

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	)	

PREPARED REBUTTAL TESTIMONY OF  
SPENCE GERBER, MICHAEL EPSTEIN, AND MICHAEL MCQUAY  
ON BEHALF OF  
THE CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION

1 Q. MR. GERBER, ARE YOU THE SAME SPENCE GERBER THAT  
2 PREVIOUSLY FILED DIRECT TESTIMONY IN THIS PROCEEDING?

3 A. Yes.

4  
5 Q. MR. EPSTEIN, PLEASE STATE YOUR NAME, TITLE, BUSINESS  
6 ADDRESS, AND JOB RESPONSIBILITIES.

7 A. [Michael Epstein] My name is Michael K Epstein. I am employed by the  
8 California Independent System Operator Corporation (the "ISO") as  
9 Controller. My business address is 151 Blue Ravine Road, Folsom, CA

1 95630. As Controller, I am responsible for the ISO's corporate  
2 accounting, fixed assets, procurement, payables, receivables, financial,  
3 tax and Federal Energy Regulatory Commission ("FERC" or  
4 "Commission") reporting functions, market cash settlements, and audit  
5 coordination for all the ISO's activities.

6

7 **Q. MR. MCQUAY, PLEASE STATE YOUR NAME, TITLE, BUSINESS**  
8 **ADDRESS, AND JOB RESPONSIBILITIES.**

9 **A. [Michael McQuay]** My name is Michael McQuay. I am employed by the  
10 California Independent System Operator Corporation ("ISO") as a Lead  
11 Analyst in the Scheduling Department. My business address is 151 Blue  
12 Ravine Road, Folsom, CA 95630. As Lead Analyst in the ISO's  
13 Scheduling Department, I am responsible for scheduling support and  
14 for data collection, validation, and analysis. My department supports pre-  
15 scheduling and real-time scheduling by conducting various  
16 communications as necessary with other ISOs and market participant  
17 support groups, confirming schedule data to assure that the information  
18 provided to settlements personnel is correct, and settling issues and  
19 disputes arising out of data differences. During the refund period, I  
20 arranged forward OOM purchases, exchanges, and the return of  
21 emergency energy, maintained the records of such transactions, and

1 confirmed balances with market participants. My department is the  
2 primary resource for interchange schedule data from the refund period.

3

4 **Q. MR. EPSTEIN, PLEASE DESCRIBE YOUR EDUCATIONAL AND**  
5 **EMPLOYMENT BACKGROUND.**

6 **A. [Michael Epstein]** I received both an MBA and a BA with a major in  
7 accounting from the University of Southern California in Los Angeles, CA.  
8 I have been the Controller of the ISO since 1997. From 1994 to 1997, I  
9 was Vice President (Finance) of Siskon Gold Corporation, a publicly  
10 traded mining company located in Grass Valley, CA. From 1989 to 1994, I  
11 was controller of the Grupe Company, a privately held diversified real  
12 estate company located in Stockton, CA. From 1985 to 1989, I was  
13 controller of Brush Creek Mining and Development Company, a publicly  
14 traded mining company located in Auburn, CA. Prior to that, I was a  
15 Certified Public Accountant in the practice of public accounting with both  
16 local and international accounting firms.

17

18 **Q. MR. MCQUAY, PLEASE DESCRIBE YOUR EDUCATIONAL AND**  
19 **EMPLOYMENT BACKGROUND.**

20 **A. [Michael McQuay]** I received a Bachelor of Science degree from the  
21 University of Utah in 1981. I have thirty-three years utility experience with  
22 Utah Power, PacifiCorp, WSCC, SMUD, and have been with the California

1 ISO since July of 1997, first developing Interconnection Agreements and  
2 Operating Procedures, then working with Scheduling Data as a  
3 Prescheduler, After-the-fact Analyst, and eventually Lead After-the-fact  
4 Analyst. As Analyst and Lead Analyst, I have become familiar with the  
5 data relating to the schedules in question and was present during the  
6 development of the ISO's scheduling practices.

7

8 **Q. MR. EPSTEIN, HAVE YOU PROVIDED EXPERT TESTIMONY**  
9 **PREVIOUSLY?**

10 A. **[Michael Epstein]** Yes, I have testified before FERC concerning the  
11 ISO's Grid Management Charge in FERC Docket Nos. ER01-313 and  
12 ER01-424. Additionally, I have presented testimony as an expert witness  
13 in several real estate valuation cases, in insurance claim matters, and in a  
14 tax and securities investigation.

15

16 **Q. MR. MCQUAY, HAVE YOU PROVIDED EXPERT TESTIMONY**  
17 **PREVIOUSLY?**

18 **[Michael McQuay]** No.

19

20 **Q. MR. GERBER, HOW WILL YOUR TESTIMONY BE ORGANIZED?**

21 A. **[Spence Gerber]** In Section I of this testimony, I will address the  
22 following issues related to the ISO's settlement re-run and calculation of

1 refunds: (1) issues concerning the ISO's data provided thus far in Phase  
2 2 of this proceeding; (2) issues concerning the re-run of the ISO's  
3 settlement and billing system, or the display of the results; (3) issues  
4 concerning the ISO's energy exchange program; (4) issues with respect to  
5 mis-logging of certain transactions; (5) issues concerning the treatment of  
6 California Energy Resource Scheduler ("CERS"); and (6) issues dealing  
7 with a possible "compliance" phase to this proceeding.

8

9 In Section II of this testimony, I will address, along with Mr. McQuay,  
10 various transactions that parties claim are excluded from refund liability in  
11 this proceeding, including "non-spot" transactions, "sleeve" transactions,  
12 "bilateral" transactions, and transactions entered into pursuant to Section  
13 202(c) of the Federal Power Act.

14

15 In Section III of this testimony, along with Mr. Epstein, I will address  
16 arguments made by various parties concerning refund amounts they claim  
17 are owed or owing and parties' arguments that the ISO's methodology for  
18 calculating refunds is flawed.

19

20 **Q. MR. MCQUAY, HOW WILL YOUR TESTIMONY BE ORGANIZED?**

21 **A. [Michael McQuay]** In Section II of this testimony, I will address, along  
22 with Mr. Gerber, various transactions that parties claim are excluded from

1 refund liability in this proceeding, including "non-spot" transactions,  
2 "sleeve" transactions, "bilateral" transactions, and transactions entered  
3 into pursuant to Section 202(c) of the Federal Power Act.

4

5 **Q. MR. EPSTEIN, HOW WILL YOUR TESTIMONY BE ORGANIZED?**

6 In Section III of this testimony, along with Mr. Gerber, I will address the  
7 following issues related to amounts owed and owing to market  
8 participants: (1) issues concerning pre-mitigated amounts owed and  
9 owing as calculated by the ISO and by various parties; (2) arguments by  
10 various parties concerning specific pre-mitigation amounts owed and  
11 owing; (3) issues concerning interest amounts that various parties have  
12 calculated, and (4) issues concerning the calculation and payment of  
13 interest.

14

15 **Q. AS YOU TESTIFY, WILL YOU BE USING ANY SPECIALIZED TERMS?**

16 **A. [Entire Panel]** Yes. Portions of our testimony contain references to  
17 amounts that certain entities owe "to the ISO" and references to amounts  
18 that "the ISO owes" to certain entities. In fact, of course, the ISO *itself*  
19 would not be owed or owing any such amounts, but rather participants in  
20 the ISO's markets would owe amounts to the market in which other  
21 participants in the ISO's markets are owed and to which the ISO would  
22 distribute the funds collected as required. Thus, every reference in this

1 testimony to amounts that are owed "to the ISO" and that "the ISO owes"  
2 should be understood as simply a convenient shorthand that means  
3 amounts to be collected from ISO market participants (owed to the ISO  
4 market) and distributed to ISO market participants (owed by the ISO  
5 market). Additionally, the terms "Scheduling Coordinators" ("SCs"), and  
6 "market participants" are used interchangeably for purposes of this  
7 testimony. The term "SC creditors" (or "creditors") refers to market  
8 participants that are owed by the ISO market, and the term "SC debtors"  
9 (or "debtors") refers to market participants that owe the ISO market.

10

11 **I. ISSUES RELATING TO THE ISO'S SETTLEMENT RE-RUN AND**  
12 **CALCULATION OF REFUNDS**  
13

14

15

15 **Q. WHAT IS THE PURPOSE OF THE TESTIMONY YOU ARE ABOUT TO**  
16 **PROVIDE IN THIS SECTION?**

16

17 **A. [Spence Gerber]** I will rebut or comment upon portions of the prepared  
18 responsive testimony of certain witnesses, namely the following:

18

19 (i) Portions of the testimony of Mr. Tranen for the California  
20 Generators, Dr. Cicchetti for the Competitive Supplier Group,  
21 and Drs. Cardell and Tabors for Powerex, in which they  
22 *comment critically in various respects upon the data the ISO*  
23 *has submitted for entry into the record or provided to the*  
24 *parties during discovery. See Exh. GEN-36 [Tranen] at 3;*

24

1 Exh. SEL-19 [Cicchetti] at 16-17; Exh. PWX-56 [Cardell] at  
2 5-12; Exh. PWX-53 [Tabors] at 5-6.

3 (ii) Portions of the testimony of Ms. Patterson for Commission  
4 Staff, Dr. Stern for the California Parties, Mr. Park for  
5 Northern California Power Agency ("NCPA"), Mr. Williams for  
6 Dynegy, Mr. Lanzalotta for the City of Vernon, Mr.  
7 Sanderson for the Western Area Power Administration  
8 ("WAPA"), and Mr. Shahpurwala for AES, as well as Mr.  
9 Tranen, Dr. Cicchetti, and Drs. Cardell and Tabors, in which  
10 they identify various alleged errors in the ISO's re-run of its  
11 settlement and billing system, including its mitigation of  
12 various charge types, as well as in its display of the results  
13 of the re-run. See Exh. S-95 [Patterson] at 6-10; Exh. CAL-  
14 35 [Stern] at 12-20; Exh. NCP-10 [Park] at 4-7; Exh. DYN-16  
15 [Williams] at 26-28; Exh. VER-3 [Lanzalotta] at 9-11; Exh.  
16 GEN-36 [Tranen] at 25-30, Exh. SEL-19 [Cicchetti] at 21-31,  
17 45-46; Exh. PWX-53 (Tabors) at 11-13.

18 (iii) Portions of the testimony of Dr. Berry for the California  
19 Parties and Mr. Tranen, in which they address the treatment  
20 of the ISO's energy exchange program for purposes of  
21 calculating refunds and amounts owing to and from various



1 entities. See Exh. CAL-40 [Berry] at 9-14; Exh. GEN-36  
2 [Tranen] at 30-32.

3 (iv) Portions of the testimony Mr. Tranen and Dr. Tabors, in  
4 which they address the ISO's purported mis-logging of  
5 certain transactions and how those transactions should  
6 affect calculation of amounts owing to and from various  
7 entities. See Exh. GEN-36 [Tranen] at 6, 17-24; Exh. PWX-  
8 53 [Tabors] at 8-9.

9 (v) Portions of the testimony of Mr. Ostrover for the California  
10 Parties, in which he addresses the treatment of amounts  
11 owed by or to the CERS in determining refunds and amounts  
12 owing to and from various entities. See Exh. CAL-37  
13 [Ostrover] at 6-12.

14 (vi) Portions of the testimony of Mr. Tranen and Dr. Tabors, in  
15 which they make suggestions concerning how to proceed  
16 from here, including the conduct of the "compliance" phase  
17 of this proceeding, *i.e.*, how to determine "final" mitigated  
18 market clearing prices ("MMCPs") and refunds after the  
19 Commission's decision. See Exh. GEN-36 [Tranen] at  
20 35:21-36:1; Exh. PWX-53 [Tabors] at 26:3-10.

21

22 A. DATA ISSUES

1

2 Q. WHAT CONTENTIONS DOES MR. TRANEN MAKE WITH RESPECT TO  
3 THE ISO'S DATA?

4 A. [Spence Gerber] Mr. Tranen states that the ISO's refund calculations in  
5 Exhibit No. ISO-30, which were produced using a snapshot of the  
6 production data base as of September 27, 2001, must be updated to take  
7 into account changes to that data base since September 27. Exh. GEN-  
8 36 (Tranen) at 3:16-4:4.

9

10 Q. DO YOU AGREE WITH MR. TRANEN?

11 A. [Spence Gerber] I agree that, in order to more accurately determine the  
12 amount of refunds due from SCs as of the time of any future re-run of the  
13 ISO's settlement and billing system, a more recent snapshot of the  
14 production data base should be used than the September 27, 2001  
15 snapshot. It may never be possible to take a "final" snapshot of the  
16 production data base for the refund period, *i.e.*, a snapshot after which  
17 there would be no further changes to the data base as a result of ongoing  
18 ISO operations. About the best one can do is take the next snapshot as  
19 close as possible to the time the new re-run is conducted; obviously, the  
20 more time that passes, the less the production data base should change.

21

1 Q. WHAT ARE DR. CICHETTI'S CONTENTIONS CONCERNING THE  
2 ISO'S DATA?

3 A. [Spence Gerber] First, Dr. Cicchetti notes that the ISO's (and the PX's)  
4 exhibits addressed to the issues of refunds and "who owes what to  
5 whom" were produced using MMCPs that were calculated in October  
6 2001, and thus do not reflect the Commission's direction in the December  
7 19 Order that MMCPs be calculated based on the highest cost unit (taking  
8 gas prices into account), rather than the unit with the highest heat rate  
9 Exh. SEL-19 [Cicchetti] at 6:11-20, 51:20-25. Second, Dr. Cicchetti  
10 contends that the MMCPs used to produce the ISO's exhibits for this  
11 phase of the proceeding are inconsistent with Commission orders in other  
12 ways. See, e g., *id.* at 10:12-11:14. And third, he states that the  
13 quantities for transactions in the ISO's data base at various points in time  
14 change, and that these changes affect not only the quantities themselves  
15 but also the per unit prices under some ISO Charge Types. *Id.* at 15:10-  
16 17:14. As a means of more quickly reaching finality in this proceeding, he  
17 recommends that the *original* quantities, reflected in what he refers to as  
18 the "original" invoices submitted to Scheduling Coordinators, be used for  
19 determining refunds and that "the results of individual market participant  
20 "adjustments" be left "for separate resolution between the CAISO and the  
21 individual market participant." *Id.* at 17:15-19:21 (quoted material at 19:5-  
22 8).

1

2 Q. HOW DO YOU RESPOND TO DR. CICCHETTI?

3 A. [Spence Gerber] First, he is, of course, correct that the ISO (and PX)  
4 used MMCPs in their settlement and billing re-runs that did not reflect the  
5 Commission's change in the December 19 Order from using, in the MMCP  
6 calculation, the unit with the highest heat rate, to the unit with highest  
7 costs taking state-wide gas prices into account. This is old, old news.  
8 The Presiding Judge will recall that whether to require the ISO to conduct  
9 yet another settlement re-run following the December 19 Order was  
10 thoroughly vetted in a pre-hearing conference and the Presiding Judge  
11 ruled against doing so. Thus, that the settlement re-runs being used in  
12 Phase II of this proceeding reflect MMCPs calculated before the  
13 December 19 Order does not suggest anything "wrong" with those re-runs.

14

15 Second, Dr. Cicchetti's other contentions concerning ways in which the  
16 MMCPs calculated by the ISO supposedly depart from the Commission's  
17 orders seem out of place under issues 2 and 3; it seems those arguments  
18 should have been made under issue 1.

19

20 Third, with respect to the issue Dr. Cicchetti raises concerning the  
21 quantities of specific transactions, he is correct that the quantity of a  
22 transaction does change from time to time in the ISO's settlement records.

1           There are various reasons. The most prominent reason for such changes  
2           is the receipt of updated metering data and post final adjustments to  
3           production data.. However, there are other reasons. For example, there  
4           are ongoing disputes concerning transactions during the refund period.  
5           These are constantly being worked out in good faith negotiations or  
6           arbitration, and their resolution ultimately may result in changes to the  
7           “snapshot” data, including the quantities, if they are resolved and  
8           processed before any subsequent refund recalculations.

9

10           With respect to Dr. Cicchetti's suggestion to use "original" quantities on  
11           the "original" invoices submitted to Scheduling Coordinators to determine  
12           refunds, I believe that this proposal would be unworkable.

13

14   **Q.   WHAT CONTENTIONS ARE MADE BY DR. TABORS AND DR.**  
15   **CARDELL, ON BEHALF OF POWEREX, CONCERNING THE ISO'S**  
16   **DATA?**

17   **A.   [Spence Gerber]** Dr. Tabors does not identify any issues independent of  
18           those identified by Dr. Cardell, but simply refers in his testimony to issues  
19           she raises. See Exh. PWX-53 [Tabors] at 5.21–6:5. As for Dr. Cardell,  
20           she makes several contentions. First, she indicates that the ISO did not  
21           provide to the parties initial production data, used by the ISO to calculate  
22           refund amounts, until the parties submitted data requests for that data,

1 and that even after the ISO provided that data the parties did not have  
2 “quite the same set” of production amounts as the ISO had used. Exh.  
3 PWX-56 [Cardell] at 5:17–6:8.

4  
5 Second, she characterizes the fact that ISO personnel did not use  
6 standard sign conventions in entering manual adjustments as a “recurring  
7 error.” *Id.* at 6:25–7:5. Third, she contends there were errors in manual  
8 entries under Charge Type 481. *Id.* at 8:1-9:15, 10:3-5. Fourth, she notes  
9 that the ISO has not provided the other parties a “complete transaction  
10 data base that clearly links the D and A records into single transactions,”  
11 *id.* at 10:25-26, and that such a data base is necessary to enable the other  
12 parties to check the ISO’s mitigation of original prices with complete  
13 accuracy, or to verify the dollar values provided by the ISO on the  
14 question of amounts owed and owing. *Id.* at 10:26–11:13, 12:6-11.

15

16 **Q. WHAT RESPONSE DO YOU HAVE TO DR. CARDELL (AND TO DR.**  
17 **TABORS, WHERE HE AGREES WITH DR. CARDELL)?**

18 **A. [Spence Gerber]** First, with respect to the initial production data, the  
19 parties asked for and received it. The ISO was not required to provide it at  
20 the time it submitted its initial exhibits in this phase of the proceeding. The  
21 fact the parties received it through discovery, and not in the ISO’s initial  
22 filing, has not delayed the proceeding in any way. As for the parties’ not

1           having precisely the same set of production amounts as the ISO, that is  
2           not because of any ISO effort to "hide the ball," but is simply a  
3           consequence of the difficulty of reproducing exactly the entire production  
4           data base that the complicated ISO settlement system uses. Dr. Cardell  
5           apparently wants the ISO to create for the parties a set of data that is  
6           arranged completely differently from what the ISO has provided to  
7           Scheduling Coordinators since the inception of the ISO.

8

9           Second, with respect to sign conventions, any inconsistency in these is a  
10          result of the fact that personnel make manual entries for the ISO's  
11          purposes in running its settlements system, not for the benefit of parties  
12          desiring to "audit" the ISO's work. It would have been better for the parties  
13          if all ISO employees working on the settlements re-run had used the same  
14          conventions, but it was not necessary for them to do so in order to make  
15          manual adjustments.

16

17

18          Third, as for errors in manual entries under Charge Type 481, negative  
19          values were used to reverse over-payments. I agree that the net of all  
20          payments and reversals under CT 481 for a particular transaction can  
21          never be negative, and therefore acknowledge that in the process of

1 attending to these manual adjustments during the settlement re-run, the  
2 ISO did not treat the transactions noted by Dr. Cardell properly.

