

**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.)	

**REPORT OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR,
CALIFORNIA POWER EXCHANGE, AND CALIFORNIA PARTIES
CONCERNING SETTLEMENT OVERLAY PROCESS AND OUTSTANDING
DISPUTED ISSUES**

Pursuant to the July 10, 2018 Order¹ of the Federal Energy Regulatory Commission (“FERC” or “Commission”), the California Independent System Operator Corporation (“ISO”), the California Power Exchange Corporation (“PX”), and the California Parties² submit the following report on the status of the California Parties’ settlement overlay process and on outstanding disputed issues.³

¹ *San Diego Gas and Elec. Co.*, 164 FERC ¶ 61,019 (2018) (“July 10, 2018 Order”).

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 The July 10, 2018 Order required a report in 90 days concerning the settlement overlay and concerning various issues that had been raised in litigation concerning the ISO and PX Compliance Filings. July 10, 2018 Order at P 39.

The settlement overlay is not complete. The California Parties intend for it to be ready to file by April 2019, and propose that the Commission establish a new date of April 1, 2019, by which time the settlement overlay should be filed or a new report submitted. Below we further discuss the ongoing process, as well as the outstanding issues addressed in the July 10, 2018 Order.

I. CALIFORNIA PARTIES’⁴ REPORT ON SETTLEMENT OVERLAY

A. PURPOSE OF SETTLEMENT OVERLAY PROCESS

The California Parties have entered into over 60 settlements with suppliers and other market participants.⁵ As they have previously described, the reason for the settlement overlay process is that the amounts recorded on the ISO and PX books do not reflect all the compromises reached in those settlements, so there is a need to revise the ISO and PX accounts to match the agreements reached in settlement. The settlement overlay process will adjust those accounts accordingly.

Additionally, the ISO and PX calculated refunds owed and owing, by or to each market participant, with respect to the overall market based on the MMCP methodology, without regard to any settlements. Because the California Parties have settled with virtually all of the sellers, virtually all of the refund amounts owed and owing throughout the markets need to be adjusted so that they are consistent with the settlements.

Adjustment of refunds will be done in the settlement overlay process.

⁴ The ISO and PX take no position regarding this section, including about the description of settlement agreements, the overlays, and the process for preparing the overlays, and reserve all rights regarding these issues.

⁵ The only Refund Period net sellers in the ISO/PX markets with which the California Parties have not settled are Hafslund Energy Trading L.L.C., Sierra Pacific Industries, and El Paso Electric Co.

To clear the markets, it also will be necessary to calculate and apply interest. For the interest calculations to proceed correctly, the settlement-related adjustments described above first have to be made. It will then be necessary to compute and allocate the “interest shortfall,” which reflects the fact that funds (hundreds of millions of dollars) have been held in escrow at the PX for many years, earning far less than the FERC interest rate, thus creating a shortfall. Calculation and allocation of the interest shortfall will be done by the ISO and PX for non-settled parties and by the California Parties in the settlement overlay process for settled parties, as further described in the discussion of Issue Eleven below.

These calculations will affect all market participants, although many market participants, through their settlements, transferred their market positions to the California Parties, and will therefore be indifferent to the results.

B. NEXT STEPS AND TIMELINE

To narrow or eliminate disputes, the California Parties will share calculations and adjustments with impacted participants before filing the settlement overlay, and will stand ready to explain and discuss them. If there are any disagreements, the California Parties will strive to resolve them prior to filing at the Commission.

To facilitate those discussions, the California Parties on September 6, 2018, served on all participants a notice describing the status of the process, the expected timeline, and requesting up-to-date contact information to be sure that participants could be provided with information for review. A copy of that notice is attached to this report as Exhibit A.

As explained in the notice sent to the participants, the California Parties currently anticipate the timetable for the settlement overlay process to be as follows:

Share Calculations/Results with Impacted Participants:	December 2018
Answer Questions/Resolve Issues:	December 2018–February 2019
Prepare FERC Filing:	March 2019
File at FERC:	April 2019
Finalize Calculations/ISO and PX Flow Cash ⁶ :	After FERC Ruling(s)

II. STATUS OF OUTSTANDING ISO/PX COMPLIANCE FILING ISSUES

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.

Joint Statement of the ISO and California Parties

This issue has been resolved based on an understanding that the ISO will supply appropriate fuel and emissions offsets for the three applicable municipal sellers and the California Parties will integrate them into the settlement overlay. Therefore, there is no need for further Commission action on this issue.

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

Joint Statement of the ISO/PX and California Parties

This issue involves the appropriate allocation of interest shortfalls, and has been resolved as described below, and thus does not require further Commission action at this time.

