

95 FERC ¶ 61,021

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

San Diego Gas & Electric Company,
Complainant,

v.

Docket Nos. EL00-95-015
EL00-95-016

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. EL00-98-014
EL00-98-015

ORDER DISMISSING REHEARING, ACCEPTING COMPLIANCE
FILING, AND DIRECTING THE RECALCULATION OF
LOWER WHOLESALE RATES

(Issued April 6, 2001)

In this order, we dismiss the request of the California Power Exchange Corporation (PX) for rehearing of the Commission's order issued on January 29, 2001, in this proceeding (January 29 Order).¹ In addition, we accept for filing the PX's compliance filing and provide guidance to the PX on an acceptable methodology so that the PX may implement the \$150/MWh breakpoint for its January 1, 2001 invoices.

Background

On December 15, 2000, the Commission issued an order adopting specific remedies to address dysfunctions in California's wholesale bulk power markets and to

¹San Diego Gas & Electric Company, *et al.*, 94 FERC ¶ 61,085 (2001).

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ensure just and reasonable wholesale power rates by public utility sellers in California.² The December 15 Order, in pertinent part, required that effective January 1, 2001, the PX modify its single-price auction system by implementing a \$150/MWh breakpoint. The single-price auction would still be used for all sale offers at or below \$150/MWh. However, if the auction failed to clear at or below the \$150/MWh level, suppliers who bid above \$150/MWh would be paid their as-bid price for the quantity that they bid, but their bids would not set the market clearing price.

On January 2, 2001, the PX submitted tariff revisions reflecting the \$150/MWh breakpoint; however, the PX argued that it was unable to implement the breakpoint on January 1, 2001, and could not provide a precise date by which compliance with the December 15 Order would be possible. In the January 29 Order, the Commission found that the PX had violated the Commission's December 15 Order and the Federal Power Act.³ The Commission directed the PX to implement immediately the provisions of the December 15 Order requiring that the PX pay suppliers in the PX markets their as-bid price above the \$150/MWh breakpoint. In addition, the Commission ordered the PX to recalculate the market clearing price for all energy provided in its Day-Ahead and Day-Of markets since January 1, 2001, consistent with the provisions of the tariff sheets. The Commission directed the PX to file a compliance report within 30 days of the date of the order.

On March 13, 2001, the PX notified the Commission that it had filed for Chapter 11 bankruptcy protection on March 9, 2001. On March 15, 2001, the PX filed a letter in Docket No. EL00-95-000, *et al.*, stating its view that the automatic stay provision of the bankruptcy code, 11 U.S.C. § 362, prohibited the Commission and parties "from continuing further litigation in the above proceedings as such litigation pertains to CalPX, including filing responsive pleading pursuant to Commission notices."

Rehearing

On February 28, 2001, the PX filed a request for rehearing of the January 29 Order. The PX argues that rehearing of the January 29 Order is warranted on two grounds. First, the PX argues that the Commission has taken its statement about manually processing settlements out of context and that it had informed the Commission numerous times that implementation of the breakpoint by the January 1, 2001, deadline

²San Diego Gas & Electric Company, *et al.*, 93 FERC ¶ 61,294 (2000), *reh'g pending* (December 15 Order).

³94 FERC at 61,378.

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was impossible. Also, the PX argues that the mere fact that the California Independent System Operator (ISO) could perform settlements manually by the deadline does not mean that the PX could have done so as well. The PX contends that it has to deal with complex, unresolved technical problems, such as how to implement the breakpoint in the PX markets when the ISO determines that congestion exists on the grid. Second, the PX argues that the Commission acted in an arbitrary and capricious manner by failing to hold a technical conference to discuss implementation problems, as requested by the PX.

Instant Compliance Filing

On February 26, 2001, the PX made its compliance filing. The PX requests guidance from the Commission on an acceptable recalculation methodology. According to the PX, implementing the breakpoint involves resolving four primary considerations: (1) how to approximate how sellers are paid; (2) how to distribute any resulting refunds to buyers;⁴ (3) how to handle overscheduling; and, (4) how to calculate the settlement of CalPX Trading Services' (CTS) block forward markets.