3

4 And finally, with respect to her assertion that parties need a "transaction  
5 data base" in order to fully verify the ISO's calculations, her point may be  
6 true. However, it is not the ISO's obligation to create a specific type of  
7 data base that it does not use, or need, in order to conduct its day-to-day  
8 operations or in order to comply with the Commission's orders in this  
9 proceeding. The Commission ordered the ISO to re-run the ISO's existing  
10 settlements and billing system, not to create new data bases. The ISO put  
11 the parties' consultants in contact with a software development company  
12 that is familiar with ISO data presentation and that could, at the other  
13 parties' cost, prepare the type of data base that Dr. Cardell contends the  
14 parties need to fully verify the ISO's work. I do not know whether the  
15 parties have engaged that consultant. It is not the ISO's obligation to  
16 create, for the parties' benefit, a data base that is completely different from  
17 the one the ISO uses to run its settlement and billing system.

18

19 **B. ISSUES CONCERNING ISO'S RE-RUN OF SETTLEMENTS**

20



1 Q. WHAT ISSUES DO WITNESSES RAISE CONCERNING THE ISO'S RE-  
2 RUN OF ITS SETTLEMENTS AND BILLING SYSTEM USING THE  
3 MMCP'S?

4 A. [Spence Gerber] Ms. Patterson and Mr. Tranen testify that the ISO in its  
5 re-run correctly mitigated the penalties levied on suppliers for failure to  
6 perform (Charge Type 485), but then erred by neglecting to remove the  
7 original, unmitigated amounts when it calculated and presented the  
8 amount of total refunds, and by sometimes double-counting the mitigated  
9 penalties. Exh. S-95 [Patterson] at 9:13-20; Exh. GEN-36 [Tranen] at  
10 26:5-6. Mr. Tranen also testifies that with respect to some transactions in  
11 which the ISO had accepted a bid above the historical MCP, the ISO  
12 during the mitigation process erroneously calculated payment at the  
13 historical MCP rather than the MMCP when the MMCP was higher than  
14 the MCP. Exh. GEN-36 [Tranen] at 27:11-18. He also contends that the  
15 ISO erroneously reallocated certain charges associated with unmitigated  
16 transactions from Charge Type 401 to Charge Type 481, with the result  
17 that those charges are billed to different buyers than they should be, and  
18 that refunds mistakenly increase by \$3 million. *Id.* at 29:9-30:2.

19  
20 Dr. Stern contends that the ISO did not follow the Commission's directive  
21 in mitigating prices for ancillary services; his view is that whenever the  
22 MMCP calculated for energy was above the historical MCP for energy, the

1 ISO erred in mitigating prices for ancillary services only down to the  
2 MMCP for energy instead of all the way down to the historical MCP for  
3 energy. Exh. CAL-35 [Stern] at 13:3-12. He also contends that for the  
4 period prior to January 2, 2001, one ancillary service, called Replacement  
5 Reserves, should be mitigated *along with* the energy that the ISO used  
6 from the ancillary service; he would have the ISO add the price of the  
7 Replacement Reserves and the price of the energy together, then apply  
8 the MMCP to the sum. *Id.* at 19:5-23.

9

10 Dr. Tabors believes that imports should not be mitigated in each ten-  
11 minute settlement period, as the ISO did it, but instead should be  
12 mitigated over an hour period. Exh. PWX-53 [Tabors] at 12:16-18.

13

14 Dr. Cicchetti contends that the ISO's re-run should not have mitigated  
15 various charge types, mostly but not entirely certain ancillary service  
16 charge types and others associated with them. Exh. SEL-19 [Cicchetti] at  
17 23:10-25:13. He also contends that the neutrality charge, Charge Type  
18 1010, should have been capped at 9.5 cents per hour through February  
19 26, 2001 and at 9.5 cents annually thereafter, and that the charge should  
20 not be further mitigated based on the MMCPs. *Id.* at 29:10-13, 30:13-17.

21

22 Mr. Nichols, on behalf of Salt River Project ("SRP") makes a similar  
argument, stating that the ISO has understated SRP's refund numbers

1 due to an overcollection of approximately \$8 million in neutrality charges.  
2 Exh. SRP-1 [Nichols] at 8:18-21.

3  
4 Mr. Lanzalotta, on behalf of the City of Vernon, contends that the ISO  
5 erred in applying the MMCPs to some Vernon items, involving  
6 Replacement Reserve Capacity, for June 16, 17, and 18, 2001. Exh.  
7 VER-3 [Lanzalotta] at 10:9-19.

8  
9 Mr. Park, on behalf of Northern California Power Agency ("NCPA"),  
10 testified that the ISO mistakenly mitigated certain amounts associated with  
11 NCPA energy sales, under Charge Type 401, when these sales were  
12 made pursuant to an RMR contract and therefore should not have been  
13 mitigated. Exh. NCP-10 [Park] at 4:12-22.

14  
15 Mr. Williams, on behalf of Dynegy, contends that the ISO failed to account  
16 during the re-run for true-ups of certain Dynegy sales during January  
17 2001, resulting in Dynegy's being shorted some \$1.4 million in the re-run.  
18 Exh. DYN-16 [Williams] at 26:21-28:12.

19  
20 Mr. Sanderson, on behalf of Western Area Power Administration  
21 ("WAPA"), testifies that the ISO failed, to properly account for a settlement  
22 between the ISO and WAPA, for SC ID WAMP, of an error relating to

1 Charge Type 401 on WAMP's December, 2000 invoice. Exh. WPA-1  
2 [Sanderson] at 9-11.

3

4 Mr. Shahpurwala, on behalf of AES, suggests that the ISO erroneously  
5 reduced to zero \$496,140.07 due to AES under Charge Type 401 for  
6 sales made on December 8, 2000. Exh. AES-2 [Shahpurwala] at 6:20-23.

7

8 **Q. DO YOU AGREE OR DISAGREE WITH MS. PATTERSON'S AND MR.**  
9 **TRANEN'S TESTIMONY THAT THE ISO ERRED IN PRESENTING THE**  
10 **MITIGATED AMOUNTS OF CHARGE TYPE 485 PENALTIES?**

11 **A. [Spence Gerber]** I agree. The ISO discovered this error, long ago  
12 acknowledged it to the parties both informally and in formal discovery, and  
13 provided a description of how each supplier can "back out" the original  
14 unmitigated amounts in calculating refund amounts. The ISO has also  
15 confirmed that there were limited instances of double counting of mitigated  
16 penalties for the month of January, 2001. I have a reviewed Mr. Tranen's  
17 figures in Exhibit No. GEN-67, and he has reasonably accounted for the  
18 magnitude of those two errors.

19

20 **Q. DO YOU ACCEPT MR. TRANEN'S OTHER TWO CRITICISMS OF THE**  
21 **RE-RUN PROCESS?**

1    **A.**    **[Spence Gerber]** I accept the first of the two, that during the mitigation  
2            process the ISO sometimes miscalculated the payment to a seller whose  
3            bid it had accepted above the historical MCP. This occurred when, after  
4            the ISO had reversed the entire amount that had been paid above the  
5            historical MCP, in some instances these manual adjustments were not  
6            properly altered and as a result the mitigated amount above the historical  
7            MCP (*i.e.*, the amount that was more than the historical MCP but only up  
8            to the MMCP) was not added back in. The ISO has not had sufficient time  
9            to perform an analysis, and therefore, I am not able to comment, one way  
10           or the other, on whether Mr. Tranen's statement is correct that this error  
11           reduced the post-mitigation amounts owed to suppliers by "roughly \$20  
12           million " Exh. GEN-36 (Tranen) at 27:21-23.

13  
14           As for Mr. Tranen's statement that the ISO erroneously transferred some  
15           charges for unmitigated transactions from Charge Type 401 to Charge  
16           Type 481, I disagree with his characterization of this phenomenon as an  
17           "error." The transfer between charge types results from the manner in  
18           which the settlement system receives market clearing prices and is  
19           consistent with the ISO's treatment of the as-bid portions of transactions in  
20           production. All net negative deviations are charged at the instructed price,  
21           *i.e.*, the market clearing price. After Amendment 33, which became  
22           effective in December 2000, the as-bid portion of a transaction (the

1 difference between the instructed price and the bid price) was also  
2 allocated to net negative deviations. Thus, after Amendment 33, the  
3 entirety of purchases made above the instructed price (the market clearing  
4 price) was charged to net negative deviations. What Mr. Tranen points  
5 out, is that there are unintended consequences to the settlement process  
6 when certain transactions are afforded different treatment than others, *i.e.*,  
7 some are mitigated and others are not.

8

9 **Q. HOW DO YOU RESPOND TO DR. STERN'S CONTENTION THAT THE**  
10 **ISO ERRED IN MITIGATING PRICES FOR ANCILLARY SERVICES**  
11 **WHENEVER THE MMCP FOR ENERGY WAS ABOVE THE**  
12 **HISTORICAL MCP FOR ENERGY?**

13 **A. [Spence Gerber]** I disagree. In performing the settlements re-run, it is  
14 true that the ISO mitigated prices for ancillary services by using the lower  
15 of the mitigated price for energy calculated pursuant to the Commission's  
16 July 25 Order and the historical clearing price for the applicable ancillary  
17 service. My understanding of Dr. Stern's argument is that he believes that  
18 the Commission's orders required that the ISO also take account of the  
19 historical clearing price for energy in this calculation, such that if the  
20 historical clearing price for energy was lower than the mitigated price for  
21 energy, the ISO should have set the applicable ancillary service clearing  
22 price at that level. As to whether or not this is what the Commission

1 intended, I do not offer a response, since it appears to call solely for a  
2 legal interpretation of the Commission's orders.

3

4 **Q. WHAT IS YOUR VIEW OF DR. STERN'S SUGGESTION THAT FOR AT**  
5 **LEAST A PORTION OF THE REFUND PERIOD, THE PRICES FOR**  
6 **REPLACEMENT RESERVES AND FOR THE ENERGY CALLED FROM**  
7 **THOSE RESERVES SHOULD BE ADDED TOGETHER AND THE**  
8 **MMCP APPLIED TO THE SUM?**

9 **A. [Spence Gerber]** I disagree with Dr. Stern. The Commission directed the  
10 ISO to re-run its settlement and billing system applying the MMCPs. The  
11 ISO should apply the MMCPs consistently to the data as it exists in the  
12 ISO's production data base. That data in the production data base results  
13 from the application of the ISO Tariff as it existed at any particular point  
14 during the refund period. For months during the refund period when both  
15 Replacement Reserve Capacity and energy dispatched from Replacement  
16 Reserve Capacity were eligible to receive payment, both payments exist in  
17 the production data base and both payments should be mitigated –  
18 separately – when the MMCP is less than the historical payment. For  
19 months during the refund period when payments for Replacement  
20 Reserve Capacity were subject to rescission when energy was dispatched  
21 from the capacity, the MMCP should be applied to whichever payment  
22 remains in the production data base; whenever no energy was dispatched,

1           that payment will be for the Replacement Reserve Capacity, and when  
2           energy was dispatched, that payment will be for the energy only.

3

4   **Q.   WHAT DO YOU SAY TO DR. TABORS'S RECOMMENDATION THAT**  
5           **IMPORTS BE MITIGATED OVER AN HOUR INSTEAD OF OVER TEN-**  
6           **MINUTE PERIODS?**

7   **A.   [Spence Gerber]** I disagree. Dr. Tabors's only stated reason for  
8           recommending this is that the WSCC rules require schedules of an hour. I  
9           would first note my understanding that the WSCC has provisions that  
10          allow for partial-hour interchange schedules. But leaving that aside, I fail  
11          to see the relevance of a requirement of hourly schedules, even assuming  
12          that is the WSCC rule. The ISO Tariff expressly provides for paying all  
13          suppliers based on ten-minute pricing. To treat inter-tie schedules  
14          differently in the re-calculation of settlement for the purposes of refunds  
15          than they are treated in production would introduce an inaccuracy into the  
16          calculation of refund amounts. The Commission directed the ISO to  
17          calculate MMCPs for ten-minute intervals, and only suggested the need  
18          for calculating an hourly MMCP in order to apply that hourly MMCP to the  
19          hourly markets, *i.e.*, the ancillary service markets and the PX markets.  
20          The Commission did not suggest that imports should be treated differently  
21          than resources within the ISO's control area.

22



1 Q. HOW DO YOU RESPOND TO DR. CICHETTI'S CONTENTION THAT  
2 THE ISO SHOULD NOT HAVE APPLIED THE MITIGATED MMCP'S TO  
3 VARIOUS CHARGE TYPES DURING THE SETTLEMENT RE-RUN?

4 A. [Spence Gerber] I disagree. While there are a limited number of charge  
5 types to which the mitigated prices were applied, many other charge types  
6 are affected as they are either the allocation side of a mitigated price paid  
7 to sellers, or mitigation of one charge type results in a tertiary impact to a  
8 charge type (predominately Charge Type 1010) that exists for the purpose  
9 of balancing energy or dollar mismatches. To the extent Dr. Cicchetti  
10 contends that some ancillary service charge types should not have been  
11 mitigated, I disagree; the ISO believes that it was appropriate to apply the  
12 MMCP to sales of imbalance energy and ancillary service sales and their  
13 attendant charge types.

14  
15 Q. WHAT IS YOUR VIEW OF DR. CICHETTI'S AND MR. NICHOLS'  
16 TESTIMONY CONCERNING THE NEUTRALITY CHARGE AND THE  
17 "CAP" TO WHICH THEY REFER?

18 A. [Spence Gerber] I disagree with their view that the neutrality charges  
19 should be capped at some amount during the refund period. The alleged  
20 "cap" to which Dr. Cicchetti and Mr. Nichols refer was always intended to  
21 be used for planning purposes only. In addition, it is the subject of  
22 another, separate FERC proceeding in Docket Nos. EL00-111 and EL01-

1 84, in which parties currently are engaged in settlement discussions. The  
2 Commission has stayed its order in that proceeding pending the outcome  
3 of these settlement discussions. Thus, these witnesses' reliance on that  
4 order is misplaced.

5  
6 The treatment of neutrality charges as proposed by these witnesses would  
7 result in wholesale revisions to settlement amounts during the refund  
8 period. If the charges to the neutrality adjustment were limited to the  
9 amount of the "cap" alleged by these witnesses, the result would be  
10 residual un-allocated costs not assigned to any Scheduling Coordinator.  
11 Such a result would violate a fundamental obligation of the ISO, as a  
12 revenue-neutral entity, authorized under the California electric industry  
13 restructuring legislation and Commission precedent, to recover from  
14 Scheduling Coordinators on whose behalf it acquired Energy and Ancillary  
15 Services the amounts it pays to other Scheduling Coordinators to procure  
16 those products. The ISO always must balance cash disbursements  
17 against cash received to maintain revenue neutrality. That is, the ISO has  
18 no basis for absorbing neutrality costs because the ISO's entire settlement  
19 system is premised upon payments to creditors only in proportion to cash  
20 received from debtors. Therefore, if some kind of "cap" were applied to  
21 the amount charged to some SCs through neutrality, the ISO would be

1 required to recoup amounts previously paid to other SCs in order to  
2 maintain its revenue neutrality.

3

4 The ISO has never treated the alleged "cap" in the way Dr. Cicchetti and  
5 Mr. Nichols propose, in its production data base or anywhere else. Nor  
6 should the ISO treat the alleged "cap" any differently now. Since the  
7 existing production data base is what is used to conduct the rerun of the  
8 refund period and is the source of the data to which the MMCP is to be  
9 applied in the present proceeding, changing the treatment of the alleged  
10 "cap" would require a change to the data base. For purposes of this  
11 proceeding, the data base should be taken as is, because the objective of  
12 this proceeding is to impose a rerun on the historical data base the ISO  
13 originally used for settlement during the refund period.

14

15 In addition, a second negative result (in addition to the wholesale revision  
16 of settlement amounts, as noted above) would arise should the ISO treat  
17 the alleged "cap" as Dr. Cicchetti and Mr. Nichols propose. Specifically,  
18 the second negative result would be the import of issues currently subject  
19 to Commission consideration and settlement discussions in the neutrality  
20 proceeding, into the present proceeding. Besides being duplicative of  
21 Commission consideration in the neutrality proceeding, inclusion of the  
22 neutrality "cap" issue in the refund proceeding would require the

1 Commission either to assume an ultimate outcome in one proceeding in  
2 order to achieve consistency in the second proceeding, or risk having  
3 inconsistent Commission decisions on the same topic. (For example,  
4 Messrs. Cicchetti and Nichols would have the Presiding Judge assume  
5 that the ISO is required to refund certain amounts now showing in the  
6 production data base as neutrality charges; a conceivable outcome of the  
7 ongoing settlement discussions in the other proceeding, however, could  
8 well be that the Commission is asked to waive refunds.)”

9  
10 Another way to look at the testimony of Dr. Cicchetti and Mr Nichols is  
11 that it does not address any issue whatsoever concerning the ISO’s  
12 application of MMCPs to the production data base. Rather, these parties  
13 are arguing for changes in that production data base itself. This is  
14 analogous to a party trying to import into this proceeding a billing dispute  
15 that it has with the ISO concerning a transaction during the refund period.  
16 This proceeding clearly is not the proper forum for addressing such  
17 disputes. Simply stated, any dispute about the amounts that the ISO  
18 charged under neutrality during the refund period is completely outside the  
19 scope of this proceeding – and is, in fact, as noted above, the subject of  
20 another proceeding.

21

1 Q. DO YOU AGREE WITH MESSRS. LANZALOTTA AND PARK THAT  
2 THE ISO ERRED WITH RESPECT TO THE TRANSACTIONS  
3 DISCUSSED IN THEIR RESPECTIVE TESTIMONIES?

4 A. [Spence Gerber] The transactions Mr. Park refers to were ones in which  
5 NCPA chose to bid into the ISO market and take whatever price was set  
6 there, rather than accept the pre-set payment under the RMR contract. To  
7 the extent that payments to suppliers for energy are set at the market  
8 clearing price, they should be subject to mitigation. The transactions to  
9 which Mr. Park refers are not different from any others in which sellers  
10 were paid at the market clearing price.

11  
12 With respect to Mr. Lanzalotta, the ISO admits that it erred in applying the  
13 MMCPs to some Vernon items, involving Replacement Reserve Capacity,  
14 for June 16, 17, and 18, 2001. The ISO recognized this error in discovery  
15 responses to Vernon, which Mr. Lanzalotta included with his testimony as  
16 Exhibit No. VER-9.

17  
18 Q. HOW DO YOU RESPOND TO THE CONTENTIONS OF MR. WILLIAMS,  
19 MR. SANDERSON, AND MR. SHAHPURWALA?

20 A. [Spence Gerber] I agree with these witnesses that, in the process of  
21 attending to manual adjustments during the settlement re-run, the ISO did

1 not properly account for these transactions. This oversight led to the  
2 results described by these witnesses, which I noted above.

3

4 C. ENERGY EXCHANGE PROGRAM

5

6 Q. WHAT COMMENTS DO THE WITNESSES MAKE CONCERNING THE  
7 ISO'S ENERGY EXCHANGE PROGRAM?

8 A. [Spence Gerber] Mr. Tranen states that the ISO changed the method of  
9 accounting for the costs of the program without FERC authorization, and  
10 has been inconsistent in accounting for the program during the refund  
11 period. Exh. GEN-36 [Tranen] at 31:2-4, 12-20. Mr. Tranen also gives his  
12 view that the correct approach to accounting for the program is to use the  
13 charge types that existed during the refund period and settle the costs  
14 through Charge Types 1010 and 487. *Id.* at 32:9-11.

