UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company, Complainant,	)	
	)	**Docket No. EL00-95-045**
v.	)	
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents	)	
Investigation of Practices of the California Independent System Operator and the California Power Exchange	)	**Docket No. EL00-98-042**

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO MOTIONS FOR CLARIFICATION/REQUESTS FOR REHEARING OF MARCH 26 ORDER

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2001), The California Independent System Operator Corporation ("ISO") hereby submits its Answer to requests for rehearing and or clarification of the Commission's March 26 order[1] filed by the California Generators ("Generators") and Williams Energy Marketing and Trading ("Williams") in this proceeding on April 25, 2003. [2]

[1] San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al., 102 FERC ¶ 61,317 (2003) ("March 26 Order").

[2] The Generators style their request as a "Request for Rehearing and Clarification." Williams styles its pleading as a "Request for Clarification or, in the Alternative, Rehearing," without differentiating between their request for clarification and their request for rehearing. Regardless of the extent to which either the

I. ANSWER

A. The ISO Plans to Assess Interest on Refunds Based on Payment Dates Rather than Transaction Dates

In its Request for Rehearing and/or Clarification of the Commission's March 26 Order, filed on April 25, 2003, the ISO asked the Commission to clarify that the ISO's methodology for assessing interest on refunds and amounts past due, as set forth therein, was consistent with the Commission's orders in this proceeding. As part of its methodology, the ISO explained that it planned to assess interest on refunds commencing on the date that the original transactions subject to refund were entered into until the date on which the ISO issues the refund rerun invoices. This statement was not entirely accurate. Therefore, the ISO now clarifies that it intends to calculate interest on refunds commencing on the Payment Date[3] for the invoice on which the transactions subject to refund originally appeared. This interest will continue to run up until the date on which payment is due on refund rerun invoices. For example, if the

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Generators or Williams' request is considered a request for rehearing, the Commission should accept this Answer. Although the Commission's rules normally prohibit answers to requests for rehearing, there is no prohibition on answers to motions or requests for clarification. *Compare* Rule 213 (a)(2), 18 C.F.R. § 385.213(a)(2) *with* Rule 213 (a)(3), 18 C.F.R. §§ 385.213(a)(3). Therefore, this Answer is entirely proper as a response to the Generators and Williams' requests for clarification. In addition, notwithstanding Rules 213(a)(2) and 713(d)(1), 18 C.F.R. §§ 385.213(a)(2), the Commission has accepted answers to requests for rehearing that assist the Commission's understanding and resolution of the issues raised in a request for rehearing (*see, e.g., South Carolina Public Service Authority*, 81 FERC ¶ 61,192 (1997), *Williams Natural Gas Co.*, 75 FERC ¶ 61,274 (1996)), or clarify or shed light on those issues (*see, e.g., Sithe/Independence Power Partners, L.P. v. Niagara Mohawk Power Corp.*, 81 FERC 61,071 (1997); *Great Lakes Gas Transmission Limited Partnership*, 77 FERC ¶ 61,034 (1996)). The ISO's proposed Answer in these proceedings will serve these purposes and will also help the Commission "to achieve a complete, accurate and fully argued record." *Mojave Pipeline Co.*, 70 FERC ¶ 61,296, at p. 61,868 (1995), *modified*, 72 FERC ¶ 61,167 (1995), *vacated on other grounds*, 75 FERC ¶ 61,108 (1996), 78 FERC ¶ 61,163 (1997). This answer should accordingly be accepted as a response to the Generators and Williams' requests for rehearing.

[3] Under the ISO Tariff, the Payment Date is defined as the date on which invoiced amounts are due to be paid by Market Participants.

ISO determined, using the calculation methodology explained in its Request for Rehearing and/or Clarification, that a specific Market Participant owed net refunds for the month of February 2001 in the amount of $2 million, then interest on that $2 million in refunds would begin to accrue on the Payment date for the original February 2001 invoice. Moreover, the interest on this $2 million would continue to be calculated up until the date on which amounts invoiced as a result of the refund rerun process are due from Market Participants (currently estimated by the ISO as early 2004).

B. The Commission Should Reject Generators' Request to Clarify that it Intended the ISO to Create a Pre-Mitigation Database That Links All Original Transactions Records with Adjustment Transaction Records

In their Request for Rehearing and Clarification, the Generators note that in the March 26 Order, the Commission directed the ISO to "create a revised database of transactions that will be used by the ISO to recalculate both the historical MCP and the MMCP." Joint Request for Rehearing and Clarification of the California Generators, Docket Nos. EL00-95-045, et al. (April 25, 2003) ("Generator Pleading") at 64. The Generators suggest, however, that the ISO will "seek to limit the Commission's order on rehearing," and therefore request that the Commission clarify that "it in fact did intend for the ISO to create a new database of "complete" transactions to be used by *all* parties to verify the of the [sic] ISO's refund calculations during the compliance phase." *Id*. (emphasis in original).

The Commission and parties can rest assured that the ISO does not, in fact, intend to limit the Commission's order in this respect. Although the ISO has sought rehearing with respect to the requirement that it recalculate the MCP and MMCP to

reflect potential mislogging, if the Commission does not revise this requirement, the ISO will incorporate such changes in a new pre-mitigation "baseline" database. In fact, in its own briefs before the Presiding Judge, the ISO recognized the need to prepare a new pre-mitigation database that corrected known errors and reflected the resolution of resolved disputes. Reply Brief of the California Independent System Operator Corporation as to Issues Two and Three, Docket Nos. EL00-95-045, et al. (Oct. 25, 2002) ("ISO Phase II R.B.") at 7. In its Request for Rehearing/Clarification of the March 26 Order, the ISO outlined the process that it planned to use to create this new pre-mitigation database.

Compliance with the Commission's instructions in the March 26 Order, however, is not what the Generators seek here. Instead, the Generators skew the language of the March 26 Order in an attempt to show that the Commission somehow endorsed their view that the ISO should be required to construct not only a new pre-mitigation database to reflect changes and corrections to the underlying transactional data (an obligation which the ISO has consistently accepted), but also to create an entirely new database, of a completely different nature than anything that the ISO currently possesses, in order to join together records of original transactions and all subsequent adjustments to those transactions into one record for each transaction. This request was squarely rejected by the Presiding Judge, Certification of Proposed Findings on California Refund Liability, 101 FERC ¶ 63,026 ("Proposed Findings") at P 436, and despite the Generators' disingenuous attempt to clothe their argument in the language of the March 26 Order, nothing in that order even so much as hinted that the Commission intended to reverse the Presiding Judge on this point.

The Generators argue that no other party other than the ISO opposed creating a new database that combines all of the ISO's settlement records. This is hardly a convincing rationale under any circumstance. Moreover, in this particular case, it is not surprising that other parties, besides the ISO, did not oppose the Generator's argument (many parties did not *support* it either, but instead chose not to address the issue altogether), given the fact that the burden of creating such a new database would fall entirely on the ISO.

The Generators go on to maintain that this new database of joined records is vital to fulfilling the ISO's responsibility to "demonstrate actual compliance with the orders issued in this proceeding." Generator Pleading at 64. The Generators reason that, in light of errors that existed in ISO data produced during the process before Judge Birchman, this new database is the only "productive and efficient way to enable parties to verify the accuracy of the ISO's corrections." *Id*. The Generators are incorrect for several reasons.

First, it is worth reiterating that the Generators are asking that the ISO be required to create an entirely new product, unlike anything that the ISO currently maintains or uses in its settlements and billing process. Initial Brief of the California Independent System Operator Corporation as to Issues Two and Three, Docket Nos. EL00-95-045, *et al*. (Oct. 4, 2002) at 20. The Generators admit that they want this database so that they can mimic the ISO by re-creating all of the ISO's pre-mitigation calculations. California Generator's Initial Post-Trial Brief on Issues II and III, Docket Nos. EL00-95-045, *et al*. (Oct. 4, 2002) at 14. However, there is nothing in the various Commission orders that suggests that the Generators (or other parties) need to have

this ability. The Commission stated that the ISO is to calculate refunds by rerunning *its* settlements and billing process. It said nothing that suggested that the Generators' or other parties need to be able to "re-create" the ISO's processes or to oversee the ISO's rerun of the settlements system for the entire market, nor did it suggest that the ISO should create a new database to enable parties to do so.

Moreover, as the ISO explained in its briefs to the Presiding Judge, Market Participants already have the ability to verify the ISO's pre-mitigation and refund calculations without the type of database that the Generators believe the ISO should be required to create. ISO Phase II R.B. at 9-10. This is the case because Market Participants know the adjustments that the ISO makes to their original transactions, and have their own information as to the reason for these adjustments. Using this information, Market Participants can determine whether they agree or disagree with the ISO's records. Therefore, the new database that the Generators contend the ISO should be required to create is unnecessary to protect the interest of Market Participants.

Even if the ISO were to create such a database, it would serve little purpose other than to sow further disputes and delay. As the ISO pointed out in its Reply Brief to Judge Birchman, it is illogical to assume that if the ISO were to create a database of combined transactions, that the Generators and other parties would simply take that product on face value. ISO Phase II R.B. at 10. Instead, the more likely result would be that the Generators and other parties, unwilling to concede that the ISO had "done it right," would then clamor for a comprehensive review of the ISO's process in creating

that database. This, in turn, would defeat the entire point of creating the database in the first place and waste the significant effort and expense involved.

Finally, despite Generators' prediction to the contrary, the ISO does not maintain that it would be impossible to create such a database. Instead, as the ISO has stated on a number of occasions, such a database could be created, but it would be extremely costly for the ISO, take personnel away from important tasks such as rerunning its settlements and billing system, and further delay the completion of the refund process. (In addition, there is no reason for the ISO, or the ISO Market, to bear the expense of such a project.) *E.g.,* ISO Phase II R.B. at 8-9. However, as the Generators note, the ISO, in an effort to assist those parties that have expressed a desire to have the ability to re-create the ISO's calculations on a market-wide level, placed those parties in touch with a company that is fully conversant with the ISO's existing database structure and could, at the expense of those interested parties, create the sort of combined transaction database that the Generators desire. Generator Pleading at 65-66. Given that the Commission has never suggested that parties needed to have the ability to "re-create" the ISO's calculations on a market-wide level, the ISO believes that it is far more reasonable to allow the Generators and any other interested parties to pursue this option independently rather than requiring the ISO to invest the resources and time of all Market Participants in creating a product of dubious value.

For all of the foregoing reasons, the Presiding Judge agreed with the ISO and found that "there is no basis for imposing upon [the ISO] an obligation to create a new database solely to enable participants to 're-create' the ISO's calculations." Proposed Findings at P 436. Contrary to the Generators' argument, the Commission did not

modify this finding in the March 26 Order. In fact, the Commission did not even address the issue of whether the ISO should be required to create a new database that combines all original transaction and adjustment records. The Commission's entire statement was that the "the historical MCP must be recalculated and a revised database must be created. Any costs for this activity should be passed through the CAISO Grid Management Charge." March 26 Order at P 78. Again, as noted above, the ISO never disputed that a revised pre-mitigation database would need to be created. The issue in dispute is narrower; whether the ISO, in addition to creating a corrected pre-mitigation database, should *also* be required to create an entirely new database, of a type that has never before existed, that combines all of the original transaction records and transaction adjustment records for the Refund Period. As to this specific issue, the Commission did not in any way suggest that it was overturning the Presiding Judge's finding that the ISO should not be obligated to create such a database. For this reason, and the reasons outlined above, the Commission should reject the Generator's request for clarification on this issue.

C. The Commission Should Reject the Generator's Request to Clarify that the ISO's Preparatory Rerun and Transaction Adjustment Process Will be Subject to Compliance Procedures, and Instead Adopt the ISO's Proposal for Ensuring that Market Participants Have Adequate Notice of that Process

In their Request for Rehearing and Clarification, the Generators urge the Commission to clarify that "any actions that the ISO takes relating to its 're-baselining' of premitigation transactions and amounts owed and owing should be treated as

compliance filings in this docket and not as ordinary settlement adjustments to be billed by the ISO in the ordinary course, subject to dispute under the Tariff's normal billing dispute processes" and that "the ISO must give full notice in *this* proceeding of each of its '18 major preparatory adjustments' proposed in Amendment No. 51, as well as of all subsequent settlement adjustments and reruns that affect the 'baseline' of premitigation transactions." Generator Pleading at 69. The Generators also contend that the ISO should provide parties in this proceeding "at least the same level of market-wide transparency and transaction-level detail" in the pre-mitigation baseline "as they were afforded during the refund proceeding." *Id*. The Generators also maintain that this process "should be supervised either by an ALJ or a continuing technical conference." *Id*. at 70.

The Generators' request should be denied. Although the ISO understands the desire for Market Participants to fully comprehend the changes that will be made through the preparatory rerun and adjustment process, the Generators' request that this process be treated as part of the compliance phase in this proceeding is unwarranted. The record in this proceeding has clearly showed that the ISO would be required to make adjustments to its production settlements data in order to create a final baseline "snapshot" against which the mitigated price would be applied in order to calculate refund amounts. E.g., Exh. ISO-37 at 10:2-20. Nevertheless, neither the Presiding Judge, in his Proposed Findings of Fact, nor the Commission, in the March 26 Order, suggested that the preparatory rerun and transactional adjustments necessary to arrive at a final pre-mitigation "snapshot" should be conducted under the auspices of the compliance filing process. Rather, the discussion of the compliance process in both the

Proposed Findings of Fact and the March 26 Order related solely to the ISO's rerunning of its settlement and billing system in order to determine refunds and amounts owed and owing.

Moreover, the Generators' proposal is flatly inconsistent with the Commission's expressed desire to complete this proceeding in a timely fashion. In the March 26 Order, the Commission noted that it expected that refunds could be distributed by the end of the summer. March 26 Order at P 1. However, because of the scope and complexity of the calculations required to reach this goal, the ISO, in its Request for Rehearing and/or Clarification of that order, estimated timeframes for each major event and determined that they would result in the completion of the entire rerun process early in 2004. Now the Generators propose a process that essentially amounts to a new evidentiary proceeding, complete with discovery rights and ALJ oversight. Given the number of transactions at issue, the number of Market Participants impacted, and the complexity of the issues involved, such a process would likely further delay the distribution of refunds for at least several months beyond the ISO's current timeline. Such a delay would be entirely at odds with the Commission's goal of benefiting customers by making refunds available as soon as possible.

The Generators base much of their argument for the need for an extensive evidentiary process on the ISO's filing of Amendment No. 51, in Docket No. ER03-746-000 on April 15, 2003. The Generators suggest that by filing Amendment No. 51, the ISO has "confirm[ed] that forthcoming settlements adjustments and reruns relating to premitigation transactions during the refund period represent compliance actions to be taken in this proceeding and not 'in the ordinary course.'" Generator Pleading at 69.

The Generators are incorrect. The modifications requested in Amendment No. 51 are limited to "walling off" the invoicing of charges associated with the preparatory rerun and adjustments in order that: (1) Scheduling Coordinator debtors associated with recalculated charges, but no longer active in the ISO Markets, will not be assessed current charges, (2) new market entrants will not be exposed to charges that occurred prior to their involvement in the ISO Market, and (3) Market Participants can more easily understand the nature of the adjustments being made in the preparatory process. Transmittal Letter for Amendment No. 51 at 3. Amendment No. 51 does not, however, change the basic nature of the ISO's settlement and billing calculations, nor the fact that reruns and adjustments to account for these issues are necessary *regardless* of the existence of the refund proceeding. The ISO has in the past performed reruns and settlements adjustments when necessary. The difference between those earlier reruns and the preparatory rerun the ISO proposes is that, with regard to the latter, the "wall off" provisions in Amendment No. 51 are needed in order to protect Market Participants from events that occurred during periods in which they were not active in the ISO markets. However, the preparatory rerun *itself* will be conducted just as much "in the ordinary course" of the ISO's business as the earlier reruns were. Indeed, the ISO would have had to conduct the preparatory reruns to resolve the issues discussed in Amendment No. 51 even if the refund proceeding had never been. Therefore, there is no reason to treat the preparatory rerun and adjustments as refund proceeding compliance actions.

That being said, the ISO understands that Market Participants may be daunted by the scope and complexity of the adjustments that will be made through the

preparatory rerun process. Therefore, the ISO believes that it can accommodate the desires of Market Participants to better understand this process through the following procedures which, although they will entail some additional delay, will not have nearly the disruptive impact as the process proposed by the Generators. First, prior to the completion of the preparatory rerun, the ISO will provide all parties with a comprehensive list and explanation of each type of adjustment that is being made in the preparatory process, and the reason why these adjustments are being made. Also, during the preparatory rerun process, as the ISO completes its adjustments for each month affected by the rerun, the ISO will provide the settlement detail files associated with each party's settlement statements at the same time that it provides the settlement statements. The ISO does not, however, believe that it is appropriate, as the Generators propose, to provide the settlement detail files for *all* ISO Market Participants to *all* parties in this proceeding. Doing so would constitute a violation of the confidentiality provisions of the ISO Tariff because the preparatory rerun involves data of the type covered by those provisions that is for periods outside the Refund Period.

Next, no more than four weeks after the ISO completes the preparatory rerun and adjustment process, the ISO will host a telephone conference at which time ISO Staff will respond to questions presented by interested parties relating to the preparatory rerun and adjustments.

Finally, the ISO proposes to extend the window for disputes relating only to this preparatory rerun from the standard eight business days, as set forth in the ISO Tariff, to fifteen business days. The ISO proposes that this be done by way of a temporary

waiver of the applicable ISO Tariff provision that governs the time frame for settlement disputes. ISO Tariff Section 11.7.2.

The ISO believes that this procedure will strike the proper balance between assuring that Market Participants fully understand the calculations that are taking place with respect to the pre-mitigation baseline data, and have an adequate opportunity to raise any questions or disputes with the ISO, and at the same time minimizing the delay in finalizing these calculations and completing the refund process. Therefore, the ISO requests that the Commission reject the Generator's motion to clarify that the preparatory rerun and transactional adjustment process will be treated as a compliance filing, subject to discovery rights and ALJ supervision, and instead adopt the ISO's proposed procedures as set forth above.

D. The Methodology Proposed by Williams for Implementing its Settlement with the State of California is Problematic But Workable Under the ISO Settlements System

In its April 25th Motion for Clarification, or, in the Alternative Request for Rehearing, Williams correctly states that the Commission, in its March 26 Order, acting on Presiding Judge Birchman's Findings of Fact in the above-captioned dockets ("The Refund Proceeding"), failed to include any instructions as to how the ISO is to implement Williams' settlement with the State of California and its Releasing Parties.[4] This settlement was reached between Williams and the Releasing Parties on November 11, 2002. The Commission's refusal to address the need for such a methodology may

[4] The "California State Releasing Parties" include the Governor of the State of California, The State of California Department of Water Resources (including the California Energy Resources Scheduler Division), The California Public Utilities Commission, The California Electric Oversight Board, and the California Attorney General.

simply indicate a preference to address these procedures on compliance as opposed to making it a part of the March 26 Order. However, the ISO believes that the need for such a methodology must be addressed at some stage of the proceeding. In its April 25th Motion, Williams proposes an eight step process for implementing its settlement with the Releasing Parties.

The proposed eight step process amounts to a kind of "bilateralization" of the Williams settlement between only two parties, Williams and the California State Releasing Parties. As the ISO has previously explained, however, implementing a bilateralization of obligations between only two Market Participants is problematic; if bilateralization is to be attempted, it is far preferable to do so with respect to all Market Participants. Moreover, it is especially problematic to attempt a two-party bilateralization of the sort that Williams proposes prior to the determination of gas offsets. Nevertheless, the ISO recognizes that Williams has made a "best efforts" attempt to propose a methodology in order to effectuate their settlement with the State, and the ISO believes that the proposed process is "workable" in terms of ISO settlements implementation. However, the ISO cannot make any determination whether the methodology is consistent with Williams' settlement with the State. Moreover, the methodology proposed by Williams will involve work activity for both Williams and the ISO, and will require close coordination between the ISO and Williams at several steps during the process. For example, under the Williams proposal, it seems likely that manual interest calculations may have to be completed by the ISO at two different points, both before and after the calculation of the gas uplift by Williams, which would

add an additional five to ten business days to the time needed by the ISO to complete the refund rerun process.

E. The Commission Should Decline to Clarify that the ISO Must Correct its Transaction Records with Respect to Combustion Turbine Units

The Generators, in their Request for Rehearing and Clarification, point out that in the March 26 Order, the Commission required the ISO to treat energy produced by Combustion Turbines ("CTs") when they are dispatched by the ISO for their minimum run time as dispatched energy, rather than residual energy. The Generators go on to argue that the ISO "has characterized dispatches associated with a CT's minimum run time as a mix of residual energy and uninstructed energy" and that this practice "has resulted in the exclusion of such CT units from eligibility to set the MMCP during many intervals in the ISO's previous refund estimates." Generator Pleading at 71. The Generators therefore request that the Commission clarify that "any dispatches associated with a CT's minimum run time should be categorized as dispatched energy, and not residual energy, for purposes of calculating refunds." *Id*.

The Commission should decline to grant the Generators' request. The ISO agrees that under ISO Operating Procedure M-403 when a CT is dispatched by the ISO for its minimum run time that the associated energy should be treated as dispatched energy. However, Generators have made no showing that the ISO failed to comply with Operating Procedure M-403 in this respect. The Generators cryptically refer to "the record" as demonstrating that the ISO erroneously characterized CT minimum run-time dispatches as a mix of residual and dispatched energy, but provide no citation as to

where in the record this is shown. Moreover, the determination as to whether a dispatch was associated with a CT's minimum run time cannot be determined simply through a review of ISO settlement records. The only way to attempt to make this determination would be a comprehensive analysis of voluminous ISO operational records, which would result in a further diversion of ISO resources, additional delay and possible dispute by other parties. For these reasons, the ISO believes that its dispatch records should not be modified, and that the Commission should reject the Generators' request for clarification on this issue.

II. CONCLUSION

Wherefore, the ISO requests that the Commission rule consistent with the ISO's positions as expressed in the foregoing sections.

Respectfully submitted,

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