

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

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| San Diego Gas & Electric Company, |) | |
| Complainant, |) | |
| |) | Docket No. EL00-95-164 |
| |) | |
| 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 |) | Docket No. EL00-98-184 |
| Independent System Operator and the |) | |
| California Power Exchange |) | |

**RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO
CALIFORNIA POWER EXCHANGE CORPORATION'S
MOTION FOR CLARIFICATION OF THE
OCTOBER 19, 2007 ORDER ON REMAND**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,¹ the California Independent System Operator Corporation ("CAISO") submits this answer to the California Power Exchange Corporation's ("PX") motion for clarification of the Commission's October 19, 2007 Order on Remand² (the "PX Motion").

The Commission should grant the PX's motion on one of the two issues raised – the issue of the "PX's Muni Creditors." Specifically, the Commission should confirm what it has already held in the past: that funds maintained in the PX Settlement Clearing

¹ 18 C.F.R. § 385.213 (2001).
² 121 FERC ¶ 61,067 (2007) ("October 19 Order")

Account should be used to pay past-due amounts for non-public entities in the CAISO's markets. As to the other issue raised by the PX – whether to mitigate certain sales by the PX in the CAISO real-time markets – the CAISO does not take a position on its substance. However, the CAISO requests that any order granting the requested clarification also specify how the CAISO should allocate the additional refund shortfall that would be created as a result. No expedited ruling is requested for this issue.

I. INTRODUCTION AND BACKGROUND REGARDING THE PX'S MUNI CREDITORS

The PX is the only CAISO Scheduling Coordinator that remains in arrears on market invoices issued during the Refund Period (October 2, 2000 through June 20, 2001). Excluding adjustments arising from the global settlements, all other parties are paid in full.

Under the CAISO Tariff, the PX, and not the CAISO, is therefore bound to pay all amounts that are still owed to creditors from the Refund Period, including all non-public entities suppliers. The CAISO Tariff is clear that the CAISO purchases energy only as an agent for the accounts of the Scheduling Coordinators who represent the load that uses that energy.³ The Tariff also provides that if one of those Scheduling Coordinators, such as the PX, fails to pay its portion of the cost of the energy for which the CAISO contracted, the unpaid creditors have recourse directly against that Scheduling Coordinator, but not against the CAISO.⁴ Although the CAISO may under

³ CAISO Tariff, § 22.13 (“In contracting for Ancillary Services and Imbalance Energy the ISO will not act as principal but as agent for and on behalf of the relevant Scheduling Coordinators.”)

⁴ See CAISO Tariff § 11.20.2.

certain circumstances assist the creditors with collection, it has no obligation to pursue the collection of unpaid amounts.⁵

In the October 19 Order, the Commission granted in part the motion of one of the unpaid creditors – the Los Angeles Department of Water and Power (“LADWP”) – requesting disbursement of amounts owed to governmental entities for sales made in the CAISO/PX markets during the Refund Period. Specifically, the Commission granted LADWP’s request for disbursement of principal amounts to non-public utilities, stating that once the CAISO finalizes its preparatory rerun adjustments, and the Commission issues an order determining which entities qualify as non-public utilities, the Commission will order disbursement of past-due principal amounts to governmental entities.⁶

In its motion, the PX states that it is seeking clarification of the October 19 Order because the order does not expressly address how the PX’s creditors through the CAISO markets will be paid.⁷ The PX Motion offers no reason to doubt that it should be required to pay this group of creditors. Rather, it assumes that the Commission will direct the PX to pay its non-public utility creditors through the CAISO markets, and then discusses two issues that would arise from such payment. First, the PX requests a credit against its debt to the CAISO markets in the amount of its distribution – a subject about which there is no dispute. Second, the PX raises a concern that after the distribution, its cash on hand – as opposed to the funds controlled in joint escrows⁸ –

⁵ See CAISO Tariff §11.20.1.

⁶ See October 19 Order, ¶ 57.

⁷ PX Motion at 6-7 (“the Order requires the payment of principal amounts past due to non-public utility entities in both the CAISO and PX market during the refund period, but does not expressly address the issue of the CAISO’s cash shortfall due to PX’s debit balance.”)