15

16 Dr. Berry disagrees with what she characterizes as the ISO's decision to  
17 date not to mitigate the transactions involved in energy exchange  
18 programs. In her view, the counter-parties that provided energy to the ISO  
19 engaged in wholesale sales and the costs to the ISO markets for the  
20 energy that the ISO sent back to those parties should be mitigated down  
21 to whatever was the value of the energy provided to the ISO; that value  
22 would be determined by multiplying the number of MWh's provided, by the

1 historical MCPs for the intervals in which the energy was provided. Exh.  
2 CAL-40 [Berry] at 10:21–12:25.

3

4 **Q. WHAT IS YOUR RESPONSE TO MR. TRANEN AND DR. BERRY?**

5 **A. [Spence Gerber]** It is my understanding from counsel at the ISO that in  
6 an October 17, 2001 Letter Order in Docket No. ER01-2886, FERC  
7 accepted the ISO's filing of the BPA energy exchange agreement. The  
8 ISO's filing set forth the ISO's energy exchange allocation methodology.  
9 The ISO acknowledges that there has been inconsistent and incomplete  
10 application of that allocation methodology during the refund period, both in  
11 production and in the refund recalculation. Any inconsistencies must  
12 eventually be reconciled in production, and the costs of the energy  
13 exchanges must be treated similarly in any subsequent refund  
14 recalculation. As to Dr. Berry's assertion that the ISO decided to not  
15 mitigate transactions involved in energy exchange programs, her position  
16 illustrates a common misunderstanding on how energy exchange costs  
17 are derived. The actual purchases of energy from suppliers, in order to  
18 return the energy received in an exchange program, are subject to  
19 mitigation along with any other purchases. Under the ISO's allocation  
20 methodology, the cost of these purchases will be assigned to the  
21 Scheduling Coordinators that benefited from the receipt of exchange

1 energy, and any refund amounts will therefore flow through to those same  
2 Scheduling Coordinators.

3

4 **D. MIS-LOGGING**

5

6 **Q. WHAT POSITIONS OR STATEMENTS OF VARIOUS WITNESSES WILL**  
7 **YOU ADDRESS IN THIS SECTION?**

8 **A. [Spence Gerber] I will address the following:**

9 (i) Mr. Tranen contends that, “depending on certain findings by the  
10 Presiding Judge,” the May 15 Order approved the use of the  
11 “corrected BEEP Stack” that Mr. Tranen proposed in testimony  
12 addressing issue 1 in this proceeding, in order to calculate the  
13 MMCPs. Exh. GEN-36 [Tranen] at 2:13-17. Mr. Tranen also  
14 described a procedure he went through to determine which  
15 transactions had been mis-logged, and presented the effect that his  
16 “correction” of the logging of these transactions would have on the  
17 total amount the ISO paid for sales during the refund period. *Id.* at  
18 17:13–24:9. Mr. Tranen also used these “corrections” in calculating  
19 *all* of the various versions of MMCPs that he used to determine the  
20 amounts of refunds under different scenarios, although it does not  
21 seem possible to isolate the effect of these “corrections” based on



1                   alleged mis-logging from the effect on the MMCPs of other  
2                   “corrections” he made. See *Id.* at 9:2-3 (note 1 to table).

3

4           (ii)    Dr. Tabors asserts that the historical MCPs must be re-calculated  
5                   because the ISO mis-logged “many” OOS transactions as OOM  
6                   transactions. Exh. PWX-53 [Tabors] at 8:29–9:8.

7

8   **Q.    WHAT WOULD YOU LIKE TO SAY WITH RESPECT TO MR.**  
9           **TRANEN'S DISCUSSION AND TREATMENT OF THIS ISSUE?**

10 **A.   [Spence Gerber]** Mr. Tranen's testimony, Exh. GEN-36 (Tranen) at  
11 17:13– 4:9, and related exhibits reflect a significant level of effort by his  
12 associates and himself in attempting to quantify changes to the historical  
13 MCPs, and to the resulting historical payments to sellers, that might result  
14 from correcting what he considers to be “out-of-sequence non-congestion  
15 transactions [that] were not logged according to the ISO's tariff  
16 provisions,” which was the type of mis-logging addressed by the  
17 Commission in the May 15 Order. See 99 FERC at 61,160. I can  
18 appreciate those efforts. However, I do have a question and a couple of  
19 comments.

20

21           First, it is not completely clear to me that the statistics that he presents,  
22           based on his own analysis of various ISO data files, correspond to those

1           that one would obtain from adhering strictly to the Commission's definition  
2           of mis-logging. He did not restrict his recalculations to transactions that  
3           were identified by the ISO's Project X as so-called "GG transactions,"  
4           which were *all* instances the ISO identified as involving units with respect  
5           to which there were valid bids in the BEEP stack (and therefore might  
6           even possibly have been subject to an OOS call) but which were  
7           dispatched outside of BEEP. See Exh. GEN-36 (Tranen) at 22:11-12.  
8           Instead, he created a three-part process involving cross-comparisons of  
9           various ISO files, *none* of which was the file containing the GG  
10          transactions. His process began with a file containing both (i) transactions  
11          categorized by the ISO as out-of-market ("OOM") for which there were  
12          bids in the BEEP stack, and (ii) transactions categorized as OOM for  
13          which there were no bids in the BEEP stack. No one would argue that the  
14          latter type of transaction should have been categorized as OOS. Yet,  
15          from his subsequent discussion of his process, it is not clear to me that he  
16          filtered out this type of transaction in identifying those that might lead to a  
17          recalculation of the historical MCPs. See Exh GEN-36 (Tranen) at 18:16–  
18          19:12. I hope Mr. Tranen can address this point in the next round of  
19          testimony and clarify whether, and if so how, he filtered out this type of  
20          transaction. Moreover, even in the case of a transaction for which a bid  
21          existed in the BEEP stack – the so-called "GG transactions" – there would  
22          be an argument for mis-logging only if it can be determined that the bid in

1 the BEEP stack preceded the dispatch instruction by the ISO. It is my  
2 understanding that in some instances the ISO gave a multiple-hour OOM  
3 dispatch notice to a Scheduling Coordinator and the Scheduling  
4 Coordinator thereafter submitted bids for those subsequent hours covered  
5 by the dispatch; this sequence would give the appearance, after the fact,  
6 of an OOM dispatch for an hour for which a bid existed in the BEEP stack,  
7 and could give rise to a "GG transaction." Yet, in this situation, the OOM  
8 call would have been logged correctly.

9  
10 Second, Mr. Tranen notes that the effect of his complicated analysis, if it  
11 were accepted *in toto*, would be to increase the *total* payments to *all*  
12 suppliers during the *entire* refund period by \$22 million. Exh. GEN-36  
13 (Tranen) at 24:3-7. Moreover, Mr. Tranen did not present any analysis  
14 showing how much of that \$22 million increase in payments would be  
15 mitigated away, which would happen any time the historical market  
16 clearing price was at the historical cap (either \$150 or \$250) or above the  
17 MMCP. I raise these points *not* to suggest that the Presiding Judge or the  
18 Commission should ignore the mis-logging issue, but to try to put it into  
19 perspective.

20  
21 Also, I note that the May 15 Order directs *the ISO* to recalculate the  
22 historical MCPs if the Presiding Judge finds the type of mis-logging

1 described in the Order. Therefore, Mr. Tranen's analysis is, at most,  
2 illustrative, and if the Presiding Judge makes the requisite finding, the ISO  
3 will have to undertake its own analysis to determine, at a minimum, if each  
4 of the situations identified by Mr. Tranen in fact requires recalculation of  
5 the historical MCP for the relevant interval. That will be a significant  
6 undertaking.

7

8 **Q. AND YOUR REPOSE TO DR. TABORS?**

9 **A. [Spence Gerber]** The Commission's May 15 Order requires the Presiding  
10 Judge to make a finding that mis-logging of OOS transactions occurred  
11 before the ISO would be required to recalculate historical MCPs. Dr.  
12 Tabors assumes that this finding has already been made.

13

14 **Q. DO YOU HAVE ANY OTHER COMMENT ON THE WITNESSES'  
15 TESTIMONY CONCERNING ALLEGED MIS-LOGGING?**

16 **A. [Spence Gerber]** I have one more observation. The May 15 Order  
17 requires the ISO to recalculate the historical MCPs only if the Presiding  
18 Judge finds "information . . . that out-of-sequence non-congestion  
19 transactions were not logged according to the ISO's Tariff provisions . . ."  
20 99 FERC at 61,654 Dr. Tabors does not address whether any alleged  
21 mis-logging was contrary to the Tariff. Ms. Patterson and Mr. Tranen  
22 simply assert that it may have been or was contrary to the Tariff. See,

1 e.g., Exh. S-95 at 14:6-8, 16:13-15; Exh. GEN-36 at 18:12-14 (discussing  
2 GG transactions, not the transactions identified in Mr. Tranen's own  
3 analysis). No one has identified a specific provision of the Tariff that was  
4 violated by any alleged mis-logging, or by the failure to set the historical  
5 market clearing price by the bid associated with any mis-logged  
6 transaction.

7

8 **E. TREATMENT OF CERS**

9

10 **Q. WHAT TESTIMONY DOES MR. OSTROVER PRESENT CONCERNING**  
11 **CERS?**

12 **A. [Spence Gerber]** Mr. Ostrover contends that some of the refunds shown  
13 in the ISO's exhibits as owing to either Pacific Gas and Electric Company,  
14 Southern California Edison Company, or San Diego Gas & Electric  
15 Company (together, the "IOUs") are properly owed to CERS, because the  
16 ISO billed CERS for the charges associated with the underlying  
17 transactions and CERS paid those charges. Exh. CAL-37 [Ostrover] at  
18 5:4-6:13. Mr. Ostrover also presented his methodology for identifying, in  
19 the ISO's exhibits, the charges paid by CERS and the refunds owed to  
20 CERS, as well as his calculation of the total amount of refunds owed to  
21 CERS. *Id.* at 8:7-11:10. His preliminary estimate of the amount of  
22 refunds owed to CERS was \$365,701,744.06. Exh. CAL-39.

1

2 Q. DO YOU AGREE WITH MR. OSTROVER?

3 A. [Spence Gerber] Yes, I agree with his recitation of the history of CERS's  
4 payments and understand his underlying methodology for identifying  
5 refunds owed to CERS. However, I note that the ISO's recalculation of its  
6 settlement system the refund period was done using the Scheduling  
7 Coordinators of record in the settlement detail files; the ISO made no  
8 attempt to consolidate in Exhibit Nos. ISO-28 through ISO-30 the  
9 individual Scheduling Coordinators that Mr. Ostrover refers to. I also note  
10 that his calculations are based on the exhibits in the record, which all  
11 parties agree must be updated for, among other things, changes in the  
12 MMCPs, a new re-run of the settlement and billing system, and updated  
13 cash positions. Therefore, the dollar amount he calculated will change.  
14 Furthermore, I note that Mr. Ostrover infers that there may have been a  
15 limited number of charge types considered in his analysis. Exh. CAL-37  
16 [Ostrover] at 10:11-12. The ISO has not performed any analysis of Mr.  
17 Ostrover's calculations to determine if he includes all of the charge types  
18 included in the ISO settlement re-calculation.

19

20 F. COMPLIANCE PHASE

21

1 Q. WHAT ARE SOME OF THE WITNESSES' SUGGESTIONS  
2 CONCERNING ANY COMPLIANCE PHASE IN THIS PROCEEDING?

3 A. [Spence Gerber] Mr. Tranen suggests that there should "some form of  
4 joint review of the settlement re-run processes by the PX and ISO, under  
5 the surveillance of other interested parties." Exh. GEN-36 [Tranen] at  
6 35:21-36:1. Dr Tabors suggests that some money can flow from buyers  
7 to sellers even before the compliance phase, because "[e]ven the most  
8 conservative calculation of refunds assuming the initial ISO values shows  
9 that there would be no over-distribution of funds." Exh. PWX-53 [Tabors]  
10 at 26:6-7. Mr. Jackson asserts that "[c]ash should flow sooner rather than  
11 later." He urges the Presiding Judge to recommend that amounts owed to  
12 each supplier be disbursed as soon as the Commission adopts the  
13 Presiding Judge's recommendations in this proceeding. He suggests that,  
14 subsequent to any data re-runs required by the Commission, a "true-up"  
15 would be performed. Exh. MID-20 [Jackson] at 9.21-10:1. Mr. Nichols  
16 states that he "favor[s] an immediate distribution of refunds based on an  
17 initial estimate of refund liabilities that arises from the hearing process,  
18 followed later by true-up compliance filings made by the ISO and PX once  
19 the Commission rules on the Presiding Judge's findings of fact and  
20 numbers are finalized in accordance with any further guidance provided by  
21 the Commission." Exh. SRP-1 [Nichols] at 17-21.

22

1 Q. WHAT SUGGESTIONS DO YOU HAVE CONCERNING ANY  
2 COMPLIANCE PHASE?

3 A. [Spence Gerber] I would suggest that, once the parties have agreed that  
4 the MMCPs have been calculated according to whatever order the  
5 Commission issues, the ISO be allowed to re-run one or two months of the  
6 settlement process, using the MMCPs, in a normal time frame. I suggest  
7 that Scheduling Coordinators then review the resulting statements and  
8 monthly invoices for any transactions or charge types a Scheduling  
9 Coordinator thinks the ISO may have handled inappropriately under the  
10 order. Once the Scheduling Coordinators are relatively confident that the  
11 process is proceeding correctly, the ISO could proceed to re-run the  
12 remaining months, with no hiatus between monthly re-runs for the dispute  
13 process that took place with respect to the first month or so. I believe my  
14 suggested course of action addresses the substance of Mr. Tranen's  
15 suggestion. However, I want to make it clear that the method by which  
16 refund amounts are calculated and cash is distributed needs to be  
17 considered as a separate process, and not co-mingled with the ISO's  
18 normal production and cash payment process.

19  
20 Q. DO YOU HAVE ANY COMMENT ON THE SUGGESTION MADE BY DR.  
21 TABORS AND MESSRS. JACKSON AND NICHOLS THAT FUNDS  
22 MIGHT FLOW EVEN BEFORE THE COMPLIANCE PHASE?



1    **A.**    **[Spence Gerber]** As noted above, any disbursement of cash would have  
2           to be made outside of the normal ISO disbursement process. In addition, I  
3           would note that this suggestion probably has little relevance vis-à-vis the  
4           ISO, because the ISO has already distributed all of the cash relating to  
5           outstanding payments that it has received. The only outstanding cash that  
6           has yet to flow through the ISO's markets are those amounts associated  
7           with PG&E and the PX, which, of course, are presently tied up in those  
8           entities' bankruptcy proceedings.

9  
10

11       **II.    TRANSACTIONS NOT SUBJECT TO REFUND LIABILITY**

12

13    **Q.**    **WHAT IS THE PURPOSE OF THE TESTIMONY THAT YOU WILL**  
14           **PROVIDE IN THIS SECTION?**

15    **A.**    **[Spence Gerber]** I will, along with Mr. McQuay, rebut or comment upon  
16           portions of the prepared responsive testimony of certain witnesses,  
17           namely the following:

- 18           (i)    Portions of the testimony of Dr. Berry, Ms. Patterson, James  
19                   R. Hicks for El Paso Merchant Energy ("EPME"), Mark S.  
20                   Ward for the Los Angeles Department of Water and Power  
21                   ("LADWP"), James A. Tracy for the Sacramento Municipal  
22                   Utility District ("SMUD") and Ian Bourne for TransAlta Energy

1 Marketing ("TransAlta"), in which these witnesses address  
2 the issue of "sleeve" transactions. See Exh. CAL-40 [Berry]  
3 at 7-9; Exh. S-95 [Patterson] at 10-12; Exh. EPME-1 [Hicks]  
4 at 13-16; Exh. SMD-15 [Tracy] at 9-10, 14; Exh. TRA-1  
5 [Bourne] at 11-14.

6 (ii) Portions of the testimony of Mr. Shapurwala, Don Wolfe for  
7 Bonneville Power Administration ("BPA"), Dr. Berry, Dr.  
8 Cicchetti, Mr. Williams, Mr. Hicks, Mr. Ward, Dr. Cardell,  
9 Christine Cantor for Sempra Energy Trading ("Sempra"), Ms.  
10 Patterson, and Mr. Bourne, in which these witnesses  
11 address the issue of "non-spot" or "multi-day" transactions.  
12 See Exh. AES-2 [Shahpurwala] at 4; Exh. BPA-57 (Wolfe) at  
13 4-5; Exh. SEL-19 [Cicchetti] at 63-66; Exh. DYN-16  
14 [Williams] at 22-26; Exh. EPME-1 [Hicks] at 8-13, Exh. DWP-  
15 21 [Ward] at 4, 6-9; Exh. PWX-56 [Cardell] at 9; Exh. SET-1  
16 [Cantor] at 4-5; Exh. S-95 [Patterson] at 4-5; TRA-1 [Bourne]  
17 at 5-7.

18 (iii) Portions of the testimony of Mr. Wolfe, Paul G. Scheuerman  
19 on behalf for the City of Burbank ("Burbank") and the Turlock  
20 Irrigation District ("Turlock"), Tim Culbertson for the Grant  
21 County Public Utility District # 2 ("Grant County"), Mr. Ward,  
22 Lyle L. Hurley for the City of Redding ("Redding"), in which

1                   these witnesses claim that certain of their transactions  
2                   should be excluded from refund liability because they were  
3                   “bilateral” transactions made outside of the ISO’s centralized  
4                   markets. See Exh. BPA-57 [Wolfe] at 3-11; Exh. BUR-4  
5                   [Scheuerman] at 11; Exh. TUR-1 [Scheuerman] at 5-17; Exh.  
6                   GC-1 [Culbertson] at 6; Exh. DWP-21 [Ward] at 5-9, 14-19,  
7                   Exh. REU-1 [Hurley] at 4-11.

8                   (iv) Portions of the testimony of Mr. Bourne in which he argues  
9                   that the Commission should take into account certain factors  
10                  in determining TransAlta’s refund liability. Exh. TRA-1  
11                  [Bourne] at 7-11.

12                  (v) Portions of the testimony of Dr. Cicchetti, Mr. Ward, Mr.  
13                  Park, Kristin Stathis for Portland General Electric  
14                  (“Portland”), and Mr. Tracy concerning the mitigation of  
15                  transactions conducted pursuant to Section 202(c) of the  
16                  Federal Power Act (“DOE transactions”). Exh. SEL-19  
17                  [Cicchetti] at 69-71; Exh. DWP-21 [Ward] at 19, Exh. NCP-  
18                  10 [Park] at 4; Exh. PGE-23 [Stathis] at 3-4; Exh. SMD-15  
19                  [Tracy] at 10.

20  
21    A.    SLEEVE TRANSACTIONS

1 Q. SEVERAL PARTIES, AS OUTLINED ABOVE, RAISE THE ISSUE OF  
2 SO-CALLED "SLEEVE TRANSACTIONS." PLEASE DEFINE A  
3 "SLEEVE" TRANSACTION.

4 A. [Spence Gerber] A sleeve transaction is, generically speaking, a  
5 transaction between a provider of energy and a purchaser that is "sleeved"  
6 by a third party who provides the necessary financial connection between  
7 the provider and purchaser. Sleeves are generally employed in cases  
8 where the provider of energy is unwilling to sell directly to the purchaser,  
9 but agrees to sell to a third party (i.e., the sleeving party). The sleeving  
10 party, in turn, agrees to re-sell the energy to the ultimate purchaser.

