

THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company,)	
Complainant,)	
)	
v.)	Docket No. EL00-95-045
)	
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)	Docket No. EL00-98-042
California Power Exchange)	

**DECLARATION OF EAN O’NEILL CONCERNING TRANSACTIONS
CLAIMED BY NORTHERN CALIFORNIA POWER AGENCY AS MADE
PURSUANT TO SECTION 202(C) OF THE FEDERAL POWER ACT**

1. My name is Ean O’Neill, and I am currently employed by the California Independent System Operator (“ISO”) as the Federal Legislative Coordinator. I have provided both Direct and Rebuttal Testimony in this proceeding on behalf of the ISO on the issue of which transactions were entered into pursuant to the emergency orders issued by the Secretary of Energy during the period December 14, 2000 through February 6, 2001 (“DOE Orders).”
2. The purpose of this declaration is to respond to the Presiding Judge’s request that the ISO advise the Presiding Judge and the participants whether or not it concurs in the trial stipulation between the Northern

California Power Agency (“NCPA”) and Commission Staff (“Staff”) that has been identified as NCP-9. See Tr. at 2977:19-24.

3. At hearing on April 9, 2002, Commission Staff (“Staff”) and NCPA entered into the record a stipulation stating that as a condition of NCPA waiving cross of Staff’s witness, Linda Patterson, that Ms. Patterson agrees that NCPA’s sale on December 23, 2000 for 140 MW was made pursuant to the DOE Order. Attached to that stipulation was a document entered into evidence as NCP-9, which consists of an excerpt from the ISO’s “ADJMENT_IE.csv” data file pertaining to NCPA’s sales made on December 23, 2000. That stipulation also states that NCPA is no longer claiming as DOE transactions its sales made on January 11 and 16, 2001, both of which were non-certification days.
4. In my rebuttal testimony, I stated that I believed that a transaction that satisfied Ms. Patterson’s four criteria would not necessarily have been made pursuant to the DOE Orders. Instead, I testified that the language of the DOE Orders suggested that “only those transactions with respect to which it was clear to the ISO that suppliers were providing energy based on the ISO’s request for excess energy pursuant to the terms of the DOE Order should be classified as 202(c) transactions.” Ex. ISO-21 at 7:4-10. I believe that this test can be satisfied by evidence showing that: (1) a supplier explicitly indicated that energy was being provided pursuant to the DOE Orders; or (2) ISO real-time operations personnel contacted a

supplier and requested that it deliver the energy that it had identified was available as “excess.”

5. NCPA provided transcripts relating to the transactions it made on December 20, 2000 and December 22, 2000. In these transcripts, the DOE Order is explicitly mentioned by NCPA. Therefore, I concur that these sales meet my test, and were made pursuant to section 202(c), and stated my concurrence on the record at the hearing.
6. Based on the data contained in NCP-9, as well as the other evidence provided by NCPA in this proceeding, I *cannot* conclude that NCPA’s sale made on December 23, 2000 was made pursuant to section 202(c). Exhibit NCP-9 only shows that that NCPA made the claimed sale of 140 MW through Pacific Gas & Electric Corporation (“PG&E”) to the ISO, and that the transaction was settled as an Out-of-Market (“OOM”) sale. There is nothing in this exhibit or other evidence provided by NCPA that demonstrates that NCPA was providing this energy based on the ISO’s request for excess energy pursuant to the DOE Order.
7. Additionally, I believe that the data shown in NCP-9, i.e., that the sale was made through PG&E and was settled as OOM, as well as the fact that a Stage 2 emergency occurred on December 23, 2000, also suggests that this energy may have been provided pursuant to the ISO’s Operating Procedure E-516, which, as I discussed in my Rebuttal Testimony, was a mechanism other than the DOE Order under which NCPA could provide the ISO with excess energy. See Ex. ISO-21 at 18:1-19:8.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2002.

Ean O'Neill