

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

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

**STATUS REPORT**

To: The Honorable Curtis L. Wagner, Jr.  
Chief Administrative Law Judge

Pursuant to the Chief Judge's Order Requiring Status Report issued in the above-captioned dockets on November 18, 2008, the California Independent System Operator Corporation ("CAISO"), on behalf of the active parties to this proceeding,<sup>1</sup> provides this status report and respectfully requests that the Chief Judge continue to

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<sup>1</sup> Based on attendance at the February 12, 2008 pre-hearing conference, the "active parties" to this case are defined, for purposes of this motion, as the CAISO, the California Department of Water Resources ("CDWR"), Pacific Gas and Electric Co. ("PG&E"), the Sacramento Municipal Utility District

suspend the procedural schedule in these proceedings pending the outcome of the California refund proceeding.

## **I. BACKGROUND**

As explained in detail in this section, the parties to this proceeding, although they have remained optimistic as to the potential for reaching a negotiated settlement, came to recognize early on that the issues set for hearing in this proceeding are inextricably tied to those at issue in the California refund proceeding, such that pursuing a settlement or continuing to litigate this proceeding would not prove fruitful until such time as the Commission renders a decision regarding the financial position of the parties in the California refund proceeding.

On November 7, 2001, the Commission issued an order in this docket that required the CAISO to invoice the CDWR for all transactions 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 CAISO submitted its compliance filing on November 21, 2001. On March 27, 2002, the Commission issued an order requiring that the CAISO "re-invoice those gross amounts owed by DWR for all [CA]ISO transactions DWR entered into on behalf of the non-creditworthy UDCs. . . and provide a transparent means by which this Commission and other parties can determine whether the invoiced amounts were properly calculated." In response, the CAISO submitted its compliance filing along with the gross invoices of

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("SMUD"), Modesto Irrigation District ("MID"), Cities of Santa Clara and Redding, California, and Powerex Corporation. All of these parties are also parties to the California refund proceeding.

PG&E and SCE, the net invoices of CDWR, and a worksheet and summary of these invoices.

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

On December 9, 2002 a pre-hearing conference was convened before the Presiding Judge, at which time the Parties developed a proposed procedural schedule and discussed steps to take towards the goal of reaching a negotiated settlement of the issues set for hearing in this proceeding. The Presiding Judge adopted the parties' proposed procedural schedule on December 10, 2002.

Throughout the early months of 2003, the parties to this proceeding engaged in a series of technical conferences and workshops in an attempt to better understand and

resolve the issues that are the subject of this proceeding. During this period, the CAISO also made available various data that was requested by the participants. On February 18, 2003, with testimony due on February 20 and negotiations still ongoing, the CAISO 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. The Chief Administrative Law Judge granted the CAISO's request and, on February 25, 2003, suspended the procedural schedule until "otherwise ordered."

On May 28, 2003, the Presiding Judge issued an order requiring the parties to submit a status report on the progress of settlement negotiations, on or before June 6, 2003. On June 6, 2003, the CAISO, on behalf of the then-active participants, filed a status report and request for continued suspension of the procedural schedule ("June 6 Status Report"). The CAISO explained that since the suspension of the procedural schedule on February 25, 2003, the parties had continued settlement discussions, and although all parties felt 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. Therefore, the CAISO, on behalf of the active parties, requested that this proceeding remain suspended until such time as the Commission issued an order approving the CAISO's compliance filing in the California refund proceeding.

On May 3, 2004, the Chief Judge issued an order requiring the parties to file "a further status report on the progress report of the settlement negotiations and whether

the procedural schedule should be reestablished on or before May 14, 2004.” On May 14, 2004, the CAISO, jointly with the then-active parties in this proceeding, filed a status report along with a request for continued suspension of the procedural schedule (May 14 Status Report”). The parties stated that they continued to believe that settlement is the preferred means of resolving the issues set for hearing by the Commission in this proceeding, but that negotiations would be greatly facilitated, and the likelihood of reaching a full settlement substantially increased, by awaiting the conclusion of the compliance process in the California refund proceeding, before attempting to conclude and file a settlement in this proceeding. On May 21, 2004, the Chief Judge issued an order continuing the suspension of the Track II procedural schedule in these proceedings, pending the completion of the compliance process in the California refund proceeding.

On February 12, 2008, the active parties attended a pre-hearing conference convened by the Presiding Judge (“February 12 Pre-hearing Conference”). As noted in the Chief Judge’s November 18 Order, the active parties reported that they anticipate being able to reach a settlement in this proceeding, but continue to await the conclusion of the compliance process in the California refund proceeding before attempting to conclude and file such a settlement.