⁸ See PX Motion p. 6, n. 2.

would no longer be sufficient to fund subsequent “global settlements.”⁹ The PX asks the Commission to address this future “potential cash shortfall.”¹⁰ The PX Motion also mentions some possible logistics for the forthcoming distribution, but does not request associated relief.

The CAISO maintains that the Commission should grant the PX’s request for an order affirming its obligation to pay its creditors through the CAISO markets.

II. THE COMMISSION SHOULD GRANT THE CLARIFICATION SOUGHT BY THE PX REGARDING THE PX’S MUNI CREDITORS

The forthcoming distributions by the PX must include amounts past due to the PX’s creditors through the CAISO markets, including PX creditors that are non-public utilities. Given the terms of the CAISO Tariff, the Commission’s previous rulings, and the lack of any indications to the contrary in the October 19 Order, this issue should be beyond dispute. Accordingly, the Commission should grant the PX’s motion on this point so that there will be additional certainty that the creditors in the CAISO market should be paid by the PX and not the CAISO as the Commission has held in its prior orders.

A. The CAISO Tariff and Previous Commission Orders Require the PX to Pay CAISO Creditors, Including Non-Public Utility Entities

The rules governing financial default under the CAISO tariff are, unfortunately, well understood. The PX defaulted on its obligation to CAISO creditors, and is now a debtor directly to the unpaid suppliers, as outlined above.

⁹ *Id.* at 7.

¹⁰ *Id.*

Previous Commission orders have been clear that the tariff obligations of a CAISO debtor, such as the PX, are not affected by whether the CAISO creditor is a public utility. In its November 23, 2004 *Order on Rehearing*,¹¹ the Commission rejected arguments made by certain unpaid sellers that the CAISO itself was directly financially responsible for certain bilateral transactions. The order stated that

the CAISO Tariff authorizes but does not require CAISO to seek payment from recalcitrant Scheduling Coordinators on behalf of sellers of energy. Nor is CAISO responsible for payments to a seller if a Scheduling Coordinator defaults. This is consistent with Commission precedent and the CAISO Tariff.¹²

On rehearing, two non-public utility creditors of the CAISO – Grant County and Turlock – argued that the Commission’s ruling would leave them without compensation. The Commission denied their motion, explaining that they must collect from the defaulting debtor – i.e., the PX:

The Commission did not address, nor did it believe it was being asked to address, whether Grant County and Turlock would be compensated for their transactions. Clearly, the obligation rests with the entities upon whose behalf the CAISO purchased power, and nothing in the Commission’s November 23 Order alters this obligation.¹³

B. The October 19 Order is Clear that the PX Must Pay the PX’s Muni Creditors through the CAISO Markets.

Nothing in the October 19 Order suggests that the precedent discussed above is invalid or inapplicable. What is said in the October 19 Order, moreover, makes it clear that it is the PX that will be distributing the funds to pay all of the still unpaid non-public utility creditors. The order consistently describes the forthcoming distribution as

¹¹ 109 FERC ¶ 61,218 (2004).

¹² *Id.* at ¶ 72 (citing *Pacific Gas & Electric Co., et al.*, 81 FERC ¶ 61,122 (1997) at 61,506-509 (rejecting the argument that the CAISO should bear responsibility for collecting defaulted receivables).

¹³ 110 FERC ¶ 61,336, ¶ 71.

including amounts past due in both markets – “the CAISO/PX spot markets.” The order is also clear that the funds for this distribution will come from the PX. In the passage explaining that the distribution will consist exclusively of past due principal, it directs *the PX* – and not the CAISO – to withhold interest from the distribution at the present time.¹⁴

* * *

For these reasons, there is no uncertainty in the October 19 Order as to the appropriate source of payment for past-due principal amounts owed to non-public utilities for transactions in the CAISO markets during the Refund Period. That source of payment must be the PX. Thus, when the time comes for the distribution described in the October 19 Order, the distribution to the PX’s Muni Creditors through CAISO must come by PX funds.