⁶ Final calculations may require some participants to make payments to the ISO/PX.

Interest shortfalls arise because of the mismatch between the higher FERC-mandated interest rate that the PX is obligated to pay and the actual, lower rate that the PX has actually earned on the amounts it has retained. The Commission instructed the PX to allocate this shortfall equally between buyers and sellers in its market based on each participant's net interest position.⁷ Specifically, the Commission directed the PX to file a proposed methodology for allocating the PX interest shortfall in the PX Settlement Clearing Account among its participants.⁸

The PX submitted four potential methodologies, and the Commission adopted "Method D," which provided for a pooled allocation based upon participants' final net interest positions. Method D provides for a share fraction to be derived based upon the absolute value of each PX participant's interest for its final balances in the PX markets for the Refund Period in relation to the total amount of the interest shortfall.⁹ On rehearing, the Commission affirmed its adoption of Method D.¹⁰

Because the PX was a participant in the ISO market and is a debtor in that market, a large part of the PX's interest shortfall allocation will be allocated to the ISO market under the PX methodology. The ISO proposed to allocate this amount pro rata among participants. The Commission accepted this proposal in its November 23, 2004 order in

⁷ *San Diego Gas & Elec. Co.*, 107 FERC ¶ 61,165 (2004) ("May 12 Order") at P 34.

⁸ *San Diego Gas & Elec. Co.*, 109 FERC ¶ 61,218 (2004), Ordering Paragraph D.

⁹ See, *California Power Exchange Corporation's Submission on Interests Allocation Methodology Pursuant to the Commissions November 23, 2004 Order*, submitted December 8, 2004; *San Diego Gas & Elec. Co.*, 110 FERC ¶ 61,336 (2005) at P 56.

¹⁰ *San Diego Gas & Elec. Co.*, 112 FERC ¶ 61,226 (2005).

this proceeding.¹¹ Based on these and other Commission orders in this proceeding, the ISO indicated in its refund compliance filing that it plans to calculate and allocate the PX interest shortfalls to its own market participants based on their net interest positions in the ISO market, rather than calculating a single shortfall allocation based on participants' combined ISO and PX balances.

As noted above, the California Parties have settled with more than 60 sellers, and those settlements, in virtually every instance, established refunds for the ISO/PX in total, without specifying which refunds were associated with the ISO and which were associated with the PX. Thus, for settled parties, there is no separate identification of which interest amounts are associated with the ISO and which are associated with the PX. There are a very few parties who have not opted into or joined in any settlement with the California Parties. As to those non-settled parties, the ISO and PX will do the shortfall allocations¹² using the Commission methodologies. As part of the settlement overlay process, the California Parties will allocate among the remaining settled parties, including APX, the portion of the shortfall that is left after allocation to those non-settling parties. The California Parties intend to apply the Commission-approved Method D for shortfall allocation, but using combined ISO/PX numbers, making the numbers consistent with the

¹¹ *San Diego Gas & Elec. Co.*, 109 FERC ¶ 61,218 at P 80 (2004) ("November 23 Order") at P 39.

¹² These allocations will also include the separate, additional shortfall in the ISO market, as described in the ISO's May 4, 2016 compliance filing in this docket, at pp. 39-40. The ISO shortfall must be allocated in the same way as the PX interest shortfall because the two are intertwined: the ISO shortfall contributes to and is a part of the PX interest shortfall.

settlements that establish interest on a combined ISO/PX basis.¹³ The California Parties will coordinate with the ISO and PX and share the results of their allocations in the overlay review process described above, in an effort to avoid or resolve any disputes prior to filing at the Commission for approval.

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

and

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

California Parties' Statement

In many California Parties settlements with sellers, Summer Period principal and interest amounts were settled and paid from ISO or PX funds. In determining interest shortfalls for settled parties, the California Parties intend to factor in such principal and interest flows from settlements to date, in a manner consistent with the settlements. Thus, in that respect, Summer Period refunds from settlements to date will be reflected in the final clearing. As described above under Issue Eleven, the ISO and PX will be performing interest shortfall allocations for non-settled parties. In performing the allocation for those non-settling parties, the ISO and PX will use the Commission methodologies as described above.

¹³ The ISO and PX take no position regarding the settled-party allocation methodology that will be employed by the California Parties, and reserve all rights regarding that issue.

Summer Period liabilities for non-settled parties, and any remaining Summer Period payment risks, will not be factored into the ISO/PX clearing and calculations. There is only one party with remaining Summer Period liabilities and payment risk – Hafslund – because the Commission has resolved the Summer Period liability for all non-settled parties, and the only remaining non-settled party with Summer Period liability is Hafslund.¹⁴ Neither the California Parties nor any other party has appealed or sought rehearing of that determination – and thus that determination is final. Additionally, there is no remaining Summer Period payment risk for settled parties – parties who settled Summer Period claims with the California Parties have satisfied those amounts owed for the Summer Period.¹⁵

We note that the Hafslund Summer Period amounts remain unpaid. As described in the California Parties' July 12, 2018 Report¹⁶ in this proceeding, Hafslund has not paid its Summer Period liability, computed to be more than \$93 million as of July 5, 2018.¹⁷ The California Parties requested in the July 12, 2018 Report that the Commission commence enforcement proceedings against Hafslund and the entity Hafslund E-CO AS that Hafslund recently merged into. We renew that request that the Commission initiate enforcement proceedings in the district court – as injured buyers in the California markets

¹⁴ *San Diego Gas & Elec. Co.*, 163 FERC ¶ 61,080 at P 58 (2018) (“May 3, 2018 Order”).

¹⁵ Some of those settlements include assignment to the California Parties of refund rights and other amounts owed to those settled sellers in the California ISO/PX markets, but they do not impose new unfunded liabilities on the markets.

¹⁶ California Parties' Report Regarding Establishment of PX Escrow Account Required Pursuant to the Commission's May 3, 2018 Order and Request for Further Action, Docket No. EL00-95, submitted July 12, 2018.

¹⁷ See July 12, 2018 Report at p. 4. Interest continues to accrue on the liability at the FERC rate specified in 18 C.F.R. § 35.19a.

deserve this compensation. The amounts remain owing, but need not impact the resolution of the remainder of the ISO/PX market for the Refund Period.

ISO/PX Statement

This issue is resolved by the agreement on Issue Eleven, described above, and the California Parties' commitment not to include Hafslund Summer Period amounts in the Refund Period clearing. Provided that the Hafslund summer period liability is not included in the clearing of the PX, and thus the presumed Hafslund financial default is not allocated to other parties, the ISO and PX have no objection to the California Parties' proposal.

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

The ISO and California Parties agree that this issue need not be resolved in order to complete the overlays. They will continue to work toward resolution and are optimistic that an agreement can be reached.

III. CONCLUSION

For the foregoing reasons, the ISO, PX, and the California Parties respectfully request that the Commission accept this report, and ask that the Commission establish a new due date of April 1, 2019, by which time the settlement overlay should be filed or a further report should be submitted.

Respectfully submitted,

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Xavier Becerra, Attorney General*

October 9, 2018

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 and on Ms Celine Setsaas, Head of Legal for Hafslund E-CO AS.

Dated at Washington, D.C. this 9th day of October, 2018.

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Exhibit A

**Notice Concerning ISO/PX
Settlement Overlay Process And
Request For Updated Contact
Information (dated Sept. 6, 2018)**

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

San Diego Gas & Electric Company)	
)	
v.)	Docket Nos. EL00-95-000
)	EL00-98-000
Sellers of Energy and Ancillary Services into)	
Markets Operated by the California)	
Independent System Operator Corporation and)	
the California Power Exchange Corporation)	

**NOTICE CONCERNING ISO/PX SETTLEMENT OVERLAY PROCESS
AND REQUEST FOR UPDATED CONTACT INFORMATION**

To: All Participants

INTRODUCTION

1. In its July 10, 2018 Order in these proceedings, the Federal Energy Regulatory Commission (“Commission”) accepted, subject to further orders, the California Independent System Operator Corporation (“ISO”) and California Power Exchange Corporation (“PX”) Refund Rerun Compliance Filings, which calculated the refunds owed by all participants in the ISO and PX markets for the October 2, 2000 through June 20, 2001 Refund Period.¹ As discussed in the July 10, 2018 Order, for cash to flow and the Refund Period ISO/PX markets to be finally resolved, the next step in

¹ *San Diego Gas and Elec. Co.*, 164 FERC ¶ 61,019 (2018) (“July 10, 2018 Order”).

these proceedings is the “settlement overlay process.”² The California Parties³ are posting this notice to advise participants about the settlement overlay process, and to request updated contact information, as discussed below.

PURPOSE OF SETTLEMENT OVERLAY PROCESS

2. The California Parties have entered into over 60 settlements with suppliers and other market participants.⁴ The reason for the settlement overlay process is that the amounts recorded on the ISO and PX books do not reflect all the compromises reached in those settlements, so there is a need to revise the ISO and PX accounts to match the agreements reached in settlement. The settlement overlay process will adjust those accounts accordingly.

3. Additionally, the ISO and PX calculated refunds owed and owing, by or to each market participant, with respect to the overall market based on the Mitigated Market Clearing Price (“MMCP”) methodology, without regard to any settlements. Because the California Parties have settled with virtually all of the sellers, virtually all of the refund amounts owed and owing need to be adjusted so that they are consistent with the settlements. Adjustment of refunds will be done in the settlement overlay process.

² *Id.* at PP 16-17; 39.

³ The “California Parties” are, collectively, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, the People of the State of California *ex rel.* Xavier Becerra, Attorney General, and the Public Utilities Commission of the State of California.

⁴ The only Refund Period net sellers in the ISO/PX markets with which the California Parties have not settled are Hafslund Energy Trading L.L.C., Sierra Pacific Industries, and El Paso Electric Company (settled only with certain California Parties).

4. To clear the markets, it also will be necessary to calculate and apply interest. For the interest calculations to proceed correctly, the settlement-related adjustments described above first have to be made. It will then be necessary to compute and allocate the “interest shortfall,” which reflects the fact that funds (hundreds of millions of dollars) have been held in escrow at the PX for many years, earning far less than the FERC interest rate, thus creating a shortfall. Calculation and allocation of the interest shortfall will be done in the settlement overlay process.

PARTICIPANTS IMPACTED BY THE SETTLEMENT OVERLAY PROCESS

5. The settlement overlay calculations, including the interest calculations, will impact the accounts of all market participants. Because many of those participants have settled with the California Parties and, in so doing, transferred true-up responsibility to the California Parties, they will be indifferent to the settlement overlay results.

6. Some participants have not settled, and some participants have retained true-up responsibilities under their settlements. Those market participants will be directly impacted by the settlement overlay calculations.

NEXT STEPS AND TIMELINE

7. As noted in the July 10, 2018 Order, the California Parties intend to file the settlement overlay results with the Commission for approval.⁵ To narrow or eliminate disputes, the California Parties plan to share relevant calculations and adjustments with impacted participants before filing the settlement overlay, and will stand ready to explain

⁵ July 10, 2018 Order at P 17.

and discuss them. We hope that impacted participants will agree, on review, that the calculations are correct. If there are any disagreements, the California Parties will strive to resolve them prior to filing.

8. Because the ISO and PX accounts are complex, and because each settlement is different, the settlement overlay calculations are necessarily complex. The Commission has required the California Parties, the ISO, and the PX, within 90 days of the July 10, 2018 Order, to either submit the settlement overlay filing or to inform the Commission that they require more time to complete it.⁶ We do not expect the settlement overlay process to be completed by that date and thus will provide the Commission with a status report at that time.

9. The California Parties currently anticipate the timetable for the settlement overlay process to be as follows:

Share Calculations/Results with Impacted Participants:	December 2018
Answer Questions/Resolve Issues:	December 2018–February 2019
Prepare FERC Filing:	March 2019
File at FERC:	April 2019 ⁷
Finalize Calculations/ISO and PX Flow Cash ⁸ :	After FERC Ruling(s)

10. Once the ISO and PX have flowed the cash, some additional settlement-related tasks will remain. These include various true-ups among certain participants, and distributions from designated escrow accounts that are outside of the ISO/PX. The

⁶ *Id.* at P 39.

⁷ The California Parties will provide an update if any of these expected dates significantly change.

⁸ Final calculations may require some participants to make payments to the ISO/PX.

California Parties will calculate any such outside-of-the-market true-ups and share them with relevant participants, but have not yet begun those calculations or determined a timeline for them.

UPDATED CONTACT INFORMATION NEEDED

11. The California Parties' settlements with market participants provide, generally in the Cover Sheet or in Section 11.2, information for two or more individuals who are to be contacted in connection with settlement-related issues. Please review the individuals listed in any settlement in which you represent a Settling Supplier and, **by no later than September 30, 2018**, either confirm that all such information is correct, or provide updated information by email to Jane Ryan at Steptoe & Johnson LLP: jryan@steptoe.com. Also, please be sure that the current contacts are included on the Docket No. EL00-95 ListServ.⁹

⁹ Persons representing non-settled suppliers are requested to provide to Jane Ryan complete contact information for the individual(s) who will interface with the California Parties on outstanding issues.

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September 6, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served an electronic copy of the foregoing document upon each person designated on the ListServes established in Docket Nos. EL00-95, EL01-10, EL02-71, EL03-137, and EL03-180. I have emailed a copy of the foregoing to Ms. Celine Setsaas, Head of Legal for E-CO Energi AS.

Dated at Washington, D.C. this 6th of September, 2018.

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