## **II. STATUS REPORT**

At the February 12 Pre-Hearing Conference, the Presiding Judge and the active parties discussed the status of this proceeding and considered the question of what could be done to resolve it. There was general agreement amongst the parties that the

outcome of this proceeding depends on the outcome of the California refund proceeding. Several parties, including the CAISO, CDWR, and PG&E, expressed the notion that after the various issues pending in the California refund proceeding are resolved, and the Commission determines the final balances of the parties that participated in the CAISO and PX markets during the period addressed by the California refund proceeding (the "Refund Period"), the issues in this case may be entirely mooted, or at least amenable to settlement. However, the active parties stated that they did not believe that it would prove fruitful to attempt to reach a negotiated settlement in this proceeding before the conclusion of the California refund proceeding. The Presiding Judge agreed that given these realities, it did not make sense to set a further procedural schedule or seek to refer the case to a settlement judge at this juncture.

The active parties continue to hold the same position regarding the procedural posture of this proceeding as they expressed at the February 12 Pre-Hearing Conference because the underlying reasons for that position have not changed in the interim. Namely, the California refund proceeding is still ongoing. Since the last status report was filed in this docket, the CAISO has continued to perform calculations aimed at determining the final balances of parties that participated in the CAISO markets during the Refund Period. Also, a number of settlements have been filed with, and approved by, the Commission that resolve obligations between various parties relating to transactions that took place during the Refund Period. Nevertheless, there are still calculations left to be performed before final balances can be determined, the outcome of which depends in part upon the resolution of certain issues that are currently pending before the Commission. A more detailed discussion of the current status of the refund

proceeding can be found in the status reports that the CAISO files with the Commission in the ER03-746 and EL00-95 dockets.<sup>2</sup>

Based on this discussion, as well as the information contained in the various status reports that it has filed to date in this proceeding, the CAISO, on behalf of the active parties, respectfully requests that the Chief Judge continue to suspend the procedural schedule in this proceeding until the date on which the Commission issues an order in Docket Nos. EL00-95-045, *et al.* that establishes the final balances of those entities that participated in markets operated by the CAISO during the Refund Period. At that time, the parties are optimistic that they will be able to expeditiously reach a settlement in this matter.

### III. CONCLUSION

The CAISO, on behalf of the active participants in this proceeding, respectfully submits the enclosed status report, and requests that the Chief Judge continue to suspend the procedural schedule in this proceeding.

Respectfully submitted,

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Dated: November 24, 2008

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<sup>2</sup> A copy of the CAISO's most recent such status report is included with this filing as Attachment A.

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list for the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington D.C. this 24<sup>th</sup> day of November, 2008.

/s/ Michael Kunselman  
Michael Kunselman

# ATTACHMENT A

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September 3, 2008

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: California Independent System Operator Corporation  
Docket Nos. ER03-746-000, et al.  
San Diego Gas & Electric Co., et al.  
Docket Nos. EL00-95-081, et al.  
California Independent System Operator Corporation and  
California Power Exchange  
Docket Nos. EL00-98-069, et al.**

Dear Secretary Bose:

Enclosed please find one original and fourteen copies of the Forty-Second Status Report of the California Independent System Operator Corporation on Re-Run Activity filed in the above-captioned dockets.

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

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

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

(not consolidated)

**FORTY-SECOND STATUS REPORT OF THE CALIFORNIA INDEPENDENT  
SYSTEM OPERATOR CORPORATION ON  
SETTLEMENT RE-RUN ACTIVITY**

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The California Independent System Operator Corporation ("ISO") hereby provides its forty-second status report pursuant to the Order Granting Clarification and Granting and Denying Rehearing of the Federal Energy Regulatory Commission ("Commission" or "FERC"), issued on February 3, 2004, in the above-captioned dockets ("February 3 Order").

The ISO has revised every section of this status report. Three sections, however, were revised only slightly and do not contain new information: Sections II(B) (Fuel Cost Allowance Data), II(C) (Emissions Offsets) and II(D) (Cost-Based Recovery Filings).

Any comments on this report that are received by August 15 will be considered for incorporation in the CAISO's next status report, which the CAISO will file after it receives Commission guidance on the "open issues" that are listed in Section III.C below and commences the next phase of refund-related calculations, which will deal with the implementation of settlements and the removal of refunds relating to non-jurisdictional entities.

One party, NCPA, filed comments in response to the ISO's forty-first status report, filed on May 15, 2008. NCPA's comments, which were filed on May 30, 2008, mainly concerned the "open issues" filing that the ISO planned to make, as discussed in the forty-first status report. Additional detail concerning this proposed filing is contained in Section III.A below. In addition, on June 27, 2008, Pacific Gas and Electric Company ("PG&E") provided comments on the ISO's most recent interest calculation data. These comments are discussed in further detail in Section III.E below.

## **I. BACKGROUND ABOUT THESE STATUS REPORTS<sup>1</sup>**

In the February 3 Order,<sup>2</sup> the Commission directed the ISO<sup>3</sup> “to submit to the Commission on a monthly basis, beginning on February 10, 2004, a report detailing the status of the preparatory adjustment re-runs and the dates that it expects to complete both the preparatory re-runs and the settlements and billing process for calculating refunds.” February 3 Order at P 21. The first such status report was filed with the Commission on February 9, 2004. While the preparatory and FERC refund re-runs are now complete, the ISO will continue to provide status reports throughout this process because the ISO believes that these reports have been a valuable tool for communicating with the Commission and Market Participants, in addition to meeting the Commission-mandated reporting requirement. This filing is the forty-second such report.

