

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

California Independent System Operator Corporation)	Docket No.	ER03-746-000
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)		
San Diego Gas & Electric Company, Complainant,)		
)		
v.)	Docket Nos.	EL00-95-081
)		EL00-95-074
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.)		EL00-95-086
)		
)		
Investigation of Practices of the California Independent System Operator and the California Power Exchange)	Docket Nos.	EL00-98-069
)		EL00-98-062
)		EL00-98-073

(not consolidated)

MOTION FOR CLARIFICATION REGARDING REFUND ISSUES

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2008), the California Independent System Operator Corporation ("CAISO") hereby requests that the Commission provide clarification on two issues relating to the CAISO's refund calculations which must be resolved in order for the CAISO to move forward with the next phase of its calculations.

I. BACKGROUND

During this proceeding, the CAISO has performed numerous calculations to implement various aspects of the Commission's refund methodology. This

process has been documented over the past several years through status reports that the CAISO has filed with the Commission on a regular basis. As reported in the CAISO's Status Reports on Settlement Re-Run Activity, the most recent of which was filed on September 3, 2008, the CAISO has applied the mitigated prices to transactions in the CAISO's markets during the Refund Period (i.e. October 2, 2000 through June 20, 2001) and determined the resulting refunds. The CAISO has also calculated adjustments to refunds for certain offsets that the Commission has approved (i.e., for suppliers' costs of fuel, emissions, and overall entity costs). Finally, the CAISO has determined interest due on both unpaid balances and refunds consistent with the Commission's orders.

Throughout this process, many questions and disputes have arisen about the appropriate implementation of different facets of the Commission's methodology. Although most of these issues have been resolved by the Commission already, a number have not. In its past several Status Reports on Settlement Re-Run Activity, the CAISO has included a list of unresolved issues that could affect the CAISO's calculations to date, as well as the upcoming adjustments necessary to reflect the Commission's directive to remove refunds associated with non-jurisdictional entities and implement settlements reached in this proceeding. In its last Status Report, the CAISO explained that these issues must be resolved in order for the CAISO to have confidence that its calculations to date are consistent with the Commission's directives, and serve as a solid building block for its next set of calculations. Therefore, the CAISO requested that the Commission rule on them as soon as practicable, and explained that it

would await a Commission order on these issues before proceeding with the next phase of refund calculations.

Two of these “open issues” identified by the CAISO have not previously been the subject of a formal pleading filed with the Commission or a Commission decision, but have been raised only in the context of the CAISO’s Status Reports and comments thereon. The CAISO understands that in order for the Commission to rule on these issues, they need to be presented to the Commission in the form of a motion or other appropriate pleading. Therefore, the CAISO is herein requesting that the Commission clarify the following with respect to two of the “open issues”:

- The CAISO appropriately included, as part of the refund resettlement process, interest on adjustments made as part of the preparatory rerun that affected transactions during the Refund Period.¹
- The CAISO appropriately refused to recognize or allocate that portion of fuel cost claims that exceeded a claimant’s pre-mitigated credit for the settlement interval, so as to ensure that the fuel cost allowance may not result in claimants receiving more than their pre-mitigated amount for the interval, per the Commission’s directive in Paragraph 55 of its May 12, 2004 "Order Addressing Fuel Cost Allowance Issues," 107 FERC ¶ 61,166 (2004).

¹ The “Refund Period” consists of the period between October 2, 2000 and June 20, 2001.

II. DISCUSSION

A. The Commission Should Clarify that the CAISO Properly Included, as Part of the Refund Resettlement Process, Interest on Adjustments Made as Part of the Preparatory Rerun

Before it began the settlement rerun to reflect the impact of the Commission's mitigation methodology on transactions entered into during the Refund Period, the CAISO undertook a "preparatory rerun," which consisted of a number of adjustments performed in order to create an accurate set of baseline data regarding Refund Period transactions.² Much earlier in this proceeding, the CAISO indicated that it did not intend to assess interest on adjustments made during the preparatory rerun, under the rationale that those adjustments had not yet been explicitly invoiced by the CAISO.³ However, after considering the issue further, the CAISO determined that it should assess interest on preparatory rerun adjustments that affect transactions entered into during the Refund Period. As explained in its Thirty-Third Status Report on Settlement Re-Run Activity,⁴ the CAISO reached this conclusion for several reasons. First, the preparatory rerun

² The specific adjustments that the CAISO performed as part of the preparatory rerun were set forth in Amendment No. 51 to its tariff, which was filed with the Commission in Docket No. ER03-746 on April 15, 2003.

³ See Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Reliant's Protest to the Addendum to the ISO's July 11, 2005 Refund Status Report, Docket Nos. ER03-746-000, *et al.* (September 1, 2005).

⁴ Thirty-Third Status Report on Re-run Activity, Docket Nos. ER03-746-000, *et al.* (March 16, 2007); see also Comments of the State Water Contractors and The Metropolitan Water District of Southern California on CAISO's Thirty-Third Status Report re Refund Calculations, Docket Nos. ER03-746-000, *et al.* (April 6, 2007); Comments of the Western Area Power Administration and the Bonneville Power Administration to the California Independent System Operator Corporation's Proposal on Interest on Preparatory Rerun Adjustments, Docket Nos. ER03-746-000, *et al.* (April 19, 2007); Answer of the California Parties, Docket Nos. ER03-746-000, *et al.* (April 23, 2007); Response of California Independent System Operator Corporation to Comments to Proposal to Assess Interest on Certain Preparatory Rerun Adjustments, Docket Nos. ER03-746-000, *et al.* (May 1, 2007); Comments of the City of Santa Clara, California and the City of Redding, California in Response to Comments on CAISO's Proposal on Interest in Preparatory Rerun Adjustment in CAISO's Thirty-Third Status Report re: Refund Calculations, Docket Nos. ER03-746-000, *et al.* (May 1, 2007).

adjustments were made over four years ago, and it is still not certain when those adjustments will be invoiced to Market Participants. Therefore, those entities that owe money to the ISO Markets as the result of preparatory rerun adjustments have been able to realize the benefit of those amounts for a substantial period of time while, on the other side of the coin, parties that are owed money by the ISO market as a result of preparatory rerun adjustments have been unable to utilize those amounts during this period.