11  
12 Q. PLEASE EXPLAIN WHY SLEEVE TRANSACTIONS ARE AT ISSUE IN  
13 THE CURRENT PROCEEDING.

14 A. [Spence Gerber] The issue of sleeve transactions arises in the context of  
15 this proceeding due to the credit difficulties experienced by the ISO during  
16 the final months of 2000 and early 2001. By now, it is well known that the  
17 failing creditworthiness of the California Investor Owned Utilities ("IOUs")  
18 during this period led to questions concerning the ability of the ISO to pay  
19 suppliers for energy and services sold in its markets. As a result, many  
20 suppliers were unwilling to continue to sell to the ISO. Also, some  
21 suppliers were unwilling to work within the established ISO settlement and  
22 billing cycle. In a limited number of instances, when suppliers refused to

1 sell to the ISO or operate within the ISO's settlement and billing cycle, the  
2 ISO requested that a third party purchase the power, pay for it, and then  
3 re-sell that power to the ISO and accept payment from the ISO within the  
4 ISO's established settlement and billing cycle.

5

6 **Q. HOW DOES ONE DISTINGUISH SLEEVE TRANSACTIONS FROM**  
7 **OTHER SITUATIONS IN WHICH SUPPLIERS PURCHASED AND RE-**  
8 **SOLD ENERGY TO THE ISO?**

9 **A. [Spence Gerber]** In discovery, the ISO suggested that the defining  
10 characteristics of a sleeve transaction, for purposes of this proceeding,  
11 should be:

- 12 1. There had to be no profit involved in the transaction for the  
13 "sleeving party."
- 14 2. The sleeve had to have been requested by the ISO.
- 15 3. The "sleeving party" had to have facilitated the sleeve and  
16 nothing more.
- 17 4. The transaction had to have occurred during the period  
18 November 1, 2000 through January 17, 2001.

19 To be clear, the ISO never developed a specific mechanism or procedure  
20 for engaging in sleeve transactions during the refund period. What the  
21 ISO attempted to do in developing these criteria, however, was to create a  
22 filtering mechanism that allowed identification of those transactions as to

1           which it would be unfair to mitigate the ISO's payment to the sleeving  
2           party, for the reasons that I address below. I recognize, however, that  
3           these criteria are not necessarily definitive, and that the diverse factual  
4           nature of many of the transactions addressed in this situation make it  
5           difficult to apply strict criteria; in the end, it is up to the Commission to  
6           determine whether or not it is appropriate to apply any special treatment to  
7           sleeve transactions, and if so, to determine which transactions should be  
8           characterized as sleeves.

9

10   **Q.    WHAT DO YOU MEAN WHEN YOU STATE THAT THERE HAD TO BE**  
11   **NO PROFIT INVOLVED FOR THE SLEEVING PARTY?**

12   **A.    [Spence Gerber]** In discovery, the ISO explained that it considered profit  
13   to be anything in excess of administrative costs to the sleeving party.  
14   Ideally, the price that the sleeving party charged the ISO would be  
15   identical to the price that the sleeving party paid for the energy.

16

17   **Q.    WHAT DO YOU MEAN BY THE PHRASE "FACILITATED THE SLEEVE**  
18   **AND NOTHING MORE."**

19   **A.    [Spence Gerber]** This criteria means that the ISO had to have directly  
20   negotiated the terms of the arrangement with the supplier, and that the  
21   sleeving party acted only as a financial intermediary at the request of the  
22   ISO. This is significant because the ISO would otherwise have had no

1 way of knowing the terms of the arrangement between the supplier and  
2 the sleeving party, particularly as to whether the sleeving party had  
3 included a profit margin in its sale to the ISO.

4

5 **Q. TO THE EXTENT THAT THERE WERE SLEEVE TRANSACTIONS**  
6 **ENTERED INTO DURING THE REFUND PERIOD, WHAT DO YOU**  
7 **BELIEVE AT THIS POINT IS THE MOST APPROPRIATE TREATMENT**  
8 **FOR THESE TRANSACTIONS?**

9 **A. [Spence Gerber]** I believe that the entity that sold to the sleeving party  
10 should be liable for any refunds associated with sleeve transactions. This  
11 is the most appropriate treatment because that seller is the last entity in  
12 the transactional chain that had the opportunity to include a profit margin  
13 in its sale. Moreover, the entity selling to the sleeving party would have  
14 known that the sleeving party was merely acting as a financial conduit,  
15 and that the ISO would act as the ultimate purchaser. For these reasons,  
16 I believe that the most equitable result would be to require the entity that  
17 sold to the sleeving party to be liable for refunding any amounts greater  
18 than the applicable mitigated price. If that is not possible for any reason,  
19 then I still believe that the most equitable result would be to absolve the  
20 sleeving party from refund liability, for the reasons that I just articulated.  
21 However, I do recognize that the Commission has, to date, created no  
22 exemption from mitigation for sleeve transactions

1

2 **Q. DID THE ISO IDENTIFY ANY TRANSACTIONS AS SLEEVES AT THE**  
3 **TIME IT PERFORMED ITS SETTLEMENT RE-RUN?**

4 A. **[Michael McQuay]** Yes. At the time it performed its settlement re-run,  
5 the ISO identified certain transactions as sleeve transactions. The list of  
6 those transactions is included with Staff's answering testimony as Exhibit  
7 S-100. This list includes transactions made with LADWP, SMUD, Edison,  
8 Williams and Southern Co. (i.e., Mirant). However, after further review,  
9 the ISO is no longer certain that each of the identified transactions should  
10 be considered a sleeve. Therefore, as I describe below, I undertook a  
11 more thorough review of these transactions in connection with the  
12 preparation of this testimony.

13

14 **Q. WHAT WAS THE PROCESS BY WHICH THE ISO INITIALLY**  
15 **IDENTIFIED THESE TRANSACTIONS AS SLEEVE TRANSACTIONS?**

16 A. **[Michael McQuay]** I identified the transactions that appear in Exhibit S-  
17 100 by looking for evidence in ISO dispatch records, including BITS (the  
18 Interchange Transaction Scheduler), OOM logs, and SLIC (the dispatch  
19 log). Since "sleeve" was not and is not a designated energy type, it was  
20 not a notation that operators were required to make with respect to  
21 transactions. Sometimes, however, I found "sleeve" noted in BITS or in  
22 the OOM logs. In other cases, I drew conclusions as to which



1 transactions were sleeves based on connections between Interchange IDs  
2 and Scheduling Coordinator IDs

3

4 **Q. DID THE ISO MITIGATE THE TRANSACTIONS THAT MR. MCQUAY**  
5 **HAD IDENTIFIED AS SLEEVES, IN ITS SETTLEMENTS RE-RUN?**

6 **A. [Spence Gerber] No, it did not.**

7

8 **Q. HAS THE ISO HAD A CHANCE TO FUTHER REVIEW THE**  
9 **TRANSACTIONS THAT IT INITIALLY IDENTIFIED AS SLEEVES?**

10 **A. [Michael McQuay] Yes.** In preparing this testimony, I have engaged in a  
11 more thorough investigation with respect to the transactions that the ISO  
12 initially identified as sleeves, as well as additional transactions alleged by  
13 other parties to be sleeves in their responsive testimony. Under the sub-  
14 headings for each specific party below, I set forth the results of my  
15 research.

16

17 **1. COMMISSION STAFF**

18 **Q. WHAT POSITION DOES MS. PATTERSON, TESTIFYING ON BEHALF**  
19 **OF COMMISSION TRIAL STAFF, TAKE WITH RESPECT TO SLEEVE**  
20 **TRANSACTIONS?**

21 **A. [Spence Gerber] Ms Patterson contends that the ISO's treatment of**  
22 **sleeve transactions (i.e., not applying the mitigated price to them in the**

1 course of its settlements re-run), is inconsistent with the Commission's  
2 July 25 Order. Exh. S-95 [Patterson] at 12:4-9. Ms. Patterson reasons  
3 that the July 25 Order only exempted CDWR and DOE transactions from  
4 price mitigation, and that the Commission specifically stated, in its May 15  
5 Order, that it would not make an exception for sleeving transactions. *Id.* at  
6 12:9-19.

7

8 **Q. DO YOU AGREE WITH MS. PATTERSON?**

9 **A. [Spence Gerber]** I concur with Ms. Patterson in that the Commission, to  
10 date, has not exempted sleeve transactions from price mitigation.  
11 However, I believe that the price mitigation associated with sleeve  
12 transactions should be applied to the appropriate party, *i.e.*, the supplier  
13 who sold to the sleeving party. I also believe that if the Commission does  
14 not impose refund liability on the supplier who sold to the sleeving party,  
15 then it would still be inequitable to punish the entity who simply acted as a  
16 financial intermediary at the ISO's request. With respect to the passage  
17 in the Commission's May 15 Order that Ms. Patterson refers to, it is not  
18 clear to me whether the Commission was addressing sleeve transactions  
19 in terms of price mitigation or in terms of a marketer's opportunity to prove  
20 an overall revenue shortfall during the refund period. Of course, this is an  
21 issue for the Commission to decide.

22

1           2.     CALIFORNIA PARTIES

2     Q.     DR. BERRY, TESTIFYING ON BEHALF OF THE CALIFORNIA  
3           PARTIES, DISCUSSES THIS ISSUE OF SLEEVE TRANSACTIONS IN  
4           HER RESPONSIVE TESTIMONY. WHAT POSITION DOES DR. BERRY  
5           TAKE?

6     A.     [Spence Gerber] Dr. Berry argues that to the extent sleeve transactions  
7           are spot market OOM transactions, they should be subject to mitigation.  
8           Exh. CAL-40 [Berry] at 8:25-30. Dr. Berry states that “[t]he exemption that  
9           the ISO has carved out for Sleeved Transactions is clearly outside the  
10          scope of the Commission’s July 25, 2001, Order. The Commission does  
11          not consider profits, requests by the ISO, or the other Sleeve criteria listed  
12          above to determine whether a transaction should be subject to mitigation.”  
13          *Id.* at 9:4-8.

14  
15    Q.     DOES DR. BERRY MAKE ANY OTHER POINTS WITH RESPECT TO  
16           SLEEVE TRANSACTIONS?

17    A.     [Spence Gerber] Yes Dr. Berry describes a set of transactions that she  
18           labels “Emergency Financial Transactions.” Dr. Berry defines these  
19           transactions as instances in which, in order to secure energy, “the ISO  
20           was required to find a party that was willing to put up cash for the  
21           transaction. The financial intermediary would pay the Seller an amount  
22           previously agreed to by the ISO and the Seller. In turn, the financial

1 intermediary would bill the ISO for an exactly equal amount.” Exh. CAL-40  
2 [Berry] at 14:7-11. Dr. Berry states that if the intermediary had a more  
3 “significant role” in the transaction, *i.e.*, if the intermediary had located the  
4 seller of energy, negotiated any part of the transaction, or had charged  
5 any fee, then the transaction would not fit her definition of an Emergency  
6 Financial Transaction. *Id.* at 15:22-26. Dr. Berry identifies only two  
7 transactions that fit her definition of Emergency Financial Transaction,  
8 both of which involved Southern California Edison (“Edison”) acting as a  
9 financial intermediary between the ISO and Powerex. *Id.* at 15:1-11.

10

11 **Q. HOW DOES DR. BERRY PROPOSE TO DEAL WITH THESE**  
12 **“EMERGENCY FINANCIAL TRANSACTIONS?”**

13 A. **[Spence Gerber]** Dr. Berry suggests that the “real seller” in these  
14 transactions should be liable for paying refunds associated with those  
15 transactions, rather than the intermediary, “who did absolutely nothing  
16 other than put up cash to support a deal that was negotiated by the ISO.”  
17 Exh. CAL-40 [Berry] at 15:19-22.

18

19 **Q. DO YOU AGREE WITH DR. BERRY’S ANALYSIS OF SLEEVE**  
20 **TRANSACTIONS AND “EMERGENCY FINANCIAL TRANSACTIONS?”**

21 A **[Spence Gerber]** First, it appears that she applies the term “Emergency  
22 Financial Transaction” to transactions meeting somewhat more stringent

1 criteria than those the ISO provided in discovery as identifying a "sleeve."  
2 Dr. Berry also notes that the Commission did not consider profits, requests  
3 by the ISO, or the other sleeve criteria in determining which transactions  
4 should be mitigated. However, this is also true with respect to the criteria  
5 that Dr. Berry contends should govern Emergency Financial Transactions.

6  
7 With respect to the two Edison transactions that Dr. Berry characterizes as  
8 "Emergency Financial Transactions," I agree, in theory, that refunds  
9 associated with these sales should be borne by the "real seller."

10 However, there may be difficulties associated with implementing this  
11 proposal. From the ISO's settlement and billing perspective, these  
12 transactions were made between the ISO and Edison – there is no direct  
13 financial connection between the ISO and the "real seller."

14

15 **3. EPME**

16 **Q. WHAT POINTS DOES MR. HICKS, TESTIFYING ON BEHALF OF**  
17 **EPME, RAISE IN HIS RESPONSIVE TESTIMONY WITH RESPECT TO**  
18 **SLEEVE TRANSACTIONS?**

19 **A. [Spence Gerber]** Mr. Hicks claims that EPME entered into several  
20 sleeving transactions with the ISO during the refund period, in which  
21 EPME resold power to the ISO supplied by Avista Energy and PacifiCorp.  
22 Exh. EPME-1 [Hicks] at 13:16-15:21. These transactions are identified by

1 EMPE in Exhibit No. EPME-3. Mr. Hicks takes the position that these  
2 transactions should not be subject to mitigation in this proceeding. *Id.* at  
3 8:1-2.

4

5 **Q. DO YOU AGREE WITH MR. HICKS THAT THE TRANSACTIONS**  
6 **IDENTIFIED IN EXHIBIT NO. EPME-3 CONSTITUTE SLEEVE**  
7 **TRANSACTIONS THAT SHOULD BE EXCLUDED FROM REFUND**  
8 **LIABILITY?**

9 A. [Spence Gerber] No, I do not.

10

11 **Q. WHY NOT?**

12 A. [Spence Gerber] These transactions simply do not fit even a loose  
13 definition of a sleeve. EPME was clearly not performing the role of a  
14 financial intermediary but was merely engaging in purchases and resale to  
15 the ISO in the normal course of business. As Mr. Hicks admits, EPME did  
16 not base the price that it charged the ISO on the price charged by Avista  
17 (the supplier); instead, the price was negotiated on a sale-by-sale basis  
18 between the ISO and EPME.

19

20 **4. LADWP**

1 Q. WHAT POINTS DOES MR. WARD, TESTIFYING ON BEHALF OF  
2 LADWP, RAISE IN HIS RESPONSIVE TESTIMONY WITH RESPECT TO  
3 SLEEVE TRANSACTIONS?

4 A. [Spence Gerber] Mr. Ward claims that LADWP acted as a credit  
5 intermediary in 19 sleeve transactions with the ISO and Powerex during  
6 the period December 7 through December 12, 2000. Exh. DWP-21  
7 [Ward] at 9:18-10:24. These transactions are documented in LADWP's  
8 Exhibit No. DWP-26. Mr. Ward claims that these transactions should not  
9 be subject to mitigation in this proceeding because "they are bilateral  
10 sales to the ISO that did not take place in the ISO's centralized, single-  
11 price auction spot markets." *Id.* at 12:7-13:7.

12  
13 Q. WOULD YOU PLEASE EXPLAIN THE CIRCUMSTANCES  
14 SURROUNDING THESE TRANSACTIONS?

15 A. [Michael McQuay] Yes. The ISO contacted LADWP on December 6,  
16 2000, to inquire as to whether LADWP would be willing to purchase power  
17 from Powerex to sell to the ISO, since Powerex was, at that point,  
18 unwilling to sell directly to the ISO. LADWP agreed to do so at a 1.5%  
19 markup to the ISO. On December 7, 2000, the ISO, LADWP, and  
20 Powerex participated in a telephone conversation in which it was agreed  
21 that LADWP would purchase 1,000 MWh of energy from Powerex at a  
22 price of \$1,000 and then immediately re-sell that energy to the ISO at a

1 price of \$1,015. These facts can be confirmed by reviewing the telephone  
2 transcripts found at Exhibit No. DWP-27. This transaction appears on the  
3 list of sleeves that I compiled during the settlement re-run process and is  
4 reproduced as Exhibit No. S-100.

5

6 **Q. WAS THE SAME PROCEDURE FOLLOWED WITH RESPECT TO THE**  
7 **OTHER TRANSACTIONS THAT LADWP HAS CLAIMED AS**  
8 **SLEEVES?**

9 **A. [Michael McQuay]** No. With respect to the other 18 transactions that Mr  
10 Ward claims were sleeve transactions, the ISO did not participate in the  
11 negotiation of price and quantity terms with Powerex. Instead, LADWP  
12 negotiated individually with Powerex, and then offered the energy it  
13 obtained to the ISO. LADWP reported to the ISO the price that Powerex  
14 would charge LADWP, and continued to add an approximately 1.5%  
15 markup. Additionally, LADWP did not engage in these transactions at the  
16 specific request of the ISO. Instead, these transactions were initiated by  
17 LADWP personnel, who inquired with the ISO whether or not it wanted to  
18 continue to purchase energy that LADWP was obtaining from Powerex.  
19 This is borne out in transcripts included in Exhibit No. DPW-27.

20

21 **Q. DO YOU CONCUR WITH MR. WARD'S CLAIM THAT THESE**  
22 **TRANSACTIONS ARE, IN FACT, SLEEVE TRANSACTIONS?**



1    **A. [Spence Gerber]** These transactions present a very close case. The  
2           initial LADWP transaction (which was identified by the ISO's internal  
3           review as a sleeve) should probably be treated as a sleeve. The only  
4           troubling aspect of this transaction is the 1.5% markup that LADWP  
5           charged to the ISO. Although LADWP has characterized this markup as  
6           accounting for the "time value of money," it is arguable whether this  
7           constitutes a "profit" on the sales. In the end, however, I believe that the  
8           1.5% markup is not significant enough in and of itself to exclude this  
9           transaction from being classified as a sleeve transaction. I base this  
10          conclusion on the fact that the ISO did specifically ask LADWP to act as a  
11          financial intermediary between the ISO and Powerex with respect to this  
12          purchase. Also, Mr. Ward states that in the initial discussions between  
13          himself and Ed Riley of the ISO, he explained to Mr. Riley that the 1.5%  
14          markup was to account for the time value of LADWP's money.  
15          Unfortunately, the ISO has been unable to confirm Mr. Ward's recollection  
16          – the agreement was not memorialized in writing, and Mr. Riley does not  
17          recall this transaction. However, if the facts are as Mr. Ward testifies,  
18          then I believe that this would support classifying this transaction as a  
19          sleeve, because the ISO would have understood at the time that the  
20          transaction was entered into that the 1.5% markup was more akin to an  
21          administrative cost than a profit on the sale.  
22

1 Q. WHAT ABOUT THE OTHER 18 TRANSACTIONS THAT MR. WARD  
2 CLAIMS ARE SLEEVES? DO YOU CONCUR WITH HIS CONCLUSION  
3 WITH RESPECT TO THESE?

4 A. [Spence Gerber] Again, these transactions present a relatively close  
5 case, but on balance, I believe that these transactions should *not* be  
6 treated as sleeves. As Mr. McQuay testified, LADWP negotiated directly  
7 with Powerex for the prices and quantities associated with these  
8 transactions, rather than acting solely as a financial intermediary at the  
9 ISO's request. Moreover, the ISO did not specifically request that LADWP  
10 perform that role with respect to these later transactions; it was LADWP  
11 that initiated contact with the ISO to inquire whether the ISO wished to  
12 make further purchases of energy that LADWP would procure from  
13 Powerex.