III. OTHER ISSUES MENTIONED BY THE PX DO NOT REQUIRE CLARIFICATION OF THE OCTOBER 19 ORDER.

The PX’s discussion of the PX’s Muni Creditors focuses on two issues that are not addressed in the October 19 Order. The motion requests that the PX receive a credit against its balance outstanding to the CAISO markets in the amount the PX distributes in satisfaction of its obligations. It also asks the Commission to establish a reserve level so that after the distribution to pay its non-public utility creditors in both markets, subsequent global settlements do not exhaust the Settlement Clearing

¹⁴ See October 19 Order ¶ 58 (“Therefore, we direct PX to retain any potential interest payments on past due amounts to the governmental entities until the refund calculations are complete and the CAISO/PX can calculate the *pro rata* allocation of the interest shortfalls”). Directing this instruction to the PX only appears to have been intentional. Had the order directed both the CAISO and PX to withhold interest, such a statement would have created confusion. Given the circumstances, such an instruction could be construed as an order for the PX to pay the CAISO the interest that it had earned on amounts overdue to CAISO creditors, and for the CAISO to hold that interest. In any event, the actual text of the October 19 Order appears to have been tailored to the circumstances.

Account. As explained below, clarification is not necessary on either issue at this time. In addition, it is also unnecessary to address another issuer raised in the motion – *i.e.*, whether the CAISO will act as distribution agent under the terms of the PX's bankruptcy plan.

A. The CAISO Will Grant the PX Full Credit for the Amount of its Distribution

The CAISO will of course credit the PX in the amount that the PX pays to satisfy its obligations through the CAISO markets. This will include the PX's forthcoming distribution to non-public utility creditors. Until the PX filed its motion, the CAISO was not aware this was a concern. In any event, clarification is unnecessary because there is no dispute on this issue.

B. The Requested Reserve Level Does Not Affect the PX's Obligation to Pay Its Creditors.

The PX also requests that, assuming the Commission directs it use the Settlement Clearing Account to pay its creditors through the CAISO Markets, the Commission should also allow the PX to establish a reserve amount in the Settlement Clearing Account of not less than \$25 million. This reserve level is necessary, the PX explains, in order to provide for the PX's continued funding, and to allow for any unexpected expenses if the PX's operations continue beyond 2010.

With respect to the proper reserve amount, the CAISO takes no position at this time, but reserves its right to do so in the future. The CAISO notes only that it is not necessary for the Commission to rule on this issue now. If, as the PX states, there are

sufficient funds in the Settlement Clearing Account to fund the forthcoming distribution,¹⁵ and that the only problem is that subsequent disbursements for future global settlements could not also be funded from the Settlement Clearing Account as opposed to the joint escrows, the PX is free to raise this issue when it ripens. By that time, the Commission will have better information available to evaluate the need for a PX reserve, and the appropriate amount thereof.

C. To the Extent the Commission Addresses the CAISO's Role in the Distribution, It Should be Aware of the CAISO's Position

Although the PX motion mentions a possible role for the CAISO in the forthcoming distribution, the PX does not request any relief along those lines. Accordingly, this issue need not be addressed in the Commission's ruling. To the extent that the Commission addresses the issue nevertheless, it is important that the Commission understand the CAISO's position.

Although the PX is correct when it says that the CAISO is willing to act as the disbursement agent for the PX,¹⁶ the CAISO is willing to do this only under the terms of the PX's confirmed plan of reorganization. That plan provides that the CAISO will be the disbursement agent for Class 7 claims, unless ordered otherwise by FERC.¹⁷ The PX's motion should not be misread to suggest that the CAISO is willing to act as disbursement agent because "CalPX has no direct relationship with [its creditor] entities."¹⁸ This is neither a motivating factor for the CAISO, nor is it legally correct. The applicable tariff provisions and Commission orders demonstrate that the PX is

¹⁵ The CAISO is indifferent whether this distribution is funded from the PX's Settlement Clearing Account, or other funds controlled by the PX, so long as these creditors are treated at least as favorably as the PX's other creditors (*i.e.*, creditors through its own markets).

¹⁶ PX Motion at 6, n.3.

¹⁷ Confirmed Plan of Reorganization, Exh. 3 ("Allowance and Distribution Procedures"), § B.6.

¹⁸ PX Motion at 6, n.3.

obligated to pay these debtors directly and that CAISO has no responsibility to pay these debtors at all, as explained above. Nor does the CAISO need to distribute the funds in order to “ensure that the appropriate credits are made and the corresponding accounting entries are noted.”¹⁹ The CAISO will do this regardless of whether the PX makes these distributions directly or through the CAISO as its distribution agent .

If the Commission were to direct the CAISO to serve as distribution agent, the legal rationale it employs will make a difference. For one thing, it is important to the CAISO that it remains clear that the obligation to pay suppliers belongs to the CAISO Scheduling Coordinators, including the PX, and not the CAISO itself. In addition, directing the PX to remit its unpaid balances to the CAISO Clearing Account, without further direction,²⁰ would not achieve the result desired by the Commission. The CAISO tariff specifies that sums received on account of defaulted receivables must be applied to all creditors in the month of the default.²¹ So any PX remittance to the CAISO Clearing Account – rather than to the non-public utility creditors who the Commission has ordered the PX to pay – would not achieve the intended result, because the CAISO would be obliged to apply the payment to all creditors, including both non-public *and* public utilities.

Accordingly, in the event the Commission asks the CAISO to serve as disbursement agent, it should do so pursuant to the PX’s confirmed plan of reorganization.

¹⁹ *Id.*
²⁰ *Cf.* PX Motion at 3.
²¹ *See* CAISO Tariff § 11.6.2.

IV. IF THE COMMISSION FINDS THAT SALES MADE IN THE CAISO MARKETS BY THE PX AS A SCHEDULING COORDINATOR ON BEHALF OF NON-PUBLIC ENTITIES ARE EXEMPT FROM MITIGATION, IT SHOULD BE CLEAR AS TO HOW THE RESULTING SHORTFALL WILL BE ALLOCATED TO CAISO MARKET PARTICIPANTS.

In its motion, the PX notes that during the Refund Period, it participated in the CAISO's markets as a Scheduling Coordinator on behalf of various entities that may be designated as non-public utilities pursuant to the October 19 Order. The PX requests that the Commission clarify whether the sales that the PX made in the CAISO markets as a Scheduling Coordinator on behalf of non-public utility entities are to be exempt from mitigation. The PX notes that if such sales are to be mitigated, then no adjustment is necessary between the CAISO and PX. However, if the Commission determines that such transactions are to be exempt from mitigation, the PX requests that the Commission clarify that the PX "should provide CAISO the sale refund reversals for such entities for adjustment." Essentially, this would result in the CAISO providing the PX a credit equal to the amount of refunds relating to sales made by the PX on behalf of non-public entities in the CAISO markets during the Refund Period.

The CAISO does not take a position on whether the transactions entered into by the PX as a Scheduling Coordinator on behalf of non-public utilities in the CAISO markets should be exempt from mitigation. However, if the CAISO is placed in a position of having to provide the PX a credit in order to reflect the inability of the PX to pay refunds associated with sales that it made on behalf of non-public utilities, then, in order to avoid a shortfall of refunds in the CAISO's markets, the CAISO would need to collect any such amount credited to the PX from its own Scheduling Coordinators. Therefore, if the Commission concludes that the sales that the PX made in the CAISO

markets as a Scheduling Coordinator on behalf of non-public utility entities are to be exempt from mitigation, and that the CAISO should provide the PX with a corresponding credit, the Commission should clearly articulate a methodology by which the CAISO will allocate the amount of the PX credit among its Market Participants, so as to ensure that its markets remain cash neutral during the Refund Period. Such guidance is necessary because there is no existing mechanism under the CAISO's Tariff for crediting the PX under these circumstances,²² or for recovering amounts from other Market Participants associated with any such credit.

V. CONCLUSION

The ISO requests that the Commission grant the PX's motion to clarify that funds maintained in the PX Settlement Clearing Account should be used to pay past-due amounts non-public utilities in the CAISO's markets, and that the Commission do so in an expedited fashion. Moreover, the CAISO also requests that if the Commission concludes that sales that the PX made in the CAISO markets as a Scheduling Coordinator on behalf of non-public utilities are to be exempt from mitigation, and that the CAISO should provide the PX a corresponding credit, the Commission clearly articulate a methodology by which the CAISO will allocate the amount of the PX credit among its Market Participants.

²² To the contrary, the CAISO has mitigated the sales made by the PX, because it is a public utility. The CAISO does not look behind its Scheduling Coordinators to consider the parties with whom they

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were transacting.

