UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company, Complainant,	)	
	)	**Docket Nos. EL00-95-000**
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 Nos. EL00-98-000**

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO DISPUTES FILED BY VARIOUS PARTIES

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2005), the California Independent System Operator Corporation ("ISO"),[1] hereby responds to issues raised in several of the dispute pleadings filed by parties to this proceeding on December 1, 2005.

I. STATEMENT OF ISSUES

The ISO requests that the Commission act on the following issues:

A. What role the ISO will play with respect to allocating fuel cost claims made by entities that did not deal directly with the ISO, but

[1] Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

rather made sales to the ISO through a separate Scheduling Coordinator, in particular, sales of uninstructed energy.[2]

B. Whether the first potential dispute articulated by NCPA in its December 1 filing should be denied, as it is not within the scope of this proceeding. Whether the second potential dispute articulated by NCPA in its December 1 filing should be deferred until the Commission provides direction on the application of the BPA decision.

C. Whether the issue raised by Portland General in its December 1 dispute filing should be rejected by the Commission.

D. Whether Commission action on the issues raised by Puget Sound in its December 1 filing should be deferred because the ISO and Puget Sound are working to resolve these issues and the ISO is confident that resolution of these issues can be reached informally between the ISO and Puget Sound.

E. Whether the dispute between Santa Clara and PG&E, which Santa Clara presents in its December 1 dispute filing, should not be considered as part of this proceeding because it does not impact the ISO markets.

[2] The ISO requests that the Commission defer acting on this issue until it provides supplemental information on this issue to the Commission and the parties to this proceeding.

II. BACKGROUND AND INTRODUCTION

In its August 8, 2005 "Order on Cost Recovery, Revising Procedural Schedule for Refunds, and Establishing Technical Conference," 112 FERC ¶ 61,176 (2005), the Commission urged parties with unresolved disputes concerning the refund rerun and/or cost filing process to file those disputes with this Commission as soon as possible, and not wait until the ISO makes its compliance filing to do so. Moreover, to further expedite resolution of the proceeding, the Commission stated that parties would be required to file, by December 1, 2005, any disputes with reruns and offsets, including fuel cost allowance claims and emissions cost offset claims.

On December 1, 2005, nine parties filed with the Commission pleadings raising actual or potential disputes concerning various aspects of the refund process.[3] Several of these pleadings raise issues concerning ISO data,[4] to which the ISO provides the following response.

III. DISCUSSION

A. California Parties

The California Parties, in their dispute filing, raise issues relating to various fuel cost adjustment claims, including the claim submitted by Midway

[3] Dispute pleadings were filed by the following parties: the "California Parties," Calpine Corporation, Merrill Lynch, Northern California Power Agency ("NCPA"), Pacific Gas & Electric ("PG&E"), Portland General Electric ("Portland"), Powerex, Puget Sound Energy ("Puget Sound"), and the City of Santa Clara, California ("Santa Clara").

[4] Although Powerex presents a dispute concerning the ISO's rerun process, the ISO is not providing a response to this issue in this pleading, because the issue raised by Powerex has already been presented to the Commission by Powerex several times, and the ISO has responded on those occasions. Powerex's dispute pleading presents no new information concerning this "dispute."

Sunset. With respect to Midway Sunset, the California Parties express concern because a number of Midway Sunset's transactions were made through the Automated Power Exchange ("APX") as the ISO Scheduling Coordinator. For somewhat different reasons, the ISO also has concerns with respect to Midway Sunset's fuel cost claim. Specifically, the ISO needs to better understand the role that it will play with respect to allocating fuel cost claims made by entities, such as Midway Sunset, that did not deal directly with the ISO, but rather made sales to the ISO through a separate Scheduling Coordinator, in particular, sales of uninstructed energy.

Such sales may present an issue because, pursuant to the Commission's orders in this proceeding, parties are only eligible to recover fuel cost allowances for net sales of uninstructed energy.[5] Because Midway Sunset did not transact directly with the ISO, however, the ISO's ability to allocate specific portions of Midway's claim to ISO Market Participants is based on the overall uninstructed energy position of the Scheduling Coordinator transacting with the ISO on behalf of Midway. For instance, if, during a particular hour, Midway claimed a fuel cost allowance, but the net of the uninstructed energy sales made to the ISO by Midway's Scheduling Coordinator for that hour was negative, then, pursuant to the Commission's March 18 Order, none of Midway's fuel cost allowance for that hour would be properly allocated to ISO Market Participants. Instead, this amount would have to be allocated by the Scheduling Coordinator among its individual clients, and would not flow through the ISO markets.

[5] *San Diego Gas & Electric Co*., et al., 110 FERC ¶ 61,293 (2005) ("March 18 Order") at P 37.

At this point, the ISO is not certain as to the scope of this potential issue. The ISO is currently looking into this matter, and will provide additional information to the Commission and parties to this proceeding in a supplement to this answer as soon as possible.