The PX contends that a calculation can be performed to approximate as-bid pricing for hours in which the PX's Unconstrained Market Clearing Price (UMCP) was used for settlement purposes. However, the PX seeks the Commission's guidance on how to implement the breakpoint for the hours during which the ISO determined that zonal congestion existed. The PX readily admits that, through a combination of manual and automated labor, it can recalculate payments for the uncongested hours to approximate as-bid-pricing.⁵ However, the PX notes that there are three potential options available for approximating as-bid pricing in the hours when zonal congestion existed. The PX contends that all of these options involve judgmental determinations that affect the amount of money that is re-allocated and to whom. The PX outlines the strengths and weaknesses of each option; however, the PX believes that it is inappropriate for it to select the method for calculating the January invoices and requests guidance.⁶

⁴The PX uses the term "refunds" to describe how it will recalculate the final invoice of buyers in the PX markets even though January invoices have not been issued and no money has been transferred. In order to accurately summarize the PX's proposal and to provide the PX with the guidance that it requests, we will adopt the PX's terminology in this order.

⁵PX Compliance Filing at 7.

⁶The PX notified the Commission on January 30, 2001, that it was suspending
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Method I

Under Method I, the PX would only implement the \$150/MWh breakpoint methodology for uncongested hours. The PX notes that uncongested hours are approximately 30 percent of the PX market and recalculating the January invoice only for those hours will substantially reduce the total January electric bill. The PX also argues that the price paid to sellers in congested hours is approximately 15 percent less than the price paid to sellers in uncongested hours; thus, there is already a price reduction in the congested hours. The PX asserts that only applying the breakpoint methodology to the uncongested hours greatly simplifies the recalculation and is uncontroversial. According to the PX, Method I will reduce the amount of time that will lapse before final bills may be issued.

Method II

In addition to calculating as-bid pricing for uncongested hours, Method II would use adjustment bids as a proxy for supply (energy) bids during constrained hours.⁷ Sellers that submitted adjustment bids would be paid according to their bid. The PX states that adjustment bids are voluntary, and those sellers who do not submit adjustment bids should receive \$150/MWh when the zonal price exceeded the breakpoint. The PX argues that under the current market rules, sellers without adjustment bids are price takers, and therefore it is appropriate to pay them \$150/MWh when the zonal price is above the breakpoint. Thus, under current market rules, sellers that do not submit adjustment bids subject themselves to getting less than the breakpoint, *i.e.*, the market clearing price. The PX suggests that a similar assumption should be applied when sellers submit adjustment bids, but the adjustment bids do not cover the full amount of the final schedule. In this instance, the PX would treat the sellers' portion of its schedule that did not have an adjustment bid as a price taker and would pay that sellers' portion of its schedule \$150/MWh when the zonal price exceeded the breakpoint. The remaining portion of the schedule would be paid based on its adjustment bid.

⁶(...continued)

operation of its Day-Ahead and Day-Of markets effective January 31, 2001. Therefore, any recalculation of bills is limited to the month of January.

⁷In contrast to energy bids, adjustments bids are submitted by buyers and sellers to the ISO for the purposes of congestion management. According to the PX, its role in adjustment bids is simply that of an order routing service. PX Compliance Filing at 13, n. 9.

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Method III

Method III is similar to Method II, but differs in the calculation of the price for sellers that did not submit adjustment bids. Method III uses the ISO's \$250/MWh bandwidth on adjustment bids in its congestion market. As a result, market participants are limited in their adjustment bids to a \$250 bandwidth around the UMCP. The lowest price that can be bid is \$125 minus the UMCP and the highest price that can be bid is \$125 plus the UMCP.⁸ Under Method III, when the Zonal Market Clearing Price (ZMCP) is greater than the \$150/MWh breakpoint, and the UMCP minus \$125 is greater than \$150 but less than the ZMCP, then sellers that did not submit adjustment bids are paid the UMCP minus \$125. Otherwise, sellers are paid according to Method II.

Notice and Responsive Pleadings

Notice of the PX's compliance filing was published in the Federal Register, 66 Fed. Reg. 13,923 (2001), with comments, protests, and interventions due on or before March 16, 2001. The Commission subsequently issued a notice shortening the comment period to and including March 9, 2001. The California Electricity Oversight Board filed a motion to intervene. Comments on the PX's compliance filing were filed by Modesto Irrigation District (Modesto); City of Santa Clara, California (Santa Clara); Southern California Edison Company (SoCal Edison); Pacific Gas and Electric Company (PG&E); Euron Power Marketing (EPMI); and, San Diego Gas & Electric Company (SDG&E).

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2000), the timely, unopposed motion to intervene serves to make the California Electricity Oversight Board a party to this proceeding.

As evidenced by the PX's February 26, 2001, compliance filing and discussed in detail above, the PX is capable of implementing the \$150/MWh breakpoint methodology for its January invoices. Therefore, we dismiss the PX's request for rehearing of the January 29 Order as moot.

We direct the PX to implement Method II for recalculating the January invoices. Method II applies the breakpoint methodology to every single hour in January, is consistent with current market rules and the normal working of the market, and is supported by PG&E, SoCal Edison, and SDG&E.

⁸Id. at 21.

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While Method I is supported by EPMI for its simplicity, Method I also ignores 70 percent of the hours when the market clearing price may have exceeded the \$150/MWh breakpoint. In the December 15 Order, we found that "[b]y establishing a \$150 breakpoint and not pricing every MWh at the clearing price, spot prices will no longer be magnified. This will provide substantial relief to buyers who remain in the market."⁹ In directing the PX to comply with the December 15 Order, the Commission cited a calculation by PG&E that the potential overcharge by the PX of not applying the breakpoint methodology was approximately \$20 million for just one day.¹⁰ It is extremely important that the breakpoint methodology be applied to every hour in January so that buyers in the PX market will receive the benefits of as-bid pricing. Thus, Method I is inconsistent with both the December 15 and January 29 Orders.

We also reject Method III. Method III is overly complex in its application of adjustment bids and the assumptions therein. In addition, Method III is not supported by any party.

Choosing Method II solves the problem of how sellers should be compensated under as-bid pricing. However, the PX requests guidance on how to distribute refunds to buyers if the Commission determines that the breakpoint methodology should be applied to congested hours. According to the PX, the refund method is straightforward when no congestion exists. In those hours the total refund amount would be distributed on a pro rata basis irrespective of zone. During congested hours, refunds can be distributed using either the same method as the uncongested hours or on a zonal basis.¹¹ The PX notes that allocating refunds on a zonal basis might be argued to more equitably allocate refunds.

We direct the PX to distribute refunds to buyers during congested hours on a zonal basis. We agree with SDG&E that the zonal approach is more consistent with the operation of the California markets which are structured to recognize price differentials between zones when congestion exists.¹² The majority of transactions occurred during congested periods when prices differed from zone to zone. Therefore, it is more appropriate to allocate refunds relating to those transactions on a zonal basis rather than spread the refunds pro rata without regard to location.

⁹93 FERC at 61,996.

¹⁰94 FERC at 61,378.

¹¹The PX describes in length the method for allocating refunds on a zonal basis in its Compliance Filing at 27.

¹²SDG&E comments at 4.

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The PX notes that after the Commission determines how sellers should be compensated and how refunds should be distributed to buyers, an important, but technical issue remains concerning the treatment of "overscheduling." According to the PX, overscheduling began when the IOUs were ordered to match their own generation with some part of their load. These matched amounts were scheduled through the PX and added to the quantity awarded in the initial PX auction. Under these circumstances, the initial preferred scheduled amount was greater than the quantity that was awarded in the PX auction. The PX asserts that, because quantities awarded in the Day-Ahead markets are based on portfolios and not resources, it is impossible to tell which resources are overscheduled and which resources are part of the quantity awarded in the auction. However, when congestion exists, the PX suggests two possible methods for treating the overscheduled amounts.

Under the first method, the PX would treat the overschedules the same as any other schedule. Under the second method, the PX would match the generation with load for overscheduling participants. The PX would match a participant's overscheduled generation with its load until the participant's generation is completely matched, leaving some load that would be eligible to receive a refund from other suppliers.¹³ The PX notes that if refunds are ordered on a zonal basis, the PX would first match all of a participant's load in a zone with that participant's generation in the zone.

Both PG&E and SoCal Edison support the second method while SDG&E favors the first. SDG&E contends that from an IOU perspective, overschedules are not materially different from any other schedule.¹⁴ We disagree. The central piece of our proposed price mitigation in the December 15 Order was the elimination of the requirement that the IOUs sell all of their generation into and buy all of their energy needs from the PX.¹⁵ Treating overschedules just like any other schedule is clearly inconsistent with the December 15 Order in that the IOUs would still charge themselves the market clearing price for their own generation. The second method would match the IOUs' generation against an equivalent amount of their load and net those transactions out of the market with no transfer of funds. Only the remaining load would be charged in the PX markets. Consistent with the December 15 Order, we direct the PX to implement the

¹³According to the PX, load generally exceeds generation for overscheduling participants. PX Compliance Filing at 30, n.21.

¹⁴SDG&E comments at 4.

¹⁵93 FERC at 61,993.

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second method and match the IOUs' generation with their load in calculating the refunds for January.

Finally, the PX requests guidance on how to settle block forward contracts in both uncongested and congested hours. The CTS block forward market is a pay-as-bid market where buyers and sellers agree on specific forward energy prices. Energy deliveries are usually done through the PX's Day-Ahead market and are settled as a contract for differences off the monthly weighted-average of the Day-Ahead zonal prices.¹⁶ The PX contends that it is impossible to definitively determine which portion of a participant's aggregate bid curves was intended to apply to spot market sales and which was to apply to CTS commitments. The PX asserts that in the instances where a participant's auction results exceed its CTS commitments, judgmental decisions are required to determine which portions of its supply curve should represent its CTS commitments.

The PX outlines three possible methods of allocating CTS commitments to a seller's bid curves. CTS commitments can be assigned to either the least expensive portion of the bid curve, the most expensive portion of the bid curve, or the middle portion of the bid curve. We direct the PX to assign the CTS commitments to the least expensive portion of the seller's bid curve. The PX makes a compelling case that rational sellers would have offered their least expensive energy in the CTS market and their more expensive supply in the spot market during January. This is evidenced by the lower prices in the CTS markets compared to the PX Day-Ahead market during that period.¹⁷ We agree with the PX that this method will ensure that sellers are not paid less than they bid and more realistically reflects the financial incentives available to sellers. For these reasons we reject SoCal Edison's proposed *pro rata* allocation.¹⁸ SoCal Edison's proposal maximizes a buyer's refund by unrealistically assigning a *pro rata* share of a high price bid to a low price CTS contract. Rational sellers would not offer energy in the CTS markets at a cost greater than the forward contract price.

The PX notes that refunds for block forward contracts are fairly straightforward. However, the PX contends that it is possible that the refund amount owed to an individual CTS buyer may exceed the amount of funds available from sellers. The PX argues that this situation can be avoided by calculating the CTS settlement before implementing the

¹⁶PX Compliance Filing at 31.

¹⁷According to the PX, CTS prices for January averaged \$77 for NP15 and \$62 for SP15 compared to \$319 for the PX Day-Ahead market. *Id.* at 34, n.27.

¹⁸SoCal Edison comments at 9-11.

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pay-as-bid recalculation. The PX states that by removing the CTS settlement from the pay-as-bid recalculation, buyers pay no more than they originally contracted. This option is the most beneficial to CTS buyers and we direct the PX to implement this methodology.

Finally, we direct the PX to file a report with the Commission within 15 days of recalculating the January invoices. The report should compare the original estimated invoices against the recalculated invoices.

Requests for Hearing and Audits

Both Santa Clara and Modesto request that the Commission hold a hearing in order to establish a methodology for determining how sellers should be paid and costs should be allocated to buyers. They argue that the PX's compliance filing fails to provide sufficient factual data for a proper determination as to which, if any, of the PX's proposed methods would appropriately implement the December 15 Order and fairly compensate Santa Clara and Modesto for the power that they sold into the PX. We disagree. The PX outlines several methods with detailed examples that it believes would implement the December 15 Order. We sought and received comments on the PX's proposal, as noted in this order. As discussed above, we have provided the PX with the guidance it needs to properly implement the December 15 Order. Moreover, we agree with the PX that both buyers and sellers are anxious to determine the financial impact of any refund and to settle their accounts as soon as possible to reduce uncertainty. In light of the above described procedures, a hearing would be unnecessary, and would needlessly delay the final submission of the January invoices.

SoCal Edison requests that we order the PX to conduct an audit of the PX's handling of SoCal Edison's block forward contracts and the suspension of the PX's business activities.¹⁹ We note that Section 15.2.4 of the PX tariff specifically provides that a PX participant, such as SoCal Edison, may request the PX Audit Committee to conduct an audit for "specific issues and concerns of certain PX Participants" and that the cost of these audits will be borne by the requesting party. Because there already are procedures in place for SoCal Edison to request an audit of the PX, SoCal Edison should avail itself of those procedures to the extent permitted by the bankruptcy proceeding. Therefore, we reject SoCal Edison's request.

¹⁹SoCal Edison has filed a similar request in Docket No. EL01-33-000.

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Bankruptcy Proceeding

Finally, with regard to the PX bankruptcy proceeding, although the Bankruptcy Code provides that the filing of a bankruptcy petition automatically stays certain actions against the debtor,²⁰ the Code also provides an exception from this automatic stay for:

An action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.²¹

The Commission has found in the past that actions taken under the authority granted it by the Federal Power Act and the controlling regulations fit within this exception, and, therefore, are exempt from the automatic stay provision.²² In the instant matter, we are exercising our regulatory power under section 206 of the Federal Power Act as permitted by section 362(b)(4) of the Bankruptcy Code to issue an order that does not threaten the bankruptcy court's control over the property of the bankruptcy estate.²³

²⁰ 11 U.S.C. § 362(a)(1) (1994).

²¹ 11 U.S.C. § 362(b)(4) (1994).

²² See, *Virginia Electric and Power Company*, 84 FERC ¶ 61,254 (1998); and *Century Power Corp.*, 56 FERC ¶ 61,087 (1991). The Commission conclusion on this matter is consistent with judicial precedent regarding the scope of the exemption to the automatic stay. E.g., *Board of Governors of the Federal Reserve System v. MCorp Fin., Inc.*, 502 U.S. 32 (1991); *SEC v. Brennan*, 250 F.3d 65 (2nd Cir. 2000); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828 (9th Cir. 1991); *United States v. Commonwealth Cos. Inc.* 913 F.2d 518 (8th Cir. 1990); *NLRB v. Edward Cooper Painting, Inc.* 804 F.2d 934 (6th Cir. 1986); *Penn Terra Ltd. v. Dept. of Environmental Resources*, 733 F.2d 267 (3rd Cir. 1984); see generally 3 *Collier on Bankruptcy* § 362.05 (15th ed. rev. 2000).

²³ The PX operates only as an intermediary to facilitate transactions between buyers and sellers. In this capacity, it collects money from load serving entities that it then pays to sellers, thus acting solely as a conduit for those funds. *Official Comm. of Unsecured Creditors v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 997 F.2d 1039, 1061 (3d Cir. 1993) (where FERC ordered pipeline to collect refunds from upstream suppliers and flow the money through to the pipeline's customers, the pipeline was merely a conduit for the money owed by suppliers to overcharged customers and

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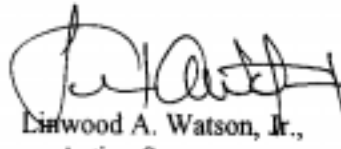
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The Commission orders:

- (A) The PX's request for rehearing is dismissed as moot.
- (B) The PX's compliance filing is accepted for filing and the PX is hereby ordered to implement the \$150/MWh breakpoint methodology for its January invoices, as discussed in the body of this order.
- (C) The PX is hereby ordered to file a report with the Commission within fifteen (15) days of recalculating the final January invoices as discussed in the body of this order.
- (D) Modesto and Santa Clara's request for a hearing is hereby rejected.
- (E) SoCal Edison's request for an audit is hereby rejected.

By the Commission.

(S E A L)


Linwood A. Watson, Jr.,
Acting Secretary.

²³(...continued)

therefore the refunds were not property of the pipeline's bankruptcy estate). See also *In re Dameron*, 155 F.3d 718 (4th Cir. 1998) (funds held by attorney as intermediary between lenders and third parties were not property of attorney's estate in bankruptcy); *Branch v. Hill, Holliday, Connors, Cosmopoulos, Inc. Advertising*, 165 B.R. 972, 977 (Bankr. D. Mass. 1994) (where parent collected funds from subsidiaries and made a "straight pass-through of the funds" to pay advertising firm, the funds were not the property of the parent's bankruptcy estate).