## **II. CURRENT STATUS OF RE-RUN ACTIVITY**

The ISO finished publishing settlement statements reflecting the refund rerun and adjustments thereto in February of 2007, and recently completed the

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<sup>1</sup> In its October 16, 2003 Order on Rehearing, 105 FERC ¶ 61,066 (2003), the Commission ordered the ISO to file within five months of the date of the order the results of the preparatory re-runs along with the appropriate explanations. The ISO considers that this directive has been overtaken by FERC’s later recognition in the Amendment No. 51 proceeding that the ISO could not possibly comply with the deadline in the October 16 Rehearing order, as well as the deadlines in the previous Amendment 51 orders. The ISO is endeavoring to comply, however, with FERC’s directive that the ISO work as fast as practicable, keep the parties well informed, and file monthly status reports. For this reason, in addition to the Amendment No. 51 docket, the ISO is also filing this report in the dockets associated with the California refund proceeding.

<sup>2</sup> 106 FERC 61,099 (2004). The context of the February 3 Order is set forth in prior versions of the ISO’s status report.

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

financial adjustment phase. This most recent phase required the ISO to make adjustments to its refund rerun settlement data to account for fuel cost allowance offsets, emissions offsets, cost-based recovery offsets, and interest on amounts unpaid and refunds.

Attachment A to this status report contains a list of the major ISO refund calculation distributions and the associated review and comment periods provided to parties by the ISO to date. In some cases, the ISO did not provide any specific closing date for comments, but rather, continued to solicit and consider comments and make appropriate corrections until the data were utilized to make further calculations.

**A. OPEN ISSUES RELATING TO THE PREPARATORY RERUN AND REFUND RERUN**

As noted in the Commission's October 19 Order on Remand, 121 FERC ¶ 61,067 (2007) ("October 19 Order"), certain ISO ADRs need to be resolved before a distribution can be made in this proceeding. The only three that remain unresolved are one brought by the Southern Cities, which is pending rehearing, and two brought by PG&E related to COTP, which remain in settlement discussions:

10/5/00 Pacific Gas & Electric Company Matter	This matter remains unresolved. It will affect the prep rerun data before the refund period, with the precise effect to be determined. It will not affect the refund period data or calculations.
10/30/00 Southern Cities Matter	FERC Docket No. EL03-54. On March 29, 2007, the Commission vacated an earlier order and reinstated the award of the arbitrator, which is reflected in ISO settlements. See 118 FERC ¶ 61,255.

But the March 29 order is pending rehearing. Were the Commission to grant rehearing, additional adjustments would have to be made to ISO Settlements.

6/10/04 Pacific Gas & Electric  
Company Matter

On May 15, 2008, the Commission ruled on the petition for review in FERC Docket No. EL06-10. The ISO will be invoicing this matter on October 2, 2008. It will affect the refund period data during May and June 2001.

More information about these matters is available on the FERC website and at <http://www.caiso.com/clientsev/adr/index.html>.

With respect to these open ADRs, the ISO respectfully requests that the Commission issue its order on the Southern Cities case before the distribution is made in this proceeding, and be prepared to provide relatively prompt rulings on any forthcoming filings that may be necessary to resolve the COTP disputes, so as to minimize any potential disruptions to the refund process going forward.

In addition, there are several open issues regarding the ISO's calculations to date in this proceeding, as well as future adjustments ordered by the Commission. These open issues are listed in Section III.C below. The ISO plans to await a Commission ruling on these issues before proceeding to the next phase of refund calculations.

#### **B. FUEL COST ALLOWANCE OFFSETS - COMPLETE**

The ISO completed the offsets for fuel cost in August of 2007. As explained in greater detail in previous status reports, the ISO pursued a two-track approach with respect to calculating fuel cost allowances. First, the ISO calculated, for each entity that participated in the ISO's markets during the

Refund Period (*i.e.*, October 2, 2000 through June 20, 2001), the percentage of the total fuel cost claim amounts to be allocated to these entities for each hour, consistent with the methodology approved by the Commission for doing so. Second, the ISO used these validated numbers to calculate the final allocation percentages, as well as the final allocation of actual dollar amounts.

On December 22, 2005, the ISO distributed the first set of fuel cost allocation percentages to parties, and received comments from several parties. The ISO made several revisions to this data set and distributed the revised allocation percentages for another round of review on June 1, 2006. Since then, the ISO made various further modifications to the fuel cost percentages, most recently to adjust its calculations in order to allocate an additional \$7 million from the fuel cost claim of Los Angeles Department of Water and Power in the ISO markets. This modification was described in detail in the ISO's 38th status report. The ISO circulated the most recent fuel cost data on July 16, and accepted comments on this data through August 8. Finally, in an effort to finalize the fuel cost allowance allocation calculations, the ISO made two additional adjustments, which it described in the thirty-seventh and thirty-eighth status reports. With these adjustments, the ISO finalized its fuel cost allocation calculations, and provided the data to the PX in order that the PX could complete its own fuel cost calculations. The ISO also used the final fuel cost calculations as an input in the cost-offset calculations.