B. NCPA

NCPA raises two issues, which it characterizes as "potential disputes." First, NCPA states that it made a "set of sales" to the ISO from units that did not have Participating Generator Agreements ("PGA") with the ISO, and therefore, were located in the wholesale portfolio which PG&E used to implement its Existing Contracts. According to NCPA, both PG&E and NCPA agree that these sales were made between NCPA and the ISO, rather than PG&E and the ISO.

NCPA's second issue concerns certain sales that it claims it made to the ISO under Reliability Must-Run ("RMR") contracts. As NCPA notes, the ISO has classified these transactions as Out-of-Market ("OOM") sales, rather than RMR sales, a classification which NCPA has disputed, and this dispute is still pending between NCPA and the ISO. NCPA states that the only relevance that this classification issue has to the refund proceeding is whether the portion of the payment that is priced through the market, as opposed to the terms of RMR contracts, will be mitigated or not. NCPA maintains that because the *BPA* decision[6] holds that non-jurisdictional sellers, such as NCPA, are not subject to refunds in this proceeding, the ISO must (and will) exempt the market portion of these payments from mitigation.

[6] *Bonneville Power Administration, et al. v. FERC*, 422 F.3d 908 (9th Cir. 2005).

With respect to NCPA's first issue, the ISO's records indicate that these transactions were correctly settled with PG&E as the Scheduling Coordinator. Therefore, any refund liability associated with these transactions would properly flow from the ISO through PG&E, not NCPA. The issue of which entity should be properly reflected as the transacting party with the ISO is, in any event, beyond the scope of the refund proceeding, which is concerned with the proper calculation of mitigated prices and application of those prices to the appropriate transactions. Any dispute to the effect that PG&E was not the Scheduling Coordinator for these transactions should have been raised and resolved in the appropriate forum outside of this proceeding, and the deadline for such a dispute passed years ago. The fact that NCPA chose not to raise this issue in the appropriate forum should not prejudice the efficient resolution of this proceeding.

With respect to the second issue raised by NCPA, the ISO does not dispute the fact that the *BPA* decision addresses the authority of the Commission to require non-jurisdictional entities to pay refunds in this proceeding. Therefore, the ISO anticipates that, assuming the *BPA* decision does become effective, some provision will have to be made to remove any refund liability associated with payments made to NCPA (as well as other non-jurisdictional sellers) for sales such as those identified by NCPA. However, until the mandate for the *BPA* decision issues and the Commission provides specific direction based on the decision, the ISO is not in a position to change its refund rerun data.

C. Portland General

In its letter to the Commission of December 1, Portland notifies the Commission of a "potential data error" that it first identified in its cost-recovery filing of September 14, 2005. Specifically, Portland alleges that it engaged in what it characterizes as "recirculation transactions" with the ISO during the Refund Period involving Portland's use of its ownership rights on the Southern Intertie. Portland maintains that these transactions were in the nature of energy exchanges, which are not subject to mitigation, and therefore should not be mitigated by the ISO. Portland notes that the ISO's refund rerun data has characterized these transactions as Instructed and Uninstructed Energy sales and purchases and, therefore, "it is conceivable that the ISO may attempt to mitigate these transactions along with other sales and purchases when it ultimately submits its compliance filing." Portland at 1. However, because the ISO has not yet made its compliance filing, Portland states that it does not know whether the ISO will "erroneously subject these recirculation transactions to mitigation." *Id*. at 2.

The ISO is somewhat confused by Portland's characterization of this issue as a "potential data error," given that the ISO has already performed the refund rerun and distributed the resulting settlements data to all of the parties in this proceeding. Because this settlements data shows the mitigation of all relevant transactions, it is not clear how Portland could be unsure as to the ISO's treatment of the transactions at issue. Moreover, the ISO also distributed to all parties in this proceeding a list of transactions that it exempted from mitigation as

part of the refund rerun (*e.g*. non-spot transactions, transactions made pursuant to 202(c) of the Federal Power Act). With this information, Portland should be able to identify whether the ISO has mitigated the transactions at issue as part of the refund rerun.

Even assuming that the ISO has mitigated the transactions referred to by Portland as "recirculation transactions," the Commission should nevertheless reject Portland's argument that these transactions should be exempt from mitigation. If Portland believed that these transactions were in the nature of energy exchange transactions, and therefore properly exempted from mitigation, the appropriate time to have raised such a claim was during the hearing procedures before Judge Birchman. At that time, all parties, including Portland, had ample opportunity to present testimony concerning the proper mitigation treatment of their transactions. However, Portland did not present any evidence at that time that the sales referred to in its December 1 letter should be exempt from mitigation because of their purported similarity to energy exchange transactions. It would therefore, violate the due process rights of the parties to this proceeding to allow Portland to raise this argument at this stage of the proceeding. Moreover, doing so would jeopardize the efficient resolution of this proceeding by opening up the possibility of iterative reruns and adjustments to reflect changes in the scope of transactions subject to mitigation. For these reasons, the Commission should reject Portland's claim.

