection of bad debt of Scheduling Coordinators. The purpose of Scheduling Coordinators is to act as an intermediary between the ISO and customers and in this capacity it should be the responsibility of Scheduling Coordinators to recover amounts that they are owed.

81 FERC ¶ 61,122, at 61,506-09. Thus, at start-up, intervenors before the Commission tried to create an obligation on the part of the CAISO to pursue Scheduling Coordinators who had not made their required payments to sellers, but the Commission rejected that proposal. There *is* a provision in the ISO Tariff that *authorizes* the CAISO to pursue such actions if it chooses to do so under certain conditions, but that provision does not suggest that in doing so the CAISO would be changing the fundamental payment obligation of the defaulting Scheduling Coordinator to the seller; the provision states that the CAISO would be pursuing "on behalf of" the seller the amounts "owed to it" by the defaulting Scheduling Coordinator. ISO Tariff § 11.20.1.⁴

⁴ Section 11.20.1 states that the CAISO may pursue against one Scheduling Coordinator the claims of another "Scheduling Coordinator." Some sellers into the CAISO markets, e.g., Grant County

The CAISO Tariff provisions and the Commission orders described above make clear, beyond the possibility of confusion, that the CAISO only contracts for energy on behalf of Scheduling Coordinators, not for its own account, and that whenever a Scheduling Coordinator fails to pay its portion of the cost of energy purchased by the CAISO on its behalf, the seller seeking payment has a claim only against the Scheduling Coordinator and must pursue that Scheduling Coordinator, even in bankruptcy proceedings, unless the CAISO agrees as an accommodation to do so, pursuant to Section 11.20.1. In the case of Grant County's claims against the PX, the CAISO has not agreed to pursue them on behalf of Grant County, so therefore Grant County must pursue them, and it is doing so.

It is not altogether clear to the CAISO how the PX will seek to use the Commission's statements in Paragraph 77 of the Order on Rehearing as a basis to object to Grant County's claim in the PX's bankruptcy proceeding. The CAISO is concerned, however, that the PX could seek to contort the meaning of the Commission's statement that it had "neither personal jurisdiction over Grant County nor subject matter jurisdiction over its CAISO sales," the Commission's statement that Grant County did not make sales "under the CAISO Tariff" into the single-price auctions, and the Commission's observation that Grant County had not signed any agreement

and some other entities outside the ISO Control Area, are not Scheduling Coordinators. Since start-up, however, the CAISO has treated such entities – as well as buyers of energy who are not Scheduling Coordinators – the same as Scheduling Coordinators whenever they sell energy to or purchase energy from the CAISO. It is only by treating them the same as Scheduling Coordinators in the CAISO's billing and settlement system that these entities can be billed and paid for the energy they take or sell. Thus, these non-Scheduling Coordinator entities have been treated as "ISO Creditors" under the Tariff when they are owed money for energy they have sold and as "ISO Debtors" when they have taken energy. In response to a comment by Grant County in the recent proceeding on Amendment 53, Docket No. ER03-942-000, the Commission noted the CAISO's explanation of its practices, and directed the CAISO to amend the definition of ISO Creditor to include such non-Scheduling Coordinator sellers, so as to "clarify

“acknowledging [the Commission’s] jurisdiction regarding its CAISO sales,” to argue that the Commission ruled that Grant County’s sales to the CAISO were somehow totally outside the framework of the CAISO Tariff and therefore the CAISO was purchasing on its own account and not on the behalf of the Scheduling Coordinators, including the PX. The CAISO submits that any such characterization of the Commission’s statements can only be false given the plain and notorious language of the ISO Tariff, and that the Commission should grant the CAISO’s requested clarification in order to avoid such attempted misapplication of its Order on Rehearing.

The CAISO requests that the Commission clarify that when it stated it lacked “personal jurisdiction” over Grant County, it meant nothing more than that Grant County, as a governmental entity, did not fall within the definition of “public utility” under the Federal Power Act and therefore the Commission could not determine the justness and reasonableness of the prices of its sales under the Commission’s general authority to review the wholesale rates of public utilities. The CAISO requests that the Commission clarify that when it said it lacked “subject matter jurisdiction over [Grant County’s] CAISO sales,” it meant only that it could not determine the justness and reasonableness of the price of those sales on the theory put forth in earlier orders concerning governmental entities’ participation in single-price auction markets governed by a Commission-approved tariff and in which each seller agreed to take the market clearing price, the justness and reasonableness of which the Commission has authority to determine. The CAISO requests that the Commission clarify that when it stated Grant County had not made “sales under the CAISO Tariff into the CAISO’s centralized, single

for the markets all entities’ rights and reduce the need to address this issue in the future.” 105 FERC ¶ 61,284 (2003) at P. 33.

clearing price auction markets,” it meant no more than what it said and was not suggesting that the CAISO Tariff had no implications whatsoever for Grant County’s sales. The CAISO requests that the Commission clarify that when it noted that Grant County had not signed an agreement acknowledging Commission authority over its sales, it meant only that Grant County had not signed an agreement granting the Commission authority to determine the justness and reasonableness of those sales (since the Commission’s authority to determine the justness and reasonableness of those sales was the only issue raised by Grant County’s request for rehearing).

Finally, the CAISO seeks clarification that nothing in the Commission’s Order on Rehearing was intended to change the fundamental framework governing *all* procurement of energy by the CAISO, which is as described above and grounded in Section 2.2.1 of the CAISO Tariff and the Commission’s relevant orders, and which the PX accepted not only by participating in the CAISO’s markets but expressly by signing a Scheduling Coordinator Agreement. The CAISO *only* contracts for energy pursuant to the authority in and terms of its tariff. It matters not *from whom* the CAISO purchases energy, *nor whether the seller happens to be a governmental entity whose rates the Commission cannot regulate*; regardless of the seller’s identity, those contracts are entered on behalf of Scheduling Coordinators and not on the CAISO’s own behalf. If a Scheduling Coordinator fails to pay, the entity with a claim against that Scheduling Coordinator is the seller, not the CAISO – and the seller’s only claim is against that Scheduling Coordinator, not the CAISO.

III. CONCLUSION

For the reasons stated above, the CAISO requests the clarifications of the Order on Rehearing described herein. This matter is of utmost importance to the CAISO, as it is concerned not only that the PX could seek to misapply the Commission's Order on Rehearing in objecting to Grant County's claim, but that other entities in bankruptcy may do so and that Grant County and even other entities may try to misuse the order in seeking to recover from the CAISO amounts unpaid by Scheduling Coordinators. These efforts could embroil the CAISO in litigation that could be avoided by the clarification sought herein, and such litigation could divert the CAISO's resources and attention from the important activities underway to accomplish the Commission's own goals.

Respectfully submitted,



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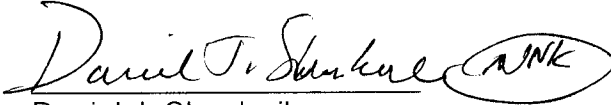
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Dated: March 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 12th day of March, 2004.


Daniel J. Shonkwiler