### C. EMISSIONS OFFSETS - COMPLETE

The ISO's work on the emissions offset was completed and uploaded in September of 2006. By way of background, in the Findings of Fact in the Refund proceeding<sup>4</sup> and again in the Commission's Order of March 26, 2003,<sup>5</sup> the Commission found that 3 entities, Duke, Dynegy, and Williams, had supported their requested emissions allowance. Three other entities – Reliant, the City of Pasadena, and the Los Angeles Department of Water and Power ("LADWP") – were ordered to reallocate and recalculate their emissions allowances.<sup>6</sup> Also, in the Commission's October 16, 2003 order, the Commission clarified that emissions offsets would be recoverable only for mitigated intervals.

On September 20, 2005, the Commission issued an order accepting the recalculated emissions claims of Pasadena and LADWP.<sup>7</sup> The Commission also acknowledged receipt of Reliant's informational filing detailing a pro rata allocation of its emissions costs offset among mitigated and non-mitigated intervals. *Id.* at P 40.

In earlier status reports, the ISO noted that it had received revised emissions claims for all outstanding entities. The ISO has incorporated these data into the financial adjustment phase.

On April 25, 2006, the ISO distributed data reflecting the allocation percentages for emissions for each party during the refund proceeding. On

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<sup>4</sup> Certification of Proposed Findings on California Refund Liability, Issued December 12, 2002, PP 729-760.

<sup>5</sup> 102 FERC ¶ 61,317 (2003) item BB.

<sup>6</sup> With respect to Reliant, the Commission, in its March 26 Order, accepted the Presiding Judge's finding that although Reliant would be required to recalculate its emissions on a pro-rata basis, Reliant would be permitted to use the California Generators' existing pro rata allocation exhibit, and would not be required to re-file that information.

<sup>7</sup> 112 FERC ¶ 61,323 (2005).

September 21, 2006, the ISO circulated the final approved emissions claim amounts that it will use in its calculations, as well as an explanation of the methodology for determining the resulting refund offsets. As explained in the market notice accompanying that distribution, the ISO used these claim amounts, along with the percentages distributed on April 25, 2006, to determine the final refund offsets associated with approved emissions claims.

**D. COST-BASED RECOVERY FILINGS – COMPLETE**

The ISO completed work on cost-recovery offsets in January of 2008. The background on cost-recovery offsets is as follows: the Commission issued an order approving an allocation methodology for cost filings on May 12, 2006. Therein, the Commission concluded that offsets from cost filings should be allocated to purchasers based on their net refunds. In its June 2006 status report, the ISO explained the methodology that it intends to adopt in order to implement the Commission's methodology. However, after considering questions posed by several parties, the ISO recognized that certain portions of its methodology discussion in the June 2006 status report should be clarified. Therefore, the ISO made several modifications to its methodology, which it set forth in its status report filed July 10, 2006 in these dockets (pages 10-12). In its February 2007 status report, the ISO included a list of the claims that it intends to process.

In previous status reports, the ISO also noted that there is an important issue about how to account for refunds in both the ISO and PX markets when allocating the cost-based filing offsets. The ISO had discussions concerning this

issue with several parties, and based on these conversations, the ISO and PX agreed to a methodology for accounting for net refunds in both the ISO and PX markets, which the ISO set forth in its March 2007 status report. A full explanation of the methodology is included on the CDs that were circulated to parties on April 10, 2007.

The ISO issued updated cost filing allocation data on May 22, 2007. The primary adjustment in this distribution was to properly net the PX position to zero between the ISO and PX markets so that PX participants receiving refunds would be allocated the entire PX portion of the offset.

In its last several status reports, the ISO noted that it would need to update its cost filing allocation calculations in order to account for modifications that it had made to its fuel cost allocation data, as well as changes in the PX's fuel cost allowance allocations resulting from these modifications. The ISO received the necessary data from the PX on November 12, 2007 and made the updated cost-filing allocation calculations available to parties on December 4, 2007. Based on comments from PG&E, the ISO updated these calculations a final time to reflect to correct a minor error. Because of the minor nature of this correction, both in scope and financial impact (\$7,003), the ISO did not re-circulate the cost filing allocation data based on this correction. With this minor change, the cost filing allocation process was completed.

#### **E. INTEREST CALCULATIONS – COMPLETE FOR NOW**

To date, the ISO has distributed to parties data concerning four of the five calculations relating to interest. It has 1) backed out interest previously charged

for transactions in its markets that occurred during the Refund Period, 2) calculated interest at the FERC rate on unpaid invoices, 3) calculated interest at the FERC rate on preparatory rerun transactions, and 4) calculated interest at the FERC rate on refunds. The history relating to the first three of these calculations has been discussed in detail in the ISO's previous status reports.

On June 12, the ISO released updated data regarding interest on unpaid invoices and refunds to reflect corrections based on comments received from parties regarding the previous distributions of these data. The ISO requested that parties provide any comments on these corrected calculations by June 27. One party, PG&E, provided comments in which it noted several minor computational errors in the data relating to interest on refunds. The ISO has made these corrections, but due to their minor nature, both in scope and financial impact, the ISO is not planning to re-circulate the interest on refund calculations.

The ISO will also need to perform adjustments to balances in the ISO market to account for any allocation that the ISO receives as a result of a shortfall in the PX markets between interest earned in the PX Settlement Clearing Account and the Commission's rate.<sup>8</sup> However, as explained in the 38th status report, the ISO plans to wait to make these adjustments until after it completes the financial adjustment phase and begins accounting for the impacts of the settlements entered into in this proceeding. The ISO proposes to proceed in this manner because even if it calculates these adjustments during the

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<sup>8</sup> In its November 23, 2004 "Order on Rehearing" issued in this proceeding, the Commission accepted the ISO's request to allocate any portion of such shortfall assigned to the ISO pro rata to its participants. 109 FERC ¶ 61,218 at P 39 (2004).

financial adjustment phase, they will almost certainly have to be re-done when it accounts for settlements in this proceeding.<sup>9</sup>

### **III. FUTURE CAISO ACTIVITY**

As noted in previous status reports, the ISO's intended process for completing the required refund case calculations could change as a result of any number of legal challenges to the Commission's orders (e.g., the Ninth Circuit's decision in CPUC v. FERC concerning certain "scope/transaction" issues). At this point, however, the ISO intends to proceed as follows.

#### **A. AWAIT COMMISSION RULING ON OPEN ISSUES**

As noted in Section II.A above, and discussed at length in the ISO's last two status reports, there are several open issues relating to the ISO's calculations to date, as well as the upcoming adjustment necessary to reflect the Commission's directive to remove refunds associated with non-jurisdictional entities. In the last two status reports, the ISO indicated that it planned to file with the Commission a list of what it considers the issues in this proceeding that must be resolved in order for the ISO to have confidence that its calculations to date have been performed in accordance with the Commission's mandates, and that it can accurately perform the calculations it has planned for the near future, and request that the Commission rule on these issues as soon as practicable. The ISO still believes that it is important that the Commission act on these issues as soon as practically possible. However, because these issues have already been put before the Commission, the ISO believes that filing a separate pleading requesting a ruling on them is not necessary, and therefore, has decided against

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<sup>9</sup> October 19 Order on Remand, 121 FERC ¶ 61,067 (2007) ("October 19 Order").

doing so. Rather, the ISO is including the list of open issues herein, which is as follows:

Issues Regarding Calculations Already Performed by the ISO:

- Whether it is appropriate for the ISO to include, as part of the refund resettlement process, interest on adjustments made as part of the preparatory rerun.<sup>10</sup>
- Whether the ISO should have included in its cost offset calculations updated cost filing data from Constellation Energy based on additional costs incurred by Constellation to maintain collateral with the PX.<sup>11</sup>
- Whether, for purposes of allocating cost recovery offsets, the ISO and California Power Exchange (“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.<sup>12</sup>

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<sup>10</sup> See Thirty-Third Status Report on Re-run Activity, Docket Nos. ER03-746-000, *et al.* (March 16, 2007); 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).

<sup>11</sup> See California Parties' Protest to Constellation Energy Commodities Group, Inc.'s Revised Cost Filing Submission to the California Independent System Operator Corporation, Docket Nos. EL00-95-000, *et al.* (November 27, 2006); Constellation Energy Commodities Group's Comments and Request for Rejection of California Parties' Impermissible Protest, Docket Nos. EL00-95-000, *et al.* (December 15, 2006).

<sup>12</sup> See California Parties' Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-95-000, *et al.* (December 17, 2007); Response of the California Independent System Operator Corporation to California Parties' Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-05-000, *et al.* (January 2, 2008).

- Whether the ISO properly included in its cost offset allocation calculations the entire cost recovery claim of Edison Mission Marketing and Trading.<sup>13</sup>
- Whether the ISO properly excluded from the fuel cost offset allocations fuel costs that exceeded a claimant's pre-mitigated amount, so as to ensure that the fuel cost allowance may not result in claimants receiving more than their pre-mitigated amount for each interval during the Refund Period, per the Commission's directive in Paragraph 55 of its May 12, 2004 "Order Addressing Fuel Cost Allowance Issues," 107 FERC ¶ 61,166 (2004).<sup>14</sup>
- Whether the ISO should treat the emissions cost allocation amounts attributed to sellers with approved cost recovery offset filings in the same manner as fuel cost allocation amounts, such that the allocated emissions cost amounts are included in those sellers' total cost recovery offsets.<sup>15</sup>

Issues Regarding Future ISO Calculations:

- Whether the ISO should remove from its emissions and fuel cost offset calculations offsets relating to non-jurisdictional entities, and if so, whether

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<sup>13</sup> See California Parties' Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-95-000, *et al.* (December 17, 2007); Answer of Edison Mission Marketing & Trading, Inc. to the California Parties' Motion, Docket Nos. EL00-95-000, *et al.* (January 2, 2008).

<sup>14</sup> See Thirty-Eighth Status Report on Re-run Activity, Docket Nos. ER03-746-000, *et al.* (September 7, 2007); 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).

<sup>15</sup> See Request for Clarification and, In the Alternative, Rehearing of Powerex Corp., filed in Docket Nos. EL00-95-000 and EL00-98-000, *et al.* (June 12, 2006).

it should perform this calculation prior to commencing the settlement adjustment phase.<sup>16</sup>

- How the ISO should determine the level of refunds associated with non-jurisdictional entities, that is, whether such amounts should be based on the overall net refund position of non-jurisdictional entities, or based on the components of the refunds themselves.<sup>17</sup>
- Whether mitigation should occur on sales in the ISO markets for which the PX acted as a Scheduling Coordinator on behalf of non-jurisdictional entities.<sup>18</sup>

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<sup>16</sup> See California Parties' Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-95-000, *et al.* (December 17, 2007); Response of the California Independent System Operator Corporation to California Parties' Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-05-000, *et al.* (January 2, 2008); Supplemental Response of the California Independent System Operator Corporation to California Parties' Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-05-000, *et al.* (January 14, 2008).

<sup>17</sup> See Thirty-Ninth Status Report on Re-run Activity, Docket Nos. ER03-746-000, *et al.* (November 13, 2007); California Parties' Second Request for Rehearing and Clarification of the Commission's October 19, 2007 Order On Remand, Docket Nos. EL00-95, *et al.* (November 19, 2007); Answer of the City of Santa Clara, California, the City of Redding, California and the Modesto Irrigation District in Opposition to the California Parties' Motion for Modification of Refund Procedures, Docket Nos. EL00-95, *et al.* (December 4, 2007); Answer of the Modesto Irrigation District, the City of Santa Clara, California and the Sacramento Municipal Utility District in Opposition to Motion of California Power Exchange Corporation of the October 19, 2007 Order on Remand, Docket Nos. EL00-95, *et al.* (December 4, 2007); Response on Behalf of The Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California to Motion for Clarification of the California Parties, Docket Nos. EL00-95, *et al.* (December 4, 2007); Motion for Leave to File Response and Response of the California Independent System Operator to Answers to California Parties' Motion for Clarification Regarding Issue of Calculating of Non-Jurisdictional Refund Obligations, Docket Nos. EL00-95, *et al.* (filed December 19, 2007).

<sup>18</sup> See California Power Exchange Corporation's Motion for Clarification of the October 19, 2007 Order on Remand, Docket Nos. EL00-95, *et al.* (November 19, 2007); Response of the California Independent System Operator to California Power Exchange's Motion for Clarification of the October 17, 2007 Order on Remand, Docket Nos. EL00-95, *et al.* (December 4, 2007); California Parties' Answer to the California Power Exchange's Motion for Clarification of the October 19, 2007 Order on Remand, Docket Nos. EL00-95, *et al.* (December 4, 2007); Answer of the Modesto Irrigation District, the City of Santa Clara, California and the Sacramento Municipal Utility District in Opposition to Motion of California Power Exchange Corporation of the October 19, 2007 Order on Remand, Docket Nos. EL00-95, *et al.* (December 4, 2007); Indicated Parties' Limited Answer to the California Power Exchange Corporation's Motion for Clarification of the October 19, 2007 Order on Remand and Motion for Accounting, Docket Nos. EL00-95, *et al.* (December 4, 2007); Answer of the City of Los Angeles Department of Water and Power to the

- Whether the Governmental Entities are exempt from the soft cap adjustment<sup>19</sup>;
- Which parties qualify as non-jurisdictional entities per the Commission's October 19 Order.

The ISO believes that now is the ideal time to resolve these issues, and that, therefore, the most sensible course is to await a Commission order on these issues before proceeding with the next phase of refund calculations, which will involve adjustments to implement *BPA v. FERC* and to reflect the impact of settlements entered into between parties to this proceeding. With respect to calculations already performed by the ISO, it makes sense to resolve issues relating to these calculations now, before the ISO moves on to the next phase of adjustments, because the upcoming adjustments will use as the already-completed calculations as their starting point. Thus, if it is necessary to make any changes to this data, it would be most efficient to make them now. Likewise, with respect to the methodology for performing future adjustments, it would be best to resolve any known issues now because it will be far easier and less time-consuming for the ISO to take into account the resolution of these issues going forward than it will be to make adjustments to the data later. Moreover, even if adjustments are necessary, they are likely to be smaller and therefore more likely

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California Power Exchange Corporation's Motion for Clarification of the October 19, 2007 Order on Remand, Docket Nos. EL00-95, *et al.* (December 4, 2007);

<sup>19</sup> See California Parties' Second Request for Rehearing and Clarification of the Commission's October 19, 2007 Order On Remand, Docket Nos. EL00-95, *et al.* (November 19, 2007); Answer of the City of Santa Clara, California, the City of Redding, California and the Modesto Irrigation District in Opposition to the California Parties' Motion for Modification of Refund Procedures, Docket Nos. EL00-95, *et al.* (December 4, 2007).

to be able to be addressed through small tweaks rather than comprehensive recalculations.