D. Puget Sound

Puget Sound raises a potential dispute with respect to what it identifies as potential discrepancies between the various data sets made available to parties by the ISO in this proceeding. Specifically, Puget Sound expresses concern that more recent ISO data sets have not reflected all of the dispute resolutions reached earlier between Puget Sound and the ISO. The ISO has recently begun working with Puget Sound to better understand Puget Sound's concerns, and the ISO is confident that it will be able to resolve these concerns informally, such that no actual dispute will materialize when the ISO makes its final compliance filing in this proceeding. If, for some reason, this matter cannot be resolved through informal exchanges between the ISO and Puget Sound, the ISO will then inform the parties and Commission of such.

E. Santa Clara

In its December 1 filing, Santa Clara states that there is an ongoing dispute between itself and PG&E concerning which of the two sold certain amounts of energy to the ISO during the refund period. Santa Clara states that it is informing the Commission of this dispute because, if it is determined that Santa Clara sold the energy to the ISO, rather than PG&E, then the sales should be excluded from mitigation per the *BPA* decision.

With respect to the particulars of Santa Clara's dispute, the ISO concurs with Santa Clara's conclusion that with respect to the transactions in question, the ISO dealt with PG&E, not Santa Clara. Regardless, Santa Clara is not correct in asserting that this dispute could impact the ISO's rerun. The dispute

between Santa Clara and PG&E does not involve the ISO's markets, and its resolution will have no impact on the ISO's markets. In fact, the ISO has been given no notice of this dispute, and is not a party. Therefore the erroneous contention that the transactions were between Santa Clara and the ISO markets, even if determined to be correct in the PG&E bankruptcy, would not be preclusive as to the ISO markets. Rather, any resolution of this dispute between Santa Clara and PG&E should be settled strictly between these two entities.

Santa Clara also contends that, with respect to these transactions, the ISO has applied incorrect prices to portions of the energy that the ISO bought from PG&E. Santa Clara suggests that this appears to have occurred because of the way in which the ISO viewed schedules submitted to PG&E by Santa Clara. Santa Clara states that it attempted to resolve this dispute, but was rebuffed, and that the ISO rejected attempts by PG&E to resolve these errors. Because of these alleged errors, Santa Clara contends that the "inputs into the CAISO's refund rerun are incorrect." Santa Clara at 5.

The ISO's records show that PG&E did indeed submit a dispute concerning the prices for the transactions at issue within the deadline for doing so specified by the ISO Tariff. However, contrary to Santa Clara's pleading, the ISO and PG&E resolved that dispute with an agreement that the ISO would make certain adjustments. PG&E and the ISO then closed the dispute. It would be inappropriate to re-open the dispute now, more than four years after it was originally closed. For purposes of the ISO markets, the prices for these transactions should be considered correct, and no longer subject to adjustment.

Moreover, for the reasons articulated above with respect to NCPA, this issue goes beyond the scope of the refund proceeding. It concerns neither the proper calculation of the mitigated price, nor the appropriate application thereof. If the Commission allows parties to fold into this proceeding every potential or actual dispute concerning the historical underlying data relating to transactions that took place during the Refund Period, then there can never be any finality to the ISO's reruns, and consequently, this proceeding will drag on *ad infinitum*.

IV. CONCLUSION

Wherefore, for the reasons set forth above, the ISO respectfully requests that the Commission act on the December 1 disputes as set forth herein.

Respectfully submitted,

/s/ Michael Kunselman

Charles F. Robinson
Daniel J. Shonkwiler
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7147

Sean A. Atkins
Michael Kunselman
Alston & Bird LLP
601 Pennsylvania Ave., N.W.
North Building, 10th Floor
Washington, DC 20004
Tel: (202) 756-3300

Dated: December 16, 2005

Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-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 this 16th day of December, 2005 at Folsom in the State of California.

/s/ Daniel J. Shonkwiler
Daniel J. Shonkwiler
(916) 608-7015

Updated Certificate of Service

On December 16, 2005, the ISO attempted to "e-file" this document with the Commission. Due to an error with the e-filing system, however, it was not clear whether or not the document had, in fact, been filed and accepted by the Commission on that date. It turns out that this document was accepted as of December 16, 2005. However, the ISO was not able to confirm this fact until today, December 19, 2005. Because of this uncertainty, this document was not served on December 16 despite the Certificate of Service attached to the version of this Document filed on December 16. Instead, service will be made today, December 19, 2005.

Accordingly, I certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-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 this 19th day of December, 2005 at Folsom in the State of California.

Daniel J. Shonkwiler
Daniel J. Shonkwiler
(916) 608-7015