UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**Docket No.**	**ER03-746-000**
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)	

ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO THE MOTION OF POWEREX CORP
FOR EXPEDITED CLARIFICATION

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 385.213, the California Independent System Operator Corporation ("ISO")[1] respectfully submits this answer to the motion of Powerex Corp. ("Powerex") dated March 4, 2005. The Powerex motion was filed in response to the

[1] Capitalized terms not otherwise defined herein shall have the meanings set forth in the Master Definitions Supplement, Appendix A, to the ISO Tariff.

Thirteenth Status Report of the ISO on Settlement and Re-run Activity, filed with the Commission on February 10, 2005 (" Status Report").

I. SUMMARY

In its March 4, 2004 Motion for Expedited Clarification, Powerex, in the guise of a response to the ISO's Thirteenth Status Report on Settlement Rerun Activity, attempts to re-open an issue already considered and decided by the Commission in this proceeding. Namely, Powerex argues that the ISO should be required to deviate from its normal practice of pricing and settling imports and construct a special average hourly historical price for import transactions against which the ISO will apply the price mitigation directed by the Commission in this proceeding. This is precisely the same argument raised by Powerex at numerous earlier stages in this proceeding, and rejected by the Commission in its October 16, 2003 Order on Rehearing. Thus, Powerex's attempt to re-introduce this argument at this stage of the proceeding should be rejected as grossly out of time and as an unwarranted collateral attack on the Commission's October 16, 2003 Order.[2]

Even if the Commission permits Powerex to re-litigate this issue, the Commission should nevertheless deny Powerex's motion, because Powerex presents no compelling substantive reason why imports should be accorded special treatment in the refund process. Moreover, adopting Powerex's proposed methodology would introduce additional delay into the process of calculating and distributing refunds.

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[2] *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv's*, 105 FERC ¶ 61,066 (2003) ("October 16 Order").

II. ANSWER

A. Powerex's Motion is Grossly Out-of-Time and Constitutes an Impermissible Collateral Attack on the Commission's October 16 Order, and Should Therefore be Rejected

Powerex is, in effect, asking the Commission for the second time to require that, for purposes of calculating refunds on sales of imported energy received over interties, the ISO modify the basis upon which it normally pays imported instructed and uninstructed energy as a part of its settlement process. Specifically, rather than basing refund calculations on the actual 10-minute Market Clearing Prices ("MCPs") paid for imports of instructed and uninstructed energy, Powerex seeks to have the ISO construct a "special" average hourly transaction price (which presumably includes both instructed and uninstructed energy sales), and then base refunds for imports on this specially calculated price and quantity. The ISO urges the Commission to reject Powerex's request for the following reasons:

First, Powerex's request constitutes an inappropriate collateral attack on the Commission's October 16 Order. As Powerex makes clear in its motion, it has raised this argument at numerous stages in this proceeding. Powerex at 4-6. As noted in Powerex's motion, Judge Birchman's proposed findings of fact found only that the ISO should calculate refunds for imports using hourly average Mitigated Market Clearing Prices ("MMCPs").[3] Powerex at 6. In response to the Commission's March 26, 2003, Order adopting Judge Birchman's finding on this

[3] See Certification of Proposed Findings on California Refund Liability, Docket No. EL00-95-045 et al., ¶ 537 Issued (2002).

issue, Powerex (as part of the Competitive Supplier Group, or "CSG") requested that the ISO be required to apply hourly MMCPs to an hourly average of historical 10-minute ISO prices for imports. Powerex, however, mischaracterizes the Commission's October 16 Order by suggesting that the Commission "did not address the specific issue of using historical average hourly prices." This is patently false. The Commission, in fact, specifically and individually addressed CSG's request for clarification that "the hourly average MMCP will be used to mitigate the hourly average price of imported energy and not each ten-minute price of that energy during the hour." October 16 Order at P 53. The Commission responded that "there was no basis to treat Energy Imports differently from other types of energy," because, "beyond pre-dispatching an accepted Energy Import bid for each interval in the pertinent hour, the Energy Import receives no special treatment." *Id*. at P 54. Thus, the Commission concluded that "[*n]o further clarification is needed and [CSG's] alternate request for rehearing is denied*." *Id*. (emphasis added).