14  
15 Q. IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD WITH  
16 RESPECT TO THESE TRANSACTIONS?

17 A. [Spence Gerber] Yes. I wish to make it perfectly clear that I do *not* adopt  
18 Mr. Ward's rationale as to why these nineteen transactions should not be  
19 subject to mitigation. Mr. Ward is incorrect in his explanation that these  
20 transactions are outside the scope of the Commission's refund orders  
21 because they were "bilateral sales to the ISO " Except for the ability to  
22 identify the supplier to the party that is actually selling to the load-serving

1 entities through the ISO, these transactions are no different from other  
2 OOM transactions, and the Commission has explicitly made clear that  
3 OOM transactions *are* subject to mitigation. I will address this point in  
4 greater detail later in this testimony.

5

6 **5. SMUD**

7 **Q. WHAT CLAIMS DOES MR. TRACY, TESTIFYING ON BEHALF OF**  
8 **SMUD, MAKE IN HIS RESPONSIVE TESTIMONY WITH RESPECT TO**  
9 **SLEEVE TRANSACTIONS?**

10 A. **[Spence Gerber]** Mr. Tracy states that on December 9, 2000, SMUD  
11 entered into two sleeve transactions at the request of the ISO – one with  
12 Powerex and a second with Washington Water Power (“WWP”). Exh.  
13 SMD-15 [Tracy] at 14:1-14. Mr. Tracy explains that SMUD purchased the  
14 energy for the ISO from these entities and, in turn, sold such power to the  
15 ISO. *Id.* Mr. Tracy states that the ISO has appropriately has not mitigated  
16 these transactions in its settlement re-run. *Id.* at 10.

17

18 **Q. DOES THE ISO HAVE ANY FURTHER INFORMATION WITH RESPECT**  
19 **TO THE MANNER IN WHICH THESE TRANSACTIONS WERE**  
20 **ARRANGED?**

21 A. **[Michael McQuay]** Yes. Through further investigation, I discovered that  
22 on December 9, 2000, the ISO sought to procure 50 MW from WWP at

1           \$500/MWh. However, WWP refused to sell to the ISO but suggested that  
2           it would sell the energy to another party that could, in turn, re-sellre-sell to  
3           the ISO. The ISO stated that SMUD might purchase the energy from  
4           WWP, and WWP then stated that if the ISO could convince SMUD to  
5           purchase the energy, WWP would sell the energy to SMUD at a price of  
6           \$450, and that SMUD could then make \$50 on the deal by selling to the  
7           ISO at \$500. The ISO then contacted SMUD, which agreed to purchase  
8           the energy from WWP at \$450 and immediately re-sell that energy to the  
9           ISO at \$500. This information is confirmed by the transcripts of relevant  
10          conversations between the ISO, WWP, and SMUD, which are included in  
11          Exhibit No ISO-38. This transcript is an accurate reproduction of the  
12          conversations that I reviewed in preparing this testimony.

13  
14          On that same date, at approximately 2:00 p.m., the ISO contacted  
15          Powerex seeking to purchase energy. Powerex informed the ISO that it  
16          could not sell to the ISO directly, but that it had been looking, and would  
17          continue to look, for entities to sell power to that could, in turn, re-sell to  
18          the ISO if they chose. At just past 2:10 p.m., SMUD contacted the ISO  
19          and explained that it had just been contacted by Powerex offering to sell  
20          SMUD energy at \$850. The ISO and SMUD then agreed that SMUD  
21          would purchase energy from Powerex at a price of \$850 and would then  
22          provide that energy to the ISO for a price of \$880. This information is

1 confirmed by the transcripts of relevant conversations between the ISO,  
2 Powerex, and SMUD, which are included in Exhibit No. ISO-39. This  
3 transcript is an accurate reproduction of the conversations that I reviewed  
4 in preparing this testimony.

5

6 **Q. DO YOU AGREE WITH MR. TRACY'S STATEMENT THAT THE**  
7 **TRANSACTIONS THAT SMUD ENTERED INTO WITH THE ISO ON**  
8 **DECEMBER 9, 2000, WERE SLEEVE TRANSACTIONS?**

9 **A. [Spence Gerber] No.**

10

11 **Q. WHY NOT?**

12 **A. [Spence Gerber]** These transactions also present a close case, but in  
13 the end, I do not believe that SMUD's role in these transactions was  
14 merely that of a financial intermediary, because SMUD appears to have  
15 made a profit from the resale of energy associated with these transactions  
16 to the ISO. SMUD did not indicate that the markup that it charged to the  
17 ISO was in any way based on administrative costs incurred by SMUD.  
18 Moreover, in the Powerex transaction, the ISO did not first negotiate a  
19 price with Powerex and then contact SMUD to seek its financial  
20 assistance. From the ISO's perspective, SMUD was simply re-selling to it  
21 energy that SMUD has purchased elsewhere.

22

1           6.    TRANSALTA

2    Q.    WHAT CLAIMS DOES MR. BOURNE, TESTIFYING ON BEHALF OF  
3           TRANSALTA, MAKE IN HIS RESPONSIVE TESTIMONY WITH  
4           RESPECT TO SLEEVE TRANSACTIONS?

5    A.    [Spence Gerber] Mr. Bourne claims that TransAlta engaged in "several"  
6           sleeve transactions with the ISO on December 13, 2000. Exh. TRA-1  
7           [Bourne] at 11:10-15.

8

9    Q.    DO YOU AGREE THAT THE TRANSACTIONS THAT TRANSALTA  
10           ENTERED INTO WITH THE ISO ON DECEMBER 13, 2000, WERE  
11           SLEEVE TRANSACTIONS ?

12   A.    [Spence Gerber] No. I feel confident that the transactions that Mr.  
13           Bourne describes were not sleeve transactions. Again, the essential  
14           characteristic of a sleeve transaction is that the sleeving party merely  
15           acted as a financial intermediary between the ISO and the party actually  
16           supplying the power. This is not the case with respect to these  
17           transactions. There is no indication that TransAlta acted merely as a  
18           financial intermediary with respect to any of these transactions. The ISO  
19           did not request that TransAlta perform that role, and I have seen no  
20           evidence suggesting that TransAlta re-sold this energy to the ISO absent  
21           profit. In fact, TransAlta may very well have made a substantial profit on  
22           some or all of these sales. Other than the fact that TransAlta apparently

1           agreed to sell to the ISO at the prevailing price at which the ISO was  
2           purchasing power from other entities, there is no evidence distinguishing  
3           these transactions from any other OOM purchases that the ISO made  
4           during this period.

5

6           7.     OTHER PARTIES IDENTIFIED BY THE ISO, AT THE TIME OF  
7           THE SETTLEMENT RERUN, AS HAVING ENGAGED IN SLEEVE  
8           TRANSACTIONS  
9

10    Q.     **IN ADDITION TO THE PARTIES DISCUSSED ABOVE, THE ISO'S LIST**  
11           **OF SLEEVES THAT IT COMPILED DURING THE SETTLEMENT RE-**  
12           **RUN (EXHIBIT S-100) CONTAINS TRANSACTIONS FROM TWO**  
13           **OTHER ENTITIES, LABELED "WESC" AND "SCEM." WHO ARE**  
14           **THESE ENTITIES?**

15    A.     **[Michael McQuay]** WESC stands for Williams Energy and SCem stands  
16           for Southern Company, which has since changed its name to Mirant.

17

18    Q.     **DO YOU STILL BELIEVE THAT THE WILLIAMS TRANSACTION**  
19           **SHOULD BE CONSIDERED A SLEEVE?**

20    A.     **[Michael McQuay]** No. I reach this conclusion based on a review of  
21           telephone conversations between operators for the ISO and Williams,  
22           which are included as Exhibit No. ISO-40. This transcript is an accurate  
23           reproduction of the conversations that I reviewed in preparing this  
24           testimony. What these transcripts make clear is that Williams agreed to

1 purchase energy from Powerex and then to re-sellre-sell that energy to the  
2 ISO at what it represented was the same price that it paid to from  
3 Powerex. However, the ISO did not negotiate price and quantity terms  
4 with Powerex, and therefore, the ISO has no way of confirming the price  
5 that Williams actually paid to Powerex.

6

7 **Q. DO YOU STILL BELIEVE THAT THE SOUTHERN TRANSACTION**  
8 **SHOULD BE CONSIDERED A SLEEVE?**

9 **A. [Michael McQuay]** No. I reach this conclusion based on a review of  
10 telephone conversations between operators for the ISO and Southern,  
11 which are included as Exhibit No. ISO-41. This transcript is an accurate  
12 reproduction of the conversations that I reviewed in preparing this  
13 testimony. There is nothing in this transcript that suggests that the energy  
14 that Southern agreed to sell the ISO had even been purchased from a  
15 third party. This appears to have been a run-of-the-mill OOM transaction  
16 between the ISO and Southern.

17

18 **B. NON-SPOT TRANSACTIONS**

19

20 **Q. A NUMBER OF WITNESSES FOR PARTIES TO THIS PROCEEDING**  
21 **HAVE CLAIMED THAT THOSE PARTIES ENGAGED IN “NON-SPOT**  
22 **MARKET” TRANSACTIONS WITH THE ISO DURING THE REFUND**



1           **PERIOD. PLEASE EXPLAIN WHAT IS MEANT BY A “NON-SPOT**  
2           **MARKET” TRANSACTION.**

3    A.    **[Spence Gerber]** It is my understanding that the Commission has  
4           confined this proceeding to determining refund liability with respect to spot  
5           market transactions made with the ISO and PX. The Commission has  
6           defined spot market transactions as those transactions that are 24 hours  
7           or less in duration and that were entered into the day of or day prior to  
8           delivery. Therefore, a “non-spot market” transaction (or “non-spot”  
9           transaction, for short), for purposes of this proceeding, is simply a  
10          transaction that does not meet that definition.

11

12   **Q.    TO THE EXTENT THAT PARTIES ENGAGED IN “NON-SPOT”**  
13           **TRANSACTIONS, HOW DOES THE ISO BELIEVE THOSE**  
14           **TRANSACTIONS SHOULD BE TREATED IN THE SETTLEMENT RE-**  
15           **RUN?**

16    A.    **[Spence Gerber]** The ISO recognizes that the Commission has decided  
17           that non-spot transactions are not within the scope of this proceeding, and  
18           thus, are not subject to refund liability. Therefore, to the extent that the  
19           facts clearly establish that specific parties engaged in non-spot  
20           transactions, I believe that the ISO is required to leave those transactions  
21           unmitigated in its settlement re-run process.

22

1           1.     AES

2     **Q.     WHAT CLAIMS DOES MR. SHAHPURWALA, TESTIFYING ON**  
3           **BEHALF OF AES, MAKE IN HIS RESPONSIVE TESTIMONY WITH**  
4           **RESPECT TO NON-SPOT TRANSACTIONS?**

5     **A.     [Michael McQuay]** Mr. Shahpurwala claims that AES entered into a  
6           "sequence of long-term sales" that began on December 6, 2000, and  
7           concluded on December 12, 2000. Exh. AES-2 [Shahpurwala] at 5:2-3.  
8           According to Mr. Shahpurwala, these sales consist of all the transactions  
9           accounted for under ISO Charge Types 401, 407 and 481 for those dates.  
10          *Id.* at 5:3-4.

11

12    **Q.     DO YOU AGREE WITH MR. SHAHPURWALA'S TESTIMONY WITH**  
13           **RESPECT TO HIS CLAIMS CONCERNING NON-SPOT**  
14           **TRANSACTIONS?**

15    **A.     [Michael McQuay]** Yes.

16

17    **Q.     ON WHAT DO YOU BASE YOUR CONCLUSION?**

18    **A.     [Michael McQuay]** Exhibit AES-3 contains several entries from the ISO's  
19           SLIC logs that indicate that two transactions with AES were "non-spot" in  
20           nature. These SLIC logs are contemporaneous records kept by ISO  
21           operators to record all operational events, communications, conditions,  
22           and other information pertaining to the operation of the ISO Controlled

1 Grid and Control Area. Various classifications of information are entered  
2 by the various positions on the ISO's real-time floor.

3

4 First, on page 1 of Exhibit No. AES-3, there is an entry that indicates that  
5 on December 6, 2000, at 1434 hours (*i.e.*, 2:34 p.m.) the ISO agreed to  
6 purchase 60 MW of energy from AES from HE 16 on December 6 through  
7 HE 24 on December 7. This transaction is over 24 hours in duration, and  
8 therefore, is non-spot in nature according to the Commission's definition.

9 Also, on page 8 of Exhibit No. AES-3, there appears a SLIC log entry from  
10 1402 hours (*i.e.*, 2:02 p.m.) on December 8, 2000, that indicates that the  
11 ISO agreed to purchase from AES 60 MW of energy for HE 1-24 on  
12 December 9 and 10, 2000, and 120 MW of energy for HE 1-24, on  
13 December 11 and 12, 2000. Again, because this transaction is over 24  
14 hours in duration, it is non-spot.

15

16 2. BPA

17 Q. WHAT POINTS DOES MR. WOLFE, TESTIFYING ON BEHALF OF BPA,  
18 RAISE IN HIS RESPONSIVE TESTIMONY WITH RESPECT TO NON-  
19 SPOT TRANSACTIONS?

20 A. [Michael McQuay] Mr. Wolfe testifies that the ISO has acknowledged in  
21 discovery that two BPA "multi-day prescheduled bilateral transactions,  
22 included in [the ISO's settlement rerun], are exempt from refund

1 exposure.” Exh. BPA-57 [Wolfe] at 4:22-26. Specifically, the first  
2 transaction began on December 27, 2000, and continued through  
3 December 31, 2000. The second transaction began on January 3, 2001,  
4 and ran through January 8, 2001. *Id.* at 4 26-5:5.

5

6 **Q. DO YOU AGREE WITH MR. WOLFE THAT THE TWO TRANSACTIONS**  
7 **REFERENCED IN HIS TESTIMONY ON THIS ISSUE ARE “EXEMPT**  
8 **FROM REFUND EXPOSURE?”**

9 A. **[Michael McQuay]** I am not entirely certain. In discovery responses to  
10 BPA, the ISO, based upon the recollection of ISO management,  
11 suggested that these transactions were non-spot. However, I have been  
12 unable to uncover any evidence (such as written documentation or  
13 telephone recordings) to support this conclusion.

14

15 **Q. DO YOU HAVE ANYTHING ELSE TO ADD WITH RESPECT TO THESE**  
16 **TWO TRANSACTIONS?**

17 A. **[Spence Gerber]** Yes. Any finding that these transactions should be  
18 excluded from refund liability should be based *solely* on the Commission’s  
19 limitation of refund liability in this proceeding to spot market transactions. I  
20 do not agree with Mr. Wolfe’s reasoning that these sales should be  
21 excluded from mitigation based on some distinction between OOM sales  
22 and “bilateral” sales, which Mr. Wolfe suggests the Commission made in

1 its December 19 Order. Later in this testimony, I will explain why this  
2 argument, which is echoed by witnesses for several other sellers, is  
3 flawed.

4  
5 **3. COMPETITIVE SUPPLIER GROUP**

6 **Q. WHAT CLAIMS DOES DR. CICHETTI, TESTIFYING ON BEHALF OF**  
7 **THE COMPETITIVE SUPPLIER GROUP, RAISE IN HIS RESPONSIVE**  
8 **TESTIMONY WITH RESPECT TO NON-SPOT TRANSACTIONS?**

9 **A. [Michael McQuay]** Dr. Cicchetti testifies that Puget Sound Energy  
10 (“Puget”), one of the entities in the Competitive Supplier Group, engaged  
11 in two transactions with the ISO that were “entered into more than one day  
12 in advance of delivery of the electricity, and that had a duration of longer  
13 than 24 hours.” Exh. SEL-19 [Cicchetti] at 63.8-10. Specifically, Dr.  
14 Cicchetti explains that the first transaction was entered into on November  
15 17, 2000, for delivery on November 20, 2000, and spanned 14 days, and  
16 that the second transaction was entered into on November 29, 2000, for  
17 delivery on December 4, 2000, and spanned two days. *Id.* at 63:10-14,  
18 64:2-5, 65:4-7. Dr. Cicchetti states that these transactions were mitigated  
19 in the ISO’s settlement re-run. *Id.* at 63:15-20.

20  
21 **Q. DO YOU AGREE WITH DR. CICHETTI’S TESTIMONY THAT PUGET**  
22 **ENTERED INTO TWO NON-SPOT TRANSACTIONS WITH THE ISO?**

1 A. **[Michael McQuay]** Yes. I concur with Dr. Cicchetti that the two  
2 transactions described in his testimony between Puget and the ISO were  
3 non-spot transactions, that is, they were entered into more than a day  
4 prior to delivery, and were for a duration greater than 24 hours.

5

6 Q. **ON WHAT DO YOU BASE THIS CONCLUSION?**

7 A. **[Michael McQuay]** I reviewed taped conversations in which operators for  
8 Puget and the ISO arranged the transactions described in Dr. Cicchetti's  
9 testimony. It was clear from my review that those transactions were  
10 arranged in the manner described by Dr. Cicchetti, *i.e.*, for delivery more  
11 than a day after they were arranged, and for a duration greater than 24  
12 hours. Dr. Cicchetti has included transcripts of these conversations with  
13 his testimony as Exhibit SEL-39.

14

15 4. **DYNEGY**

16 Q. **WHAT CLAIMS DOES MR. WILLIAMS, TESTIFYING ON BEHALF OF**  
17 **DYNEGY, MAKE IN HIS RESPONSIVE TESTIMONY WITH RESPECT**  
18 **TO NON-SPOT TRANSACTIONS?**

19 A. **[Spence Gerber]** Mr. Williams maintains that transactions made pursuant  
20 to an 11-day contract between the ISO and Dynegy, which authorized the  
21 ISO to dispatch Dynegy units from December 5, 2000 through December  
22 15, 2000, are non-spot transactions and should be excluded from

1 mitigation. Exh. DYN-16 [Williams] at 22:4-6, 23:1-12. Mr. Williams  
2 states that the transactions covered under this contract are set forth in  
3 Exhibit No. Exhibit No. DYN-26. *Id.* at 23:20-24. Mr. Williams also states  
4 that the transactions included in Exhibit DYN-26 do not represent the  
5 entire universe of transactions that Dynegy believes are not subject to  
6 mitigation, but “only those transactions that the ISO did not dispute in  
7 Phase 1 of the proceeding as being subject to the 11-day bilateral contract  
8 and ineligible to set the MMCP.” *Id.* at 24:1-3, 6-8. Mr. Williams explains  
9 that the transactions subject to the 11-day contract are currently the  
10 subject of good faith negotiations between the ISO and Dynegy. *Id.* at  
11 24:4-6. Mr. Williams suggests that it is not necessary for the Presiding  
12 Judge to determine whether or not the transactions listed in Exhibit No.  
13 DYN-26 were made pursuant to the 11-day contract, but that the ISO  
14 should simply be “directed to update its settlement records to reflect the  
15 outcome of those and other pending disputes prior to rerunning its refund  
16 settlements in a compliance filing.” *Id.* at 25:15-21.