The ISO's concern with minimizing both the number and scope of adjustments to calculations already performed and those that will be performed in the future as part of this proceeding is driven, in large part, by the unusually tight constraints on resources that the ISO currently faces. The majority of the refund calculations involve a large amount of manual input and supervision by highly trained personnel. Most of these personnel are also heavily involved in ongoing efforts to prepare for and implement the ISO's new Market Redesign and Technology Upgrade ("MRTU") market structure. As a result, in order to minimize delays, it is necessary to ensure that the refund process is conducted in the most efficient manner possible. The ISO believes that the best way to achieve this goal is to obtain Commission rulings on the open issues now, so that any adjustments to the ISO's calculations that are necessary can be completed now, and that the ISO has the guidance it needs to be confident that it will be performing future calculations in the manner intended by the Commission.

## **B. IMPLEMENTATION OF BPA DECISION**

In its last two status reports, the ISO explained that once the Commission rules on the "open issues," the ISO intends to perform the necessary adjustments to remove refunds associated with non-jurisdictional entities and allocate that shortfall to net refund recipients, in accordance with the Commission's October 19 Order and a future Commission ruling on the universe of non-jurisdictional entities. In their comments on the fortieth status report, the California Parties

expressed concern that this approach may not be workable, and that depending on the circumstances of particular settlements, the adjustments for *BPA*<sup>20</sup> and the various settlements may instead need to be accomplished in the reverse order, or possibly together, in order to properly reflect the various global settlements. The California Parties suggested that this issue should be further discussed by the ISO, PX, and the parties affected by these calculations. In its response to the California Parties, the ISO agreed that given the complexity of these issues, and the importance of choosing the correct approach early on, that such discussions should be held, and committed to participating fully in such discussions. The ISO also agreed that data detailing these adjustments and providing assurances to both settling and non-settling parties that the adjustments have been implemented in a way that accurately reflects the settlements, while still protecting the rights of non-settling parties, should be provided.

The ISO has not changed its proposed methodology for allocating the shortfall associated with refunds that, pursuant to the *BPA* decision, will not be owed by non-public utility entities. The ISO explained this methodology in its thirty-ninth status report. After refunds and offsets are finally calculated, but before it makes adjustments to account for the approved global settlements, the ISO will issue a credit to each party that the Commission has determined to be a non-public utility. See *id.* at P 57. The credit will equal the amount of the refunds “that otherwise would have been paid” by that party. *Id.* at P 39. This shortfall of

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<sup>20</sup> *Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005).

refunds will be allocated to parties whose “final net refund position”<sup>21</sup> is positive – *i.e.*, the net refunds and offsets totaled between the ISO and PX markets results in a payment to the party. See *id.* at P 39 (suggesting that “refund recipients [should] share the burden of the shortfall in proportion to their exposure in the CAISO and PX spot markets”). This allocation will reduce the final net refund. *Id.*

In the 39th status report, the ISO also explained that it would not be appropriate to calculate the amount of the credit to a non-public utility based on the components of the refunds that would have been paid, rather than the refunds themselves. The ISO explained that proceeding in this manner would be inconsistent with the focus of the October 19 Order and the *BPA* decision on not requiring non-public utilities to “pay” refunds, would require a great deal of work simply to calculate refunds on the basis of sales only, exclusive of purchases, contrary to the October 19 Order, would be inconsistent with the Commission’s approach to allocating the interest shortfall, and finally, could result in an imbalance in the PX market (and a resulting payment shortfall to all parties) that obviously is not contemplated by the October 19 Order.

Subsequent to the filing of the ISO’s last status report, several parties filed pleadings with the Commission regarding the appropriate basis for determining

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<sup>21</sup> The ISO acknowledges that the result of this reading will be that the words “net refunds” will have a slightly different meaning for purposes of the October 19 Order in reference to “implement[ing the] simplified financial clearing,” October 19 Order at P 39, than they do for purposes of the Commission’s Order of May 12, 2006 in reference to “allocat[ing] the cost offset to those buyers who are compensated by the MMCP refund methodology through receiving refunds.” 115 FERC ¶¶ 61,171, ¶ 28. In the context of this order, the words “net refunds” encompass offsets, where they do not in the context of the latter order. The ISO believes that this difference reflects the fact that “net refunds” is not a term of art that has the same meaning regardless of context, but merely a description of the different calculations and goals in the two orders.