Second, although the ISO tariff does not provide for interest on internal reruns, including interest on the preparatory rerun adjustments relating to the Refund Period is appropriate because it is the outcome that best satisfies the Commission's directives in this proceeding that interest be assessed on both unpaid amounts and refunds,⁵ which necessarily override the normal application of the ISO's tariff.⁶ In many respects, assessing interest on preparatory rerun adjustments for the Refund Period is similar to assessing interest on refund amounts: neither of these adjustments has yet technically been "invoiced" to parties, but they nevertheless reflect amounts owed by or owing to the CAISO market. Also, the Commission's policy of requiring interest to be assessed on both refunds and unpaid amounts suggests that the Commission intended that interest be assessed based on each party's overall position with respect to Refund Period transactions. In order to implement this approach on a consistent and holistic basis, interest assessments should also take into account

⁵ See *San Diego Gas & Electric Co., et al.*, 96 FERC ¶ 61,120 (2001) at 61,519; *San Diego Gas & Electric Co., et al.*, 97 FERC ¶ 61,275 (2001) at 62,223.

⁶ See *San Diego Gas & Electric Co., et al.*, 121 FERC ¶ 61,188 (2007) (agreeing with the California Parties that the Commission's orders in this proceeding had amended the CAISO Tariff in order to reset the market clearing price during the Refund Period).

adjustments to Refund Period transactions made as part of the preparatory rerun process.

Moreover, assessing interest on adjustments made in the preparatory rerun is justified because the adjustments that affect transactions during the Refund Period involve two extraordinary circumstances: prices were found to be unreasonably high and suppliers will be paying interest on the refunds. These circumstances present a unique opportunity to shortchange parties that are the beneficiaries of preparatory adjustments during that period. A seller, for example, will be paying significant interest on refunds for certain billable quantities for which it may never have been credited, due to the settlements issues being corrected through the preparatory rerun. Stated another way, absent the CAISO's proposal, a seller might be required to pay interest, or a greater amount of interest, on refunds as a result of adjustments made during the preparatory rerun, without the benefit of earning offsetting interest on amounts that it never received. On the other hand, a buyer may have lost the use of funds for several years of certain billable quantities for which it may have been overcharged, again due to the settlements issues being corrected through the preparatory rerun, at the unreasonably high prices charged during that hour. The result would be that a buyer under these circumstances would find itself in the position of paying interest based on a principal amount higher than what it will ultimately owe, without the opportunity to recover offsetting interest based on these adjustments. Both of these unjust circumstances go beyond the ordinary risks that parties assume through the settlements process.

For these reasons, the CAISO requests that the Commission clarify that it is appropriate for the CAISO to calculate and assess interest on preparatory rerun adjustments relating to transactions that were entered into during the Refund Period.

B. The Commission Should Clarify that the CAISO Properly Excluded From Fuel Cost Offset Allocations those Fuel Costs that Exceeded a Claimant's Pre-Mitigated Amount

On May 12, 2004,⁷ the Commission accepted the California Parties' request for clarification that, regardless of whether there was a soft cap in effect during particular intervals in the Refund Period, "the fuel cost allowance should not result in generators recovering more than the pre-mitigated amount." Based on this directive, the CAISO ran a check on its fuel cost data to ensure that no claimant was recovering more than its pre-mitigated amount during intervals in the Refund Period as a result of its fuel cost allowance. After running this check, the CAISO determined that the fuel cost allowances of ten claimants needed to be reduced in order to comply with the May 12 Order, and explained that in a Status Report.⁸ As a result, the CAISO reduced fuel cost claims by approximately \$1.7 million. The CAISO maintains that reducing fuel cost claims in this manner was not only appropriate, but necessary, in order to give effect to the Commission's mandate that fuel cost claimants should not recover more than their pre-mitigated amounts. Therefore, the CAISO requests that the Commission clarify that the

⁷ See *San Diego Gas & Electric Co., et al.*, 107 FERC ¶ 61,166 (2004) ("May 12 Order") at P 55.

⁸ Thirty-Eighth Status Report on Re-run Activity, Docket Nos. ER03-746-000, *et al.* (September 7, 2007); see also Answer to California Independent System Operator Corporation's Status Report of Williams Power Company, Inc., Docket Nos. ER03-746-000, *et al.* (November 27, 2007).

CAISO acted appropriately in reducing fuel cost claims pursuant to Paragraph 55 of the May 12 Order.

III. CONCLUSION

For the reasons articulated above, the CAISO respectfully requests that the Commission rule on the foregoing issues as requested herein as soon as reasonably practicable.

Respectfully submitted,

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Dated: November 13, 2008

CERTIFICATE OF SERVICE

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

Dated at Washington, DC, on this 13th day of November, 2008.

/s/ Michael Kunselman
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