17

18 **Q. DO YOU AGREE WITH MR. WILLIAMS' TESTIMONY WITH RESPECT**  
19 **TO HIS CLAIMS CONCERNING NON-SPOT TRANSACTIONS?**

20 **A. [Spence Gerber]** I agree with Mr. Williams in that I concur that any  
21 transactions that were entered into pursuant to the 11-day Dynegy  
22 contract are non-spot transactions. I want to emphasize, however, that

1 the universe of transactions that were entered into pursuant to this  
2 contract is currently the subject of good-faith negotiations between the  
3 ISO and Dynegy, and therefore, I take no position on that issue.

4

5 **Q. ON WHAT DO YOU BASE YOUR CONCLUSION?**

6 **A. [Spence Gerber]** The Dynegy contract is already in the record as Exhibit  
7 No. DYN-15. As Mr. Williams explains, the contract applies to a set of  
8 transactions covering an 11-day period, namely December 5, 2000,  
9 through December 15, 2000. As such, any transactions entered into  
10 pursuant to the contract would qualify as "non-spot" under the  
11 Commission's definition of that term, to the extent that the ISO ultimately  
12 agrees that they were made at the ISO's direction.

13

14 **Q. WHAT DO YOU CONTEND IS THE PROPER TREATMENT FOR THESE**  
15 **SALES?**

16 **A. [Spence Gerber]** I agree with Mr. Williams that the proper treatment for  
17 these sales is to wait until a resolution is reached as to which transactions  
18 are determined to have been entered into pursuant to the 11-day contract,  
19 at which time the ISO would make the necessary adjustments to its  
20 settlement records to reflect the non-mitigation of those transactions

21

22 **5. EPME**



1 Q. WHAT POINTS DOES MR. HICKS, TESTIFYING ON BEHALF OF  
2 EPME, RAISE IN HIS RESPONSIVE TESTIMONY WITH RESPECT TO  
3 NON-SPOT TRANSACTIONS?  
4 A. [Michael McQuay] Mr. Hicks testifies that EPME entered into an  
5 agreement with the ISO in late December 2000, to sell to the ISO energy  
6 that EPME had obtained from Avista Energy. Exh. EPME-1 [Hicks] at  
7 8:10-9:8. Mr. Hicks explains that the terms of the arrangement were that  
8 EPME would provide to the ISO all power that was made available to  
9 EPME from Avista. With respect to price, Mr. Hicks explains that the ISO  
10 set the price in most of the hours that EPME provided energy under this  
11 agreement, but during some hours, the ISO insisted that EPME set the  
12 price, and EPME did so "taking into account the then prevailing market  
13 price and the prices for the immediately preceding hours." *Id.* at 10:21-  
14 11:3. According to Mr. Hicks, the energy delivered under this  
15 arrangement should not be considered a series of spot market  
16 transactions "because it was, in large part, arranged more than 24 hours  
17 in advance and lasted more than 24 hours." *Id.* at 12:16-13:3. This is the  
18 same transaction that Mr. Hicks also claims as a sleeve transaction, which  
19 I addressed previously in this testimony, and is identified in Exhibit EPME-  
20 3.  
21

1 Q. DO YOU AGREE WITH MR. HICKS' TESTIMONY WITH RESPECT TO  
2 HIS CLAIMS CONCERNING NON-SPOT TRANSACTIONS?

3 A. [Michael McQuay] No.

4

5 Q. ON WHAT DO YOU BASE YOUR CONCLUSION?

6 A. [Michael McQuay] Mr. Hicks bases his non-spot claim solely on an  
7 agreement between the ISO and EPME to conduct business. The only  
8 conditions agreed to on a forward basis were that EPME would continue  
9 to do business with the ISO in the manner of buying available energy from  
10 other resources (*i.e.*, Avista) and re-selling that energy to the ISO.  
11 However, because prices and quantities were determined during and by  
12 the spot-market, there is no sound basis for characterizing these  
13 transactions as anything but "spot market" transactions.

14

15 6. LADWP

16 Q. WHAT CLAIMS DOES MR. WARD, TESTIFYING ON BEHALF OF  
17 LADWP, RAISE IN HIS RESPONSIVE TESTIMONY WITH RESPECT TO  
18 NON-SPOT TRANSACTIONS?

19 A. [Michael McQuay] Mr. Ward claims that LADWP entered into thirteen  
20 non-spot transactions with the ISO during the refund period, some of  
21 which the ISO did not mitigate in its settlement re-run. Exh. DWP-21

1 [Ward] at 4:3-7. These transactions are identified by Mr. Ward in Exhibit  
2 No. DWP-22

3

4 Q. DO YOU AGREE WITH MR. WARD'S TESTIMONY THAT LADWP  
5 ENTERED INTO NON-SPOT TRANSACTIONS WITH THE ISO, AS SET  
6 FORTH IN EXHIBIT NO. DWP-22?

7 A. [Michael McQuay] Yes. I concur with Mr. Ward's testimony that the  
8 transactions identified in Exhibit No. DWP-22 are, in fact, non-spot  
9 transactions.

10

11 Q. ON WHAT DO YOU BASE THIS CONCLUSION?

12 A. [Michael McQuay] The ISO, through its own internal review conducted  
13 during the settlement re-run process, determined that one of the  
14 transactions referenced in Exhibit DWP-22, was a non-spot transaction.  
15 Additionally, during the discovery process, LADWP provided the ISO with  
16 taped conversations between ISO and LADWP operators which  
17 demonstrated that the transactions identified in Exhibit No. DWP-22 were  
18 entered into more than one day prior to the day of delivery. Mr. Ward  
19 describes these taped conversations in his testimony. Exh. DWP-21  
20 [Ward] at 6:13-7.15. Mr. Ward has also included transcripts of these  
21 conversations with his testimony as Exhibit DWP-23.

22

1           7.     POWEREX

2     Q.     WHAT CLAIMS DOES DR. CARDELL, TESTIFYING ON BEHALF OF  
3           POWEREX, RAISE IN HER RESPONSIVE TESTIMONY WITH  
4           RESPECT TO NON-SPOT TRANSACTIONS?

5     A.     [Michael McQuay] Dr. Cardell claims that Powerex sold power to the ISO  
6           under non-spot transactions from December 4 through December 31,  
7           2000. Exh. PWX-56 [Cardell] at 9:18-24. These transactions are  
8           identified by Dr. Cardell in Exhibit No. PWX-59.

9

10    Q.     DO YOU AGREE WITH DR. CARDELL'S TESTIMONY THAT  
11           POWEREX ENTERED INTO NON-SPOT TRANSACTIONS WITH THE  
12           ISO, AS SET FORTH IN EXHIBIT PWX-59?

13    A.     [Michael McQuay] Yes. I concur with Dr. Cardell's testimony that the  
14           transactions identified in Exhibit PWX-56 are, in fact, non-spot  
15           transactions.

16

17    Q.     ON WHAT DO YOU BASE THIS CONCLUSION?

18    A.     [Michael McQuay] The ISO, through its own internal review conducted  
19           during the settlement re-run process, determined that some of the  
20           transactions referenced in Exhibit PWX-59 were non-spot transactions  
21           Additionally, during the discovery process, Powerex provided the ISO with  
22           taped conversations between ISO and Powerex operators which

1 demonstrated that the transactions identified in Exhibit No. PWX-59 were  
2 entered into more than one day prior to the day of delivery.

3

4 8. SEMPRA

5 Q. WHAT CLAIMS DOES MS. CANTOR, TESTIFYING ON BEHALF OF  
6 SEMPRA ENEGY, MAKE IN HER RESPONSIVE TESTIMONY WITH  
7 RESPECT TO NON-SPOT TRANSACTIONS?

8 A. [Michael McQuay] Ms. Cantor states that in December of 2000, Sempra  
9 entered into one multi-day transaction with the ISO lasting from December  
10 9 through December 12, 2000, the details of which she sets forth in Exhibit  
11 SET-3 Exh. SET-1 [Cantor] at 5:2-5.

12

13 Q. DO YOU AGREE WITH MS. CANTOR'S TESTIMONY THAT SEMPRA  
14 ENTERED INTO A NON-SPOT TRANSACTIONS WITH THE ISO, AS  
15 SET FORTH IN EXHIBIT NO. SET-3?

16 A. [Michael McQuay] Yes. I concur with Ms. Cantor's testimony that the  
17 transaction identified in Exhibit SET-3 was, in fact, a non-spot, multi-day  
18 transaction.

19

20 Q. ON WHAT DO YOU BASE THIS CONCLUSION?

21 A. [Michael McQuay] During the discovery process, Sempra provided the  
22 ISO with taped conversations between ISO and Sempra operators which

1 demonstrated that the transaction identified in SET-3 was entered into  
2 more than one day prior to the day of delivery.

3

4 9. TRANSALTA

5 Q. WHAT CLAIMS DOES MR. BOURNE, TESTIFYING ON BEHALF OF  
6 TRANSALTA, MAKE IN HIS RESPONSIVE TESTIMONY WITH  
7 RESPECT TO NON-SPOT TRANSACTIONS?

8 A. [Michael McQuay] Mr. Bourne claims that TransAlta engaged in several  
9 transactions with the ISO for a term of 24 hours or greater. Exh. TRA-1  
10 [Bourne] at 5: 15-17. Specifically, Mr. Bourne testifies that TransAlta  
11 made four "balance of the month" sales to the ISO, with delivery to begin  
12 on December 4, 2000, and continue through December 31, 2000. *Id.* at  
13 5:17-6:3. Mr. Bourne identifies these transactions in Exhibit TRA-5. Mr.  
14 Bourne also points out that these balance-of-month deals were terminated  
15 with the deliveries made at the end of December 8, 2000. *Id.* at 7:1-2. Mr  
16 Bourne states that because these transactions were for a term of longer  
17 than 24 hours, they are not spot market sales, and should therefore be  
18 excluded from refund liability in this proceeding *Id.* at 7:3-11.

19

20 Q. DO YOU AGREE WITH MR. BOURNE'S TESTIMONY WITH RESPECT  
21 TO HIS CLAIMS CONCERNING NON-SPOT TRANSACTIONS?

1 A. **[Michael McQuay]** Mostly. I concur with Mr. Bourne that the ISO and  
2 TransAlta arranged the four balance-of-month deals as he describes.  
3 However, I cannot find a record of any deliveries made from TransAlta to  
4 the ISO occurring on December 4, 2002.

5

6 Q. **ON WHAT DO YOU BASE YOUR CONCLUSION?**

7 A. **[Michael McQuay]** Upon review of recorded phone conversations  
8 between TransAlta and ISO operators provided by TransAlta, I was able to  
9 determine that the transactions in question were, in fact, entered into more  
10 than 24 hours prior to delivery.

11

12 **9. COMMISSION STAFF**

13 Q. **WHAT POINTS DOES MS. PATTERSON, TESTIFYING ON BEHALF OF**  
14 **STAFF, RAISE IN HER ANSWERING TESTIMONY WITH RESPECT TO**  
15 **NON-SPOT TRANSACTIONS?**

16 A. **[Spence Gerber]** Ms. Patterson notes that the ISO has indicated, in  
17 discovery, that there are transactions that the ISO has identified as non-  
18 spot, but that were mitigated in the ISO's settlement re-run. Exh. S-95  
19 [Patterson] at 5:4-8. Ms. Patterson concludes that because "multi-day  
20 transactions are not, by definition, spot market transactions, the ISO  
21 should not apply the MMCPs to these transactions" in any settlement re-  
22 runs ordered by the Commission. *Id.* at 5:8-12.

1

2 Q. DO YOU AGREE WITH MS. PATTERSON'S TESTIMONY WITH  
3 RESPECT TO NON-SPOT TRANSACTIONS?

4 A. [Spence Gerber] Yes. As I have testified, non-spot transactions are  
5 exempt from mitigation by Commission order, and therefore, should not be  
6 mitigated in any future ISO settlement re-runs.

7

8 10. CALIFORNIA PARTIES

9 Q. WHAT POINTS DOES DR. BERRY, TESTIFYING ON BEHALF OF THE  
10 CALIFORNIA PARTIES, RAISE IN HER RESPONSIVE TESTIMONY  
11 WITH RESPECT TO NON-SPOT TRANSACTIONS?

12 A. [Michael McQuay] On the issue of non-spot transactions, Dr. Berry first  
13 addresses the transactions that the ISO excluded from mitigation based  
14 on its own determination of which transactions constituted non-spot  
15 transactions. In response to a discovery request from Duke Energy, the  
16 ISO produced the list of these transactions, which the California Parties  
17 have reproduced in Exhibit CAL-42. Dr. Berry contends that this list of  
18 non-spot transactions is inaccurate, in that various transactions by  
19 LADWP, the Sacramento Municipal Utility District ("SMUD"), Edison, and  
20 WESC "are of 24 hours or less in duration and were entered into the day  
21 prior to delivery." Exh. CAL-40 [Berry] at 4:11-16.

22



1 Q. ON WHAT BASIS DOES DR. BERRY ARRIVE AT THIS CONCLUSION?

2 A. [Michael McQuay] Dr. Berry relies on discovery responses from  
3 LADWP, SMUD, and WESC, which she attaches as Exhibit CAL-43.

4

5 Q. DO YOU AGREE WITH DR. BERRY'S CONCLUSION THAT THE  
6 TRANSACTIONS SHE IDENTIFIES ARE NOT, IN FACT, MULTI-DAY  
7 TRANSACTIONS?

8 A. [Michael McQuay] Yes. It appears that the transactions identified by Dr.  
9 Berry were inadvertently identified as "non-spot" transactions. These  
10 transactions were not excluded from mitigation because they were non-  
11 spot, but because the ISO had identified them as "sleeve" transactions.  
12 The determination of whether they should be subject to mitigation should  
13 be based on the issues that Mr. Gerber and I discussed above with  
14 respect to sleeve transactions.

15

16 Q. DOES DR. BERRY MAKE ANY OTHER POINTS WITH RESPECT TO  
17 NON-SPOT TRANSACTIONS?

18 A. [Michael McQuay] Yes, with respect to several transactions by Powerex,  
19 Puget, and BPA that the ISO identified in discovery as non-spot  
20 transactions, Dr. Berry contends that the ISO "has [not] adequately  
21 justified its exclusion of these transactions." Exh. CAL-40 [Berry] at 5:1-  
22 13. Dr. Berry maintains that "more detailed contract information, clearly

1 and plainly laying out the terms and conditions of these transactions, and  
2 when they were entered into, is necessary to make a determination about  
3 the nature of these transactions." *Id.* at 5:17-20.

4

5 **Q. HOW DO YOU RESPOND TO DR. BERRY ON THIS POINT?**

6 **A [Michael McQuay]** I believe that Dr. Berry is overlooking, or perhaps was  
7 simply not privy to, the information provided in discovery to the ISO by  
8 Powerex, and Puget with respect to these transactions, which formed the  
9 basis of the ISO's data responses confirming that sales were non-spot  
10 transactions. As addressed under the headings for each of these three  
11 market participants, the ISO concurred that the transactions discussed by  
12 Dr. Berry were non-spot based on conversations between operators from  
13 the ISO and the market participants, in which the sales at issue were  
14 arranged for delivery more than 24 hours from the time that agreement  
15 was reached. With respect to BPA, as I stated above, I have been unable  
16 to uncover any definitive evidence that these transactions were non-spot  
17 in nature.

18

19 **C. "BILATERAL" TRANSACTIONS**

20

21 **Q. PLEASE EXPLAIN THE ISSUES THAT YOU INTEND TO ADDRESS**  
22 **UNDER THIS HEADING.**

1 A. **[Spence Gerber]** In this section, I will respond to arguments made by  
2 several suppliers that certain of their transactions with the ISO should be  
3 excluded from mitigation because they were “bilateral” transactions made  
4 outside of the ISO’s centralized markets.

5

6 **Q. PLEASE EXPLAIN THE ARGUMENTS MADE BY PARTIES WITH**  
7 **RESPECT TO SO-CALLED BILATERAL TRANSACTIONS WITH THE**  
8 **ISO.**

9 A. **[Spence Gerber]** Several witnesses argue that the Commission’s orders  
10 in this proceeding distinguish between OOM transactions with the ISO,  
11 which are subject to refund, and bilateral transactions with the ISO, which  
12 are not. These witnesses generally rely on the Commission’s statement  
13 in the December 19 Order that the scope of this proceeding was limited to  
14 “sales of energy and ancillary services into markets operated by the ISO  
15 and PX and not bilateral sales.” 97 FERC ¶ 61,275, 62,197 (2001). See  
16 Exh. BPA-57 (Wolfe) at 3:18-4:16; Exh. DWP-21 [Ward] at 5:17-22; Exh.  
17 GC-1 [Culbertson] at 6.

18

19 Mr. Culbertson contends that Grant County’s sales to the ISO during the  
20 refund period “did not have the characteristics of the transactions that the  
21 December 19 Order describes as being within the scope of the refund  
22 order in this case,” but instead were “bilateral sales under the Western

1 Systems Power Pool ("WSPP") Agreement at negotiated prices." Exh.  
2 GC-1 [Culbertson] at 5.

3

4

5 Several witnesses argue that certain transactions should be exempt from  
6 mitigation because they were negotiated orally between the ISO and the  
7 supplier outside of the ISO's centralized, single clearing price auction  
8 market. Exh. DWP-21 [Ward] at 14:10-12; Exh. TID-1 [Scheuerman] at  
9 7:4-5; Exh. REU-1 [Hurley] at 17:3-6.

10

11

12 Mr. Wolfe contends that a number of BPA transactions with the ISO  
13 should be considered bilateral transactions rather than OOM transactions,  
14 and therefore not subject to refund. Exh. BPA-57 [Wolfe] at 5.9-7:11. Mr.  
15 Wolfe reasons that the Commission defined OOM as, and therefore  
16 limited refund liability to, those transactions "undertaken after the ISO's  
17 formal markets failed to produce sufficient power to meet demand." *Id.* at  
18 3:18-4:16. Mr. Wolfe maintains that only transactions undertaken after the  
19 close of the ISO's formal markets meet this criterion, and therefore, all  
20 transactions between BPA and the ISO prior to the close of the ISO's  
21 markets are exempt from refund liability. *Id.* Mr. Wolfe suggests that this  
22 conclusion is supported by the fact that in conversations arranging these

1 transactions with BPA, ISO operators never stated that they were  
2 purchasing the energy from BPA for reliability concerns. *Id.* at 10:3-20

3  
4 Mr. Wolfe also contends that these “bilateral” transactions do not fit the  
5 ISO’s definition of OOM, since the ISO compensates sellers for these  
6 bilateral transactions at a negotiated rate, rather than the rate specified for  
7 OOM transactions, which is set forth in section 11.2.4.2 of the ISO Tariff.  
8 Exh. BPA-57 [Wolfe] at 6:22-7:11. Mr. Culberston makes a similar  
9 argument, suggesting that sales made to the ISO by Grant County during  
10 the refund period should be considered “bilateral” sales, and therefore  
11 exempt from refund, because the ISO compensated Grant County  
12 pursuant to section 2.3.5 1.5 of the ISO Tariff, which refers to “negotiation  
13 of contracts through processes other than competitive solutions.” Exh.  
14 GC-1 [Culbertson] at 5.