the level of refunds associated with non-public utility entities. In response to those pleadings, the ISO clarified that its netting approach was not limited to netting within settlement intervals, but would involve netting at a higher, financial level.<sup>22</sup> The ISO reiterated that this approach was the most consistent with the October 19 Order, and that restricting netting to within intervals, as advocated by several parties, would involve an unreasonable amount of time and resources for the ISO to undertake.<sup>23</sup>

### **C. ADJUSTMENTS TO IMPLEMENT SETTLEMENTS**

Although, as indicated above, it is not presently clear whether it will occur prior to, after, or during the *BPA* adjustment process, the ISO will also need to work with the parties to the various global settlements to make appropriate adjustments to the ISO's data in order to properly reflect those settlements. The ISO will provide more details regarding these adjustments, including the schedule for performing these adjustments and party review periods, in subsequent status reports. After completing all of these calculations, the ISO will make a compliance filing with the Commission that presents the final financial position of each party that participated in its markets during the Refund Period.<sup>24</sup>

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<sup>22</sup> See *Motion for Leave to File Response and Response of the California Independent System Operator to Answers to California Parties' Motion for Clarification Regarding Issue of Calculating of Non-Jurisdictional Refund Obligations*, Docket Nos. EL00-95, *et al.* (filed December 19, 2007).

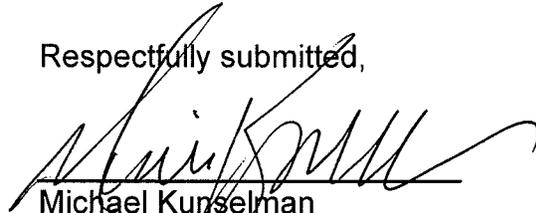
<sup>23</sup> Because several parties have challenged the ISO's approach, the ISO included this issue in the list of open issues that the Commission will need to rule on.

<sup>24</sup> One issue that the ISO is currently considering involves the possible combination of the ISO and PX markets for purposes of the settlement adjustments, *BPA* adjustments, and compliance filing. The ISO intends to discuss this issue with the parties and based on these discussions, will include further information regarding this issue in future status reports.

**IV. CONCLUSION**

The ISO respectfully requests that the Commission accept the ISO's forty-second refund status report about rerun activity in this docket.

Respectfully submitted,



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Dated: September 3, 2008

## ATTACHMENT A

**TABLE OF MAJOR REFUND CALCULATIONS DISTRIBUTED BY ISO AND  
ASSOCIATED REVIEW PERIODS**  
(September 2008)

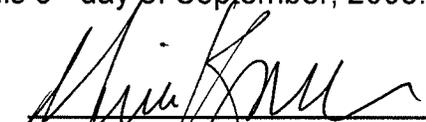
<b>Item</b>	<b>Date Issued</b>	<b>Review Period/Comments Due Date</b>
Preparatory Settlement Rerun Calculations	Published by the ISO on a rolling basis between December 15, 2003 to July 16, 2004	Disputes accepted on a rolling basis between February 17, 2004 to September 11, 2004
Refund Settlement Rerun Calculations	Published by the ISO on a rolling basis between October 25, 2005 to February 17, 2006	Several due dates for disputes, the first being March 2, 2005, the last being March 1, 2006
Preliminary Mitigated Market Clearing Prices	May 28, 2004	No explicit comment period specified
Final Mitigated Market Clearing Prices	July 8, 2004	No explicit comment period specified
List of Transactions Exempt from Mitigation	November 4, 2004	No explicit comment period specified
Fuel Cost Allocation Percentages	December 22, 2005	4 Weeks
Revised Fuel Cost Allocation Percentages	June 1, 2006	June 8, 2006
Second Revised Fuel Cost Allocation Percentages	February 12, 2007	February 26, 2007
Third Revised Fuel Cost Allocation Percentages	March 29, 2007	April 12, 2007
Emissions Allocation Percentages	April 25, 2006	May 23, 2006
Final Approved Emissions Claim Amounts	September 21, 2006	No explicit comment period, as the ISO did not receive any objections to its previous emissions distribution

Cost Recovery Allocation Data	April 10, 2007	May 1, 2007
Reversal of Interest Charged During Refund Period	January 12, 2006	No explicit comment period specified
Interest on Unpaid Invoices	May 1, 2006	No explicit comment period specified
Revised Interest on Unpaid Invoices	September 29, 2006	October 27, 2006
Second Revised Interest on Unpaid Invoices	February 27, 2007	March 15, 2007
Interest on Preparatory Rerun Adjustments Relating to Refund Period Transactions	March 29, 2007	April 19, 2007
Revised Cost Allocation Data	May 22, 2007	June 12, 2007
Fourth Revised Fuel Cost Allocation Percentages	May 22, 2007	June 12, 2007
Fifth Revised Fuel Cost Allocation Percentages	July 16, 2007	August 8, 2007
Interest on Refunds	March 21, 2008	April 18, 2008
Third Revised Interest on Unpaid Invoices and Second Revised Interest on Refunds	June 12, 2008	June 27, 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 3<sup>rd</sup> day of September, 2008.

  
Michael Kunselman  
(202) 756-3395