Powerex's rendition of history is also misleading insofar as it suggests that the ISO's intention to mitigate imports by applying hourly MMCPs to historical 10-minute prices is a recent innovation. In fact, the ISO has consistently taken the position that it should not be required to treat imports differently by constructing an artificial average hourly historical price to use in mitigating these transactions.[4] Given the Commission's explicit rejection of this proposal in the October 16 Order, it should have come as no surprise to Powerex that the ISO planned to

[4] *See, e.g.,* Reply Comments of the California Independent System Operator Corporation on Proposed Findings of Fact, Docket Nos. EL00-95-045, et al. (Feb. 3, 2003) at 71.

mitigate imports in this manner. In fact, a decision by the ISO to do otherwise would have been in direct violation of the Commission's orders.

Thus, Powerex's suggestion that this issue is one of recent vintage is simply wrong, and Powerex has provided no compelling reason why, after the passage of almost a year and a half since the Commission's October 16 Order, it should be permitted to re-open this issue. Powerex's contention that its motion should be accepted and considered pursuant to the Commission's directive in the October 16 Order that the ISO "advise the Commission immediately" of any outstanding issues is patently absurd. October 16 Order at P 21. This issue can hardly be called "outstanding," having been raised and considered at various stages of this proceeding, and finally and explicitly rejected by the Commission in the October 16 Order. Accepting this type of spurious reasoning would spell disaster to the Commission's (and the ISO's) attempt to conclude this proceeding and see that refunds finally reach their intended beneficiaries – the California consumers, because under Powerex's rationale, any action taken by the ISO in accordance with the Commission's orders in this proceeding would be subject to re-litigation by parties unsatisfied with the Commission's original findings.

For all of these reasons, the Commission should reject Powerex's motion as an impermissible collateral attack on the October 16 Order.

B. Powerex's Underlying Reasoning for Mitigating Imports Using Special Historical Average Hourly Price is Unconvincing

Even if the Commission is persuaded to once again re-consider this issue, it should reject Powerex's motion because Powerex presents no convincing rationale for affording import transactions special treatment in the refund process.

Although Powerex contends that they are not requesting special treatment for imports, Powerex is demonstrably doing just that. Under the Commission's methodology, refunds for all types of energy and ancillary service capacity are calculated based on the actual transaction price and quantity for that energy or capacity in the PX and ISO markets, as reflected in actual settlement records. However, Powerex's proposal would have the ISO deviate from its normal settlement process for imports and calculate a special average hourly transaction price and quantity for imports, and to then use this specially calculated price as the basis for determining refunds. The fact that Powerex's proposal represents a deviation from the ISO's normal settlement procedures and the way in which refunds are calculated for all types of energy is clearly revealed in the affidavit of Kevin Wellenious, who explains that Powerex's proposed approach is based on "implying" an average hourly price from actual transaction prices and quantities Wellenious Affidavit at 3. Moreover, as explained in Powerex's motion, Powerex's proposed approach would require that the ISO combine energy that is settled as entirely different energy types (instructed and uninstructed energy) into a single "implied" hourly price and quantity Powerex at 10.[5] Thus, Powerex's entire approach is premised on the "special treatment" of imports, because it relies on the calculation of "implied" prices for imports, rather than actual transaction prices used to calculate refunds for all other types of energy and capacity.

[5] In addition to being inconsistent with actual settlement procedures, the combination of instructed and uninstructed energy in calculating a single average hourly price would result in an inaccurate calculation of actual revenues received, since uninstructed energy is actually settled on a portfolio level for each Schedule Coordinator. This is explained in more detail below.

Powerex also contends that calculating refunds based on actual 10-minute transactional quantities and prices used to settle imports is unfair since this "subject(s) [them] to market conditions that did not exist at the time of their sales" Powerex at 11. However, market rules in effect at the time these imports were offered by Powerex and other sellers clearly provided that sales of imports would be paid based on 10-minute MCPs, and market conditions at the time of these sales frequently caused 10-minute MCPs to vary within each hour. As indicated in Powerex's own motion, the 10-minute MCPs used to settle import transactions varied within each hour "depending on prevailing market conditions" Powerex at 10. Thus, the 10-minute prices which Powerex now objects to using in refund calculations are in fact consistent with the market rules and conditions in effect at the time of these sales, while the "implied" hourly average prices Powerex proposes to use in place of these actual historical transaction prices are, in effect, and invention created by Powerex to minimize its refund obligations.

Powerex maintains that imports should be mitigated by applying hourly MMCPs to "implied" average hourly prices and quantities, since other markets being mitigated in this proceeding in which hourly MMCPs are used (the PX energy and ISO ancillary service markets) involve hourly transaction prices. Powerex at 4. Again, this argument ignores the fact that hourly transaction prices and quantities in these other markets represent the actual historical transaction prices in these markets, rather than "implied" hourly prices that were calculated solely for use in determining refund obligations.

Powerex also argues that the ISO should also be required to include uninstructed energy associated with imports along with instructed energy in calculating an implied average hourly price for use in refund calculations. Powerex at 13. In addition to being inconsistent with the ISO's actual settlement processes, combining instructed energy imports with any uninstructed energy associated with an import into a single "implied" average hourly price would result in an inaccurate calculation of actual revenues received for such energy. This results from the fact that uninstructed energy is actually settled on a portfolio level for each Scheduling Coordinator ("SC"), rather than on a resource-by-resource level. For example, if an SC has some positive uninstructed energy associated with an import schedule during one interval, but has a net negative deviation for its overall portfolio for that interval, the SC would incur charges for its net negative deviation that interval, and there would be no actual sales transaction price even indirectly associated with any uninstructed energy provided by the SC during that interval. Powerex's filing does not address how they propose to resolve this fundamental flaw in their proposal. This is a problem that does not exist under the import mitigation procedures employed by the ISO, and approved by the Commission, because those procedures are based on the manner in which the ISO actually settled import transactions during the Refund Period.

Finally, Powerex contends that adopting their proposal would not require any delay in the final phase of the refund process, and would have a significant financial impact on overall results. In fact, the opposite is true. The ISO believes

that any attempt to implement the general approach suggested by Powerex would involve significant additional resources, time and expense by the ISO, and could create further disputes, delays and expense as the ISO attempted to work out the details of such an approach. The ISO believes that the impact of such changes are not justified given the expenditures and potential delays involved, and that Powerex's proposal would simply add an unwarranted level of additional complexity in an already complex process. In fact, it appears to the ISO that Powerex's proposal, if adopted, would probably reduce Powerex's total refund liability by less than 1 percent.

III. CONCLUSION

For the foregoing reasons, the ISO respectfully urges the Commission to reject, as an improper collateral attack on the Commission's October 16 Order, Powerex's motion to re-open the issue of mitigation of import transactions. In the alternative, the ISO requests that the Commission deny Powerex's request because Powerex has provided no convincing rationale for the creation of a "special" methodology to calculate refunds relating to sales of instructed and uninstructed import energy during the Refund Period.

Respectfully submitted,

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March 21, 2005

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BY ELECTRONIC TRANSMISSION

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

Re: ***California Independent System Operator Corporation***
Docket No. ER03-746-000

San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and California Power Exchange
Docket No. EL00-95, et al.

Investigation of Practices of the California Independent System Operator and California Power Exchange
Docket No. EL00-98, et al.

Dear Secretary Salas:

Enclosed for electronic filing please find an Answer of the California Independent System Operator Corporation to Powerex Corp's Motion for Expedited Clarification in the above-referenced dockets.

Thank you for your assistance in this matter.

Very truly yours,

/s/ Gene L. Waas
Gene L. Waas

Counsel for the California Independent System Operator Corporation

Enclosures

cc: All parties of record

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served copies of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA, this 21st day of March, 2005.

/s/ Gene L. Waas
Gene L. Waas