15  
16 Mr. Scheuerman, testifying on behalf of Burbank and Turlock, argues that  
17 all of the sales made by Turlock to the ISO during the refund period, and  
18 one sale made by Burbank, are not OOM sales because Turlock and  
19 Burbank are not Participating Generators and because ISO Operating  
20 Procedure S-318 defines OOM as “capacity and/or Energy managed by  
21 the Scheduling Coordinator, but for which there is no bid in the relevant  
22 Day Ahead or Hour Ahead market.” Exh. TID-1 [Scheuerman] at 9:5-14;

1 Exh. BUR-4 [Scheuerman] at 11:1-7. Mr. Scheuerman states that  
2 Turlock's sales fall under the definition of Non-Scheduling Coordinator  
3 sales, Exh. TID-1 [Scheuerman] at 9:16-10:14, and should be exempt  
4 from mitigation in this proceeding. *Id.* at 13:17-18. Mr. Scheuerman also  
5 argues that recent Commission decision in *El Segundo Power, LLC*, 95  
6 FERC ¶ 61,159 (2001), makes it clear that Turlock is not subject to the  
7 ISO's OOM authority

8  
9 Mr. Scheuerman also argues that even if Turlock and Burbank's sales are  
10 considered to be OOM, they are exempt from mitigation because the  
11 Commission has exempted sales outside the ISO's formal markets by  
12 governmental entities, such as Turlock and Burbank. Exh. TID-1  
13 [Scheuerman] at 9:5-14; Exh. BUR-4 [Scheuerman] at 15:6-16:9.

14

15 **Q. DO YOU AGREE WITH THESE WITNESSES THAT THE COMMISSION**  
16 **CREATED A CLASS OF BILATERAL TRANSACTIONS WITH THE ISO,**  
17 **SEPARATE FROM OOM TRANSACTIONS, THAT ARE EXEMPT FROM**  
18 **REFUNDS?**

19 **A. [Spence Gerber]** No. I believe that the Commission's discussion of  
20 "bilateral" transactions was limited to transactions entered into directly  
21 between suppliers and end-use purchasers, and those entered into by  
22 CDWR/CERS. I have found no language in the various refund orders that

1 suggests to me that the Commission considered any transactions entered  
2 into with the ISO to have been "bilaterals." In all instances in which the  
3 Commission has addressed ISO transactions, it has referred to these  
4 transactions as either being made through the ISO's formal markets, or as  
5 OOM.

6  
7 The lack of any Commission mention of bilaterals in connection with sales  
8 made to the ISO is unsurprising, given the fact that no transactions with  
9 the ISO, even when entered into with entities that do not normally have a  
10 contractual relationship with the ISO, are truly "bilateral" in nature. The  
11 ISO does not purchase energy for its own needs, but on behalf of the  
12 entire market, in order to ensure the reliability of the Control Area.  
13 Therefore, ISO OOM purchases, even those negotiated directly with  
14 sellers outside of the ISO's single-price markets, are fundamentally  
15 different from "true" bilateral purchases, which the Commission  
16 determined were not subject to refund in this proceeding.

17  
18 **Q. HOW DO YOU RESPOND TO THE ARGUMENT THAT CERTAIN**  
19 **TRANSACTIONS SHOULD BE EXEMPT FROM MITIGATION**  
20 **BECAUSE THEY WERE BILATERALLY NEGOTIATED BETWEEN THE**  
21 **ISO AND SUPPLIERS OUTSIDE OF THE ISO'S CENTRALIZED,**  
22 **SINGLE CLEARING PRICE AUCTION MARKET?**

1 A. [Spence Gerber] The fact that prices for certain transactions were  
2 established outside of the ISO's single-price auction mechanism does not  
3 in any way distinguish them from the universe of OOM transactions which  
4 the Commission explicitly made subject to refund. As the Commission  
5 made clear in the July 25 Order:

6 to the extent that the ISO made spot market OOM purchases  
7 (i.e., 24 hours or less and that were entered into the day of  
8 or day prior to delivery), *such purchases are no different*  
9 *than purchases through its markets.* Both types of  
10 purchases are made by the ISO in order to procure the  
11 resources necessary to operate the grid. Therefore, we  
12 clarify that spot market OOM transactions are subject to  
13 refund and subject to the hourly mitigated price established  
14 in the ordered hearing.

15  
16 96 FERC ¶ 61,120 at 61,515.  
17

18 Q. WHAT IS YOUR RESPONSE TO MR. WOLFE'S ARGUMENT THAT  
19 ONLY TRANSACTIONS ENTERED INTO BY THE ISO AFTER THE  
20 CLOSE OF THE MARKETS ARE SUBJECT TO REFUND LIABILITY?

21 A. [Spence Gerber] Mr. Wolfe's argument is based on a fundamentally  
22 flawed premise: that only those OOM purchases made after the close of  
23 the ISO's formal markets are made in order to "address a reliability  
24 concern resulting from market insufficiencies." Exh. BPA-57 [Wolfe] at  
25 6.10-11 The ISO's formal markets do not close until 45 minutes prior to  
26 real-time operations. During the period in which BPA entered into the  
27 transactions with the ISO that it now claims are exempt from mitigation  
28 (November, 2000 through January, 2001), it was common knowledge that



1 bids into the ISO's formal markets were, during many hours, grossly  
2 insufficient to meet load in the ISO's Control Area, and that the ISO would  
3 need to procure energy outside of those markets. The ISO knew full well,  
4 prior to close of the markets, that it would need to seek alternative sources  
5 of supply, often in large quantities. Therefore, the ISO did not wait until  
6 less than one hour prior to real-time to ensure that the necessary supplies  
7 would be available to keep the lights on in California. To do so would  
8 have been imprudent in the extreme. Moreover, this method of  
9 transacting was preferred by many suppliers, because they then had the  
10 opportunity to negotiate up-front sales to the ISO spanning several hours  
11 or longer, rather than transacting on an hour-by-hour basis.

12  
13 As for Mr. Wolfe's suggestion that his conclusion is supported by the fact  
14 that ISO operators did not state that certain purchases from BPA were for  
15 reliability purposes when arranging those transactions, I am not aware of  
16 any requirement that ISO operators explain to suppliers the motivations for  
17 the ISO's purchases. Thus, this fact establishes nothing. It simply does  
18 not logically follow that because an ISO operator did not affirmatively state  
19 that a purchase was being made for reliability purposes that the ISO must  
20 not have intended to make it for reliability purposes.

21

22

1 Q. WHAT IS YOUR RESPONSE TO THE ARGUMENT ADVANCED BY MR.  
2 WOLFE AND MR. CULBERTSON THAT CERTAIN TRANSACTIONS  
3 ARE BILATERAL RATHER THAN OOM TRANSACTIONS BECAUSE  
4 THE ISO PAID THOSE TRANSACTIONS PURSUANT TO SECTION  
5 2.3.5.1.5 OF THE ISO TARIFF RATHER THAN SECTION 11.2.4.2?

6 A. [Spence Gerber] I do not believe that the fact that ISO might have  
7 compensated suppliers pursuant to its authority to enter into contracts  
8 under section 2.3.5.1.5 of the ISO Tariff supports the distinction that these  
9 witnesses suggest. It only demonstrates that the ISO enters into different  
10 types of OOM transactions which are settled pursuant to different  
11 provisions of the ISO Tariff. Neither section of the Tariff cited by these  
12 witnesses mentions the term "OOM" or "Out-of-Market" explicitly, and, as I  
13 explained previously, I do not believe that the Commission intended to  
14 exclude any subset of OOM from refund liability in this proceeding.

15

16 Q. HOW DO YOU RESPOND TO MR. SCHEUERMAN'S CONTENTION  
17 THAT CERTAIN TRANSACTIONS ARE NOT SUBJECT TO REFUND  
18 LIABILITY BECAUSE THEY DO NOT MEET THE DEFINITION OF OOM  
19 TRANSACTIONS?

20 A. [Spence Gerber] First, let me offer a little bit of background concerning  
21 the term "OOM," which is, of course, an acronym meaning "Out-of-  
22 Market." The terms OOM or Out-of-Market do not appear anywhere in the

1 ISO's Tariff or Protocols. The definition of OOM in S-318, on which Mr.  
2 Scheuerman seems to hang most of his argument, was included therein  
3 for purposes of distinguishing types of transactions discussed in that  
4 Operating Procedure only, and was not meant to be applicable outside of  
5 that Operating Procedure. Moreover, prior to, and during the refund  
6 period, ISO personnel, as well as many suppliers, used the term OOM  
7 broadly to mean any energy that the ISO procured outside of the  
8 competitive market process, be it from PGA or non-PGA generators.

9  
10 Also, I do not find any references in the July 25 Order, or any of the other  
11 refund orders, to S-318, or the definition contained therein. Also, I am  
12 informed by counsel that the Commission, in addressing the issue of  
13 refund liability for OOM transactions in its refund orders, has done so in  
14 direct response to arguments raised by non-PGA sellers. I find it hard to  
15 believe that the Commission would have addressed these arguments if it  
16 did not even consider the sales made by these entities to have been  
17 OOM transactions subject to refund liability.

18  
19 As for Mr. Scheuerman's arguments concerning the *El Segundo* decision,  
20 I would simply note that this case appears to be limited to pricing issues  
21 relevant to the ISO's authority to dispatch Participating Generators even  
22 when those Generators have not bid into the ISO's markets. Of course, I

1 would certainly agree that Turlock has no *obligation* to respond to ISO  
2 dispatch instructions. However, this in no way suggests that the ISO  
3 cannot enter into *voluntary* OOM transactions with non-PGA generators,  
4 which is exactly what the ISO did with respect to Turlock.

5

6 **Q. DO YOU AGREE WITH MR. SCHEUERMAN'S ARGUMENT THAT**  
7 **EVEN IF TURLOCK'S TRANSACTIONS ARE CONSIDERED OOM,**  
8 **THEY ARE STILL EXEMPT FROM MITIGATION AS TRANSACTIONS**  
9 **MADE BY GOVERNMENTAL ENTITIES?**

10 A. **[Spence Gerber]** No. Mr. Scheuerman bases this argument on the fact  
11 that the Commission, in discussing its jurisdiction over sales made by  
12 governmental entities, did not specifically indicate that OOM sales by  
13 governmental entities are subject to refund. Exh. TID-1 [Scheuerman] at  
14 15 14-18. Mr. Scheuerman concludes that the Commission never invoked  
15 jurisdiction over OOM sales by governmental entities, and because  
16 Turlock is a governmental entity, its sales to the ISO cannot be subject to  
17 refund liability, regardless of whether they are considered OOM or not. *Id.*  
18 at 16-1-9.

19

20 I believe that Mr. Scheuerman's interpretation of the Commission's orders  
21 is flawed. In its refund orders, I believe that the Commission has  
22 consistently used the term "spot market" to refer to those sales made to

1 the ISO or PX for 24 hours or less and that are entered into the day of or  
2 day prior to delivery, but has not limited "spot sales" to those sales made  
3 through the ISO's formal single-price auction markets. In fact, as I noted  
4 above, in the July 25 Order, the Commission stated that "to the extent that  
5 the ISO made *spot market* OOM purchases . . . such purchases are no  
6 different than purchases made through its markets." 96 FERC ¶ 61,120  
7 at 61,515.

8

9 **D. ARGUMENTS RAISED BY TRANSALTA**

10

11 **Q. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY?**

12 **A. [Spence Gerber]** In this section, I respond to the claims made by Mr.  
13 Bourne, testifying on behalf of TransAlta, that certain transactions made  
14 by TransAlta should be excluded from mitigation based on arguments not  
15 discussed previously in my testimony.

16

17 **Q. MR. BOURNE TESTIFIES THAT EXHIBITS TRA-3 AND TRA-4**  
18 **CONSIST OF TRANSACTIONS FOR WHICH TRANSALTA, BY**  
19 **SELLING TO THE ISO, "FOREWENT OPPORTUNITIES TO SELL**  
20 **POWER INTO THE NORTHWEST MARKET," AND THAT THE**  
21 **COMMISSION SHOULD TAKE THIS INTO ACCOUNT IN**

1           **DETERMINING TRANSALTA'S REFUND LIABILITY. EXH. TRA-1**

2           **[BOURNE] AT 7:12-8:10. PLEASE COMMENT.**

3    A.    **[Spence Gerber]** Mr. Bourne's testimony on this issue is completely  
4           inappropriate at this stage of this proceeding. I am informed by counsel  
5           that the Commission has explicitly dealt with arguments of this kind  
6           already. I will only note that, in response to arguments that "opportunity  
7           costs" should be factored into the refund determination, the Commission  
8           stated that it would "not allow any additional cost items to be included in  
9           the refund formula." 97 FERC ¶ 61,275 at 62,214. Instead, the  
10          Commission explained that marketers, or those re-selling purchased  
11          power, would have an opportunity at the conclusion of the refund  
12          proceeding "to submit evidence that the impact of the refund methodology  
13          on their overall revenues over the refund period is inadequate." *Id.* In any  
14          event, the Commission has not instructed the ISO to consider any  
15          "foregone opportunities," either in calculating the benchmark mitigated  
16          price used to determine refunds, or in applying those mitigated prices in  
17          re-running its settlement and billing system.

18

19    Q.    **MR. BOURNE ALSO ARGUES THAT TRANSALTA ENTERED INTO**  
20           **CERTAIN TRANSACTIONS WITH THE ISO ONLY BECAUSE THE ISO**  
21           **REQUESTED THAT TRANSALTA PROCURE ENERGY AT A**  
22           **"MUTUALLY AGREED UPON PRICE," AND THAT THE COMMISSION**

1 SHOULD ENSURE THAT RATES FOR THESE TRANSACTIONS  
2 “PRODUCE REVENUES THAT ARE SUFFICIENT TO COVER THE  
3 COSTS THAT TRANSALTA INCURRED TO SERVE THE ISO AND TO  
4 ENSURE THAT THE ISO, THE PARTY WHO CAUSED TRANSALTA TO  
5 INCUR COSTS, IS RESPONSIBLE FOR THOSE COSTS.” EXH. TRA-1  
6 [BOURNE] AT 8:11-11:2. PLEASE COMMENT.

7 A. [Spence Gerber] For the same reasons that I articulated in my response  
8 to the previous question, I believe that this testimony is entirely  
9 inappropriate in the current proceeding before the Presiding Judge.

10

11 E. DOE TRANSACTIONS

12

13 Q. SEVERAL PARTIES STATE THAT THEY ENGAGED IN SALES TO THE  
14 ISO DURING THE REFUND PERIOD PURSUANT TO SECTION 202(C)  
15 OF THE FEDERAL POWER ACT AND THAT THESE TRANSACTIONS  
16 SHOULD NOT BE MITIGATED. EXH. NOS. CSG-19 [CICCHETTI] AT  
17 19:5-12; DWP-21 [WARD] AT 19:8-20; NCP-10 [PARK] AT 4:1-11;  
18 SMD-15 [TRACY] AT 10:17-19. HOW DO YOU RESPOND?

19 A. [Spence Gerber] First, I want to note that the issue of which transactions  
20 constitute DOE sales has been fully litigated in Phase 1 of this proceeding,  
21 and so I will not address that issue. However, I do not dispute that the  
22 ISO will need to remove from mitigation any transactions that the

1 Presiding Judge and, ultimately, the Commission determine were made  
2 pursuant to Section 202(c).

3

4 Q. MS. STATHIS, TESTIFYING ON BEHALF OF PORTLAND, MAINTAINS  
5 THAT, IN THE EVENT THAT "A FINAL DECISION IS MADE NOT TO  
6 RECOGNIZE [PORTLAND'S] DOE TRANSACTIONS FOR PURPOSES  
7 OF RESOLVING ISSUES 2 AND 3 IN THIS PROCEEDING," THAT ANY  
8 PAYMENTS MADE TO PORTLAND BY THE ISO FOR MONTHS IN  
9 WHICH PORTLAND MADE BOTH DOE AND NON-DOE SALES  
10 SHOULD BE ALLOCATED FIRST TO THE DOE SALES. EXH. PGE-23  
11 [STATHIS] AT 5:5-12. HOW DO YOU RESPOND TO THIS?

12 A [Spence Gerber] The ISO makes no distinction between these types of  
13 transactions (*i.e.*, DOE or non-DOE) in its normal invoice process, and  
14 therefore, has no basis or mechanism to make this distinction in this  
15 proceeding.

16

17

18 III. AMOUNTS OWED AND OWING TO MARKET  
19 PARTICIPANTS  
20

21 Q. MR. EPSTEIN, WHAT IS THE PURPOSE OF THE TESTIMONY YOU  
22 ARE ABOUT TO PROVIDE IN THIS SECTION?



1 A. [Michael Epstein] First, I will provide a brief description of the ISO's  
2 calculation of pre-mitigated amounts owed and owing and how the  
3 amounts owed and owing have changed since the ISO last provided a  
4 calculation of pre-mitigated amounts owed and owing. I will then rebut or  
5 comment upon portions of the prepared responsive testimony of the  
6 following witnesses, in which they assert that they have calculated pre-  
7 mitigated amounts owed and owing that are in some cases the same as  
8 and in some cases different from the amounts calculated by the ISO:

9 Carolyn A. Berry on behalf of the California Parties;

10 Bryan C. Bradshaw on behalf of PPL Montana, LLC and PPL  
11 EnergyPlus, LLC (collectively, "PPLM");

12 James G. Butler on behalf of Public Service Company of New  
13 Mexico ("PNM");

14 Raymond C. Camacho on behalf of Silicon Valley Power ("SVP");

15 Christine Cantor on behalf of Sempra Energy Trading Corp.  
16 ("Sempra");

17 Steven J. Capomaccio on behalf of Mirant Corporation ("Mirant");

18 John R. Collins on behalf of Constellation Power Source ("CPS");

19 Tim Culbertson on behalf of Public Utility District No. 2 of Grant  
20 County, Washington

21 Dennis M. Elliott on behalf of Williams Energy Marketing & Trading  
22 Company ("Williams");

1 Simon T. W. Greenshields on behalf of Morgan Stanley Capital  
2 Group Inc. ("Morgan Stanley");  
3 Hank Harris on behalf of Coral Power, L.L.C. ("Coral Power");  
4 James R. Hicks on behalf of El Paso Merchant Energy, L.P ;  
5 David Hutchens on behalf of Tucson Electric Power Company  
6 ("Tucson Electric");  
7 Blair Jackson on behalf of the Modesto Irrigation District ("MID");  
8 Robert Klein on behalf of PacifiCorp;  
9 Eric R. Klinkner on behalf of the City of Pasadena, California  
10 ("Pasadena");  
11 Peter J. Lanzalotta on behalf of the City of Vernon, California;  
12 W. Joey Lell on behalf of the Reliant Energy Companies ("Reliant");  
13 Frederick H. Mason on behalf of the City of Banning, California  
14 ("Banning");  
15 Joseph R. McClendon on behalf of Calpine Energy Services, L.P.;  
16 ("Calpine") and Geysers Power Company, LLC ("Geysers");  
17 Gary L. Nolf on behalf of the City of Riverside, California  
18 ("Riverside");  
19 James R. Paradis on behalf of Powerex Corp.;  
20 Dean Park on behalf of the Northern California Power Agency;  
21 J. Christopher Robertson on behalf of Duke Energy Trading and  
22 Marketing, L.L C. ("Duke Energy");

1 Kenneth R. Saline on behalf of Imperial Irrigation District ("IID");  
2 Sean Sanderson on behalf of the Western Area Power  
3 Administration and Western Lower Colorado;  
4 Paul G. Scheuerman on behalf of the City of Burbank, California ,  
5 the City of Glendale, California ("Glendale"), and Turlock Irrigation  
6 District;  
7 Stephen J. Sciortino on behalf of the City of Anaheim, California  
8 ("Anaheim");  
9 Abizar Shahpurwala on behalf of AES NewEnergy, Inc. and AES  
10 Placerita, Inc.;  
11 Harry Singh on behalf of PG&E National Energy Group, Inc  
12 ("PGET");  
13 Carolyn P. Stone on behalf of the City of Seattle ("Seattle");  
14 Adrienne Thomas on behalf of the Pinnacle West Companies  
15 ("Pinnacle West");  
16 Richard V. Torres on behalf of the City of Azusa, California  
17 ("Azusa");  
18 James A. Tracy on behalf of the Sacramento Municipal Utility  
19 District;  
20 Mark S. Ward on behalf of the City of Los Angeles Department of  
21 Water and Power;

1 Edward R. Western on behalf of Midway Sunset Cogeneration  
2 Company ("Midway Sunset"); and  
3 J. Kent Williams on behalf of Dynegy.

4  
5 Next, I will rebut or comment upon portions of the prepared responsive  
6 testimony of the following witnesses, in which they make arguments  
7 concerning specific pre-mitigation amounts owed and owing: Dr. Berry;  
8 Brian Ferguson on behalf of Harbor Cogeneration Company ("Harbor");  
9 Mr. McClendon; Mr. Park; Mr. Robertson; Mr. Scheuerman and Gary A.  
10 Stern on behalf of the California Parties.

11  
12 I will then rebut or comment upon portions of the prepared responsive  
13 testimony of the following witnesses, in which they assert that they have  
14 calculated post-mitigation amounts. Mr. Jackson, Robert S. Nichols, Mr.  
15 Scheuerman on behalf of Burbank and Glendale; and Dr. Singh

16  
17 I will then rebut or comment upon portions of the prepared responsive  
18 testimony of the following witnesses, in which they assert that they have  
19 calculated interest amounts: Mr. Bourne, Ms Cantor; Mr. Collins; Mr.  
20 Robertson; and Mr. Ward.

21

1 I will then rebut or comment upon portions of the prepared responsive  
2 testimony of the following witnesses, in which they make arguments  
3 concerning the calculation and payment of interest: Mr Bradshaw; Mr  
4 Bulk; Ms. Cantor; Dr. Cicchetti on behalf of the Competitive Supplier  
5 Group; Mr. Klein; Mr. Lanzalotta; Dirk C. Minson on behalf of Arizona  
6 Electric Power Cooperative, Inc. ("AEPCO"); Ms. Patterson; Mr.  
7 Sanderson; Mr. Shahpurwala; Dr. Stern, Richard D. Tabors on behalf of  
8 Powerex; and Mr. Tranen.

9

10 **Q. MR. GERBER, WHAT IS THE PURPOSE OF THE TESTIMONY YOU**  
11 **ARE ABOUT TO PROVIDE IN THIS SECTION?**

12 **A. [Spence Gerber]** I will briefly discuss the ISO's methodology for  
13 determining refund amounts, and will then rebut or comment upon  
14 portions of the prepared responsive testimony of the following witnesses,  
15 in which they make arguments concerning refund amounts owed and  
16 owing and arguments that the ISO's methodology for calculating refunds is  
17 flawed: Mr. Bourne; Mr. Bradshaw; Maxwell Bulk on behalf of Automated  
18 Power Exchange, Inc. ("APX"); Mr. Collins; Mr. Greenshields, Mr. Hicks;  
19 Mr. Hurley; Mr. Jackson; Mr. Minson; Steven Ostrover; on behalf of the  
20 California Parties; Mr. Scheuerman on behalf of Burbank, Glendale, and  
21 TID; Mr Shahpurwala; Dr. Singh; Mr Ward, and Mr. Williams.

22

1 A. PRE-MITIGATED AMOUNTS OWED AND OWING TO MARKET  
2 PARTICIPANTS  
3

4 Q. PLEASE DESCRIBE WHERE THE ISO'S METHODOLOGY FOR  
5 CALCULATING THE PRE-MITIGATED AMOUNTS OWED AND OWING  
6 TO MARKET PARTICIPANTS CAN BE FOUND, AND EXPLAIN WHERE  
7 AMOUNTS CALCULATED BY THE ISO AS OWED AND OWING CAN  
8 BE FOUND.

9 A. [Michael Epstein] The ISO's methodology for determining the pre-  
10 mitigated amounts owed and owing to each Market Participant is the  
11 methodology described in detail in the Prepared Direct Testimony of  
12 Spence Gerber provided in this proceeding on March 1, 2002. The results  
13 of the application of this methodology, as of the date Mr. Gerber's  
14 testimony was filed, were shown in Exhibit No. ISO-32. Mr. Gerber  
15 explained that Exhibit No. ISO-32 provided in a tabular format "all monthly  
16 unpaid amounts by Scheduling Coordinators in default, and the monthly  
17 amounts owed to Scheduling Coordinators as a result of those defaults,  
18 through a certain date," that "[f]or convenience, the total amounts owed by  
19 Scheduling Coordinators and the total amounts owing to Scheduling  
20 Coordinators are aggregated for the period in which there were defaults,"  
21 and that "these amounts will change before the date of the hearing in this  
22 proceeding." Exhibit ISO-24 at 41:4-10  
23

1 The amounts shown under the column titled "Total" on the far right-hand  
2 side of Exhibit No. ISO-32 are the "net cash position amounts" of the  
3 Scheduling Coordinators. Each Scheduling Coordinator's net cash  
4 position amount is the net amount the ISO has determined that the  
5 Scheduling Coordinator owes or is owed, on a pre-mitigation basis, over  
6 the time-period covered by Exhibit No. ISO-32.

7  
8 Subsequent to the date that Mr. Gerber filed his testimony, the Scheduling  
9 Coordinators' amounts owed and owing have indeed changed. As a  
10 result, the amounts shown in Exhibit No. ISO-32 are not the most current  
11 amounts owed and owing. A more current list of the amounts owed and  
12 owing, as determined through application of the methodology described in  
13 Mr. Gerber's Prepared Direct Testimony, is shown in Exhibit No. ISO-42.  
14 Exhibit No ISO-42 shows in a tabular format the amounts owed by and  
15 owing to each Scheduling Coordinator through the end of March 2002,  
16 *i.e.*, the amounts owed and owing as of the issuance of the March 2002  
17 final settlement statements. As can be seen by comparing the list of  
18 Scheduling Coordinators and dollar amounts owed and owing in Exhibit  
19 No. ISO-32 with the corresponding information shown in Exhibit No. ISO-  
20 42, Exhibit No. ISO-42 simply updates Exhibit No. ISO-32 to provide dollar  
21 amounts owed and owing to reflect cash settlements for the time-period  
22 from November 2001 through March 2002, the dollar amounts owed and

1            owing for each Scheduling Coordinator for the time-period from November  
2            2000 through October 2001 are different due to the application of cash  
3            and offsets subsequent to monthly distribution. Exhibit No. ISO-42 also  
4            contains a column on the far right-hand side of the exhibit that indicates  
5            the pre-mitigated net cash position of each Scheduling Coordinator, as  
6            calculated by the ISO through the end of March 2002.

7  
8            I wish to emphasize that the information provided in Exhibit Nos. ISO-32  
9            and Exhibit No. ISO-42 is merely "snapshot" information about the  
10           amounts owed and owing at a particular point in time. The amounts owed  
11           and owing will continue to change, as Mr. Gerber described in his  
12           Prepared Direct Testimony.

13  
14           Additionally, the net cash position amounts calculated by the ISO for each  
15           Scheduling Coordinator that is listed in Exhibit Nos. ISO-32 and ISO-42  
16           and that has provided testimony to which this rebuttal testimony responds  
17           are provided in the columns of Exhibit No. ISO-43 titled "Exhibit No. ISO-  
18           32 Net Cash Position Amount", and "Exhibit No. ISO-42 Net Cash Position  
19           Amount," respectively. (In Exhibit No. ISO-43, the names and VenID  
20           numbers of Scheduling Coordinators, as listed in Exhibit Nos. ISO-32 and  
21           ISO-42, are provided under the column titled "Customer Name (VenID  
22           Number)".) Exhibit No. ISO-43 also summarizes the ISO's and parties'



1 positions on a number of subjects discussed later in this testimony:  
2 namely, the asserted net cash position amounts of various parties (shown  
3 under the column of Exhibit No. ISO-43 titled "Party's Asserted Net Cash  
4 Position Amount (Exhibit Reference)," the refund amounts owed and  
5 owing as shown in Exhibit No. ISO-30 (shown under the column of Exhibit  
6 No. ISO-43 titled "Exhibit No. ISO-30 Refund Amount (BAID Number)"),  
7 various parties' asserted refund amounts owed and owing (shown under  
8 the column of Exhibit No. ISO-43 titled "Party's Asserted Refund Amount  
9 (Exhibit Reference)"), various parties' asserted post-mitigation amounts  
10 owed and owing (shown under the column of Exhibit No. ISO-43 titled  
11 "Party's Asserted Post-Mitigation Amount Owed or Owing (Exhibit  
12 Reference)"), and various parties' asserted amounts of interest due to  
13 them (shown under the column of Exhibit No. ISO-43 titled "Party's  
14 Asserted Interest Amount (Exhibit Reference)") Exhibit No. ISO-43  
15 contains citations to exhibits provided in the present proceeding. Exhibit  
16 No. ISO-43 also retains the sign conventions that are used in Exhibit Nos  
17 ISO-30, ISO-32, and ISO-42 to differentiate amounts owed from amounts  
18 owing.

19  
20 Empty cells in Exhibit No. ISO-43 under the columns titled "Party's  
21 Asserted Net Cash Position Amount (Exhibit Reference)," "Party's  
22 Asserted Refund Amount (Exhibit Reference)," "Party's Asserted Amount

1           Owed or Owing (Exhibit Reference),” and “Party’s Asserted Interest  
2           Amount (Exhibit Reference)” indicate cases in which a party’s testimony  
3           does not specify a particular “bottom line” amount that is claimed to be  
4           owed or owing.

5

6   **Q.   WHAT ITEMS ARE NOT REFLECTED IN EXHIBIT NO. ISO-42?**

7   A.   **[Michael Epstein]** The amounts shown in Exhibit No. ISO-42 only reflect  
8           amounts calculated through the March 2002 final settlement and do not  
9           reflect the effects of further market reruns, disputes, ADR, or the effects of  
10          the Commission’s June 3, 2002 order on paying interest collected to  
11          creditors, discussed later in my testimony.

12

1 Q. PLEASE PROVIDE AN OVERVIEW OF THE IMPACTS OF THE  
2 SETTLEMENTS PROCESS ON THE SCHEDULING COORDINATOR  
3 INVOICE PROCESS.

4 A. [Michael Epstein] Invoices from the settlement system commingle trade  
5 dates. Reruns and post final adjustments that relate to a given month  
6 (e.g., December 2000) will appear in the invoice in the month in which  
7 they are run (e.g., March 2002). Thus, refund period liabilities and  
8 receivables appear in settlement months outside of the refund period.  
9 Additionally, offsets result from subsequent payments and receipts.

10

11 Q. PLEASE BRIEFLY DESCRIBE THE CERTIFICATION PROCESS.

12 A. [Michael Epstein] After the final cash distribution for each trade month  
13 the ISO prepares a certification for the current and all prior trade months  
14 that contain unpaid invoices. The certification provides the debtor's name,  
15 invoice number, and amount unpaid. The certification includes the total  
16 amount unpaid to creditors and separately provides to each creditor the  
17 unpaid amount to that SC for each trade month. The certification only  
18 provides the respective receivable and payable balances, which on its  
19 face implies an undivided interest in all debtors' balances by the creditors.  
20 The ISO has made no statements as to what portion of which debtor's  
21 unpaid balance is payable to which creditor.

22

1 Q. PLEASE DESCRIBE THE IMPACTS OF INTEREST ON INVOICE  
2 BALANCES.

3 A. [Michael Epstein] I am unable at this time to describe the impacts of  
4 interest on the invoice balances. As I explain later in this testimony,  
5 neither the interest rate that should apply in this proceeding, nor the  
6 amounts to which the appropriate interest rate should be applied, has  
7 been clearly established.

8

9 Q. TURNING TO THE SUBJECT OF THE SPECIFIC NET CASH POSITION  
10 AMOUNTS THAT ARE ASSERTED BY PARTIES TO BE OWED AND  
11 OWING, DO CERTAIN PARTIES ASSERT THAT THEY ARE NOT  
12 OWED OR OWING ANY PRE-MITIGATION AMOUNTS?

13 A. [Michael Epstein] Yes.

14

15 Q. DO YOU AGREE WITH THESE PARTIES?

16 A. [Michael Epstein] Yes. I agree with the assertions of Banning, IID,  
17 Midway Sunset, and SVP that they are not owed or owing any amounts,  
18 because they are neither debtors nor creditors in the ISO's markets. See  
19 Exhs. IID-1 [Saline] at 5:22-10:7; SOC-12 [Mason] at 2-3 [no line numbers  
20 provided]; SVP-1 [Camacho] at 3:12; Exh [no exhibit number provided]  
21 [Western] at 4 [no line numbers provided].

22

1 Q. AS TO PARTIES THAT ASSERT THEY ARE OWED OR OWING PRE-  
2 MITIGATED AMOUNTS, DO THE VARIOUS PARTIES' NET CASH  
3 POSITION AMOUNTS CORRESPOND TO THE NET CASH POSITION  
4 AMOUNTS FOR THE PARTIES AS CALCULATED BY THE ISO AND  
5 SHOWN IN EXHIBIT NOS. ISO-42 and ISO-43?

6 A. [Michael Epstein] Not in all cases. As can be seen by comparing the  
7 amounts under the column in Exhibit No. ISO-43 titled "Exhibit No. ISO-42  
8 Net Cash Position Amount" with the amounts shown in the column titled  
9 "Party's Asserted Net Cash Position Amount (Exhibit Reference)," the  
10 amounts asserted by some of the parties do correspond to the amounts  
11 shown in Exhibit No. ISO-42, and the amounts calculated by other parties  
12 do not correspond to the amounts shown in Exhibit No. ISO-42.

13

14 Q. WHICH PARTIES' CALCULATED AMOUNTS CORRESPOND TO THE  
15 NET CASH POSITION AMOUNTS LISTED IN EXHIBIT NO. ISO-42?

16 A. [Michael Epstein] As shown in Exhibit No. ISO-43, the calculated net  
17 cash position amounts of AEPCO, AES, Dynegy, EPME, Grant PUD,  
18 LADWP, Mirant, Pinnacle West, PNM, Riverside, Sempra, and Tucson  
19 Electric correspond to the amounts for those parties listed in Exhibit No.  
20 ISO-42.

21

1 Q. WHICH PARTIES' CALCULATED NET CASH POSITION AMOUNTS DO  
2 NOT CORRESPOND TO THE AMOUNTS LISTED IN EXHIBIT NO. ISO-  
3 42?

4 A. [Michael Epstein] As shown in Exhibit No. ISO-43, the calculated net  
5 cash position amounts of Anaheim, Azusa, Burbank, Calpine, Coral  
6 Power, CPS, Duke Energy, Glendale, MID, Morgan Stanley, NCPA,  
7 PacifiCorp, Pasadena, PPLM, Powerex, Redding, Reliant, Seattle, SMUD,  
8 TID, Vernon, WAPA, Western Lower Colorado, and Williams do not  
9 correspond to the net cash position amounts listed in Exhibit No. ISO-42.

10

11 Q. WHAT APPEAR TO BE THE REASONS THAT THE NET CASH  
12 POSITION AMOUNTS OF THESE PARTIES DIFFER FROM THE NET  
13 CASH POSITION AMOUNTS CALCULATED BY THE ISO?

14 A. [Michael Epstein] These parties can be divided into two broad groups  
15 according to the reasons that their net cash position amounts differ from  
16 those calculated by the ISO. The first group consists of parties that simply  
17 use different methodologies than did the ISO to make their own  
18 calculations of net cash position amounts. The second group consists of  
19 parties that argue that the ISO has not correctly calculated their net cash  
20 position amounts as a result of specific flaws in the execution of the ISO's  
21 settlement and invoicing process.

22

1 Q. PLEASE EXPLAIN WHICH PARTIES SIMPLY USE DIFFERENT  
2 METHODOLOGIES THAN DID THE ISO TO MAKE THEIR OWN  
3 CALCULATIONS OF NET CASH POSITION AMOUNTS, AND YOUR  
4 RESPONSE TO THOSE PARTIES.

5 A. [Michael Epstein] The parties that simply use different methodologies  
6 than did the ISO to calculate their net cash position amounts are Anaheim,  
7 Azusa, Coral Power, CPS, Glendale, MID, Morgan Stanley, PacifiCorp,  
8 Pasadena, Powerex, PPLM, Reliant, Seattle, and TID.

9  
10 The ISO calculations of net cash position amounts are based on the ISO's  
11 production settlement and invoicing process, operated in accordance with  
12 the provisions of the ISO Tariff, and the amount of money paid to the ISO  
13 by market participants. To the extent that parties have arrived at cash  
14 positions that differ from the ISO's based not on any allegation of specific  
15 flaws in the execution of the ISO's settlement and invoicing process, but  
16 by using some alternative method of calculation, I offer no substantive  
17 response to these assertions. I do not feel that any such response is  
18 merited, since the Commission has concluded that it is the ISO's  
19 settlements and billing process that is to be used to determine amounts  
20 owed and owing.

21

1 To the extent that parties calculate different net cash positions based on  
2 alleged discrepancies in pre-refund settlements results, I emphasize that  
3 such discrepancies are outside the scope of this proceeding, which is  
4 concerned with amounts owed and owing based on the re-run of the ISO's  
5 settlement and billing process. The ISO has in place a process for  
6 resolving disputes relating to production settlements results, and this  
7 proceeding should not provide parties another opportunity to raise such  
8 disputes.

9

10 **Q. PLEASE EXPLAIN WHICH PARTIES ALLEGE THAT THEIR NET CASH**  
11 **POSITION AMOUNTS DIFFER FROM THOSE CALCULATED BY THE**  
12 **ISO DUE TO SPECIFIC FLAWS IN THE EXECUTION OF THE ISO'S**  
13 **SETTLEMENT AND INVOICING PROCESS, AND YOUR RESPONSE**  
14 **TO THOSE PARTIES.**

15 **A. [Michael Epstein]** The parties that allege that their net cash position  
16 amounts differ from the ISO's as a result of specific flaws in the execution  
17 of the ISO's settlement and invoicing process are Burbank, Calpine, Duke  
18 Energy, NCPA, Redding, SMUD, Vernon, WAPA, Western Lower  
19 Colorado, and Williams.

20

21 Arguments made by some of these parties concerning the pre-mitigated  
22 amounts they are owed and owing are addressed above in the rebuttal



1 testimony of Mr. Gerber, although the specific amounts claimed by each of  
2 the parties are not always called out in the testimony. Additionally, I  
3 address the arguments of the parties not addressed by Mr. Gerber, as well  
4 as the arguments of other parties concerning specific pre-mitigated  
5 amounts owed and owing, below.

6

7 **B. ARGUMENTS CONCERNING SPECIFIC PRE-MITIGATION AMOUNTS**  
8 **OWED AND OWING**  
9

10 **Q. WHAT POSITIONS DOES DR. BERRY TAKE CONCERNING THE**  
11 **PURPORTED EFFECTS OF A SETTLEMENT BETWEEN DUKE**  
12 **ENERGY AND PG&E?**

13 **A. [Michael Epstein]** Dr. Berry asserts that PG&E entered into a settlement  
14 with Duke Energy to settle claims relating to certain transactions unrelated  
15 to this proceeding, and that the agreement as to how Duke Energy would  
16 satisfy this settlement served to reduce PG&E's liability during the refund  
17 period by the amount of \$193,818,118, and reduces PG&E's liability  
18 through a set-off for the same amount. Exh. CAL-40 [Berry] at 16:5-23.

19

20 **Q. DO YOU AGREE WITH DR. BERRY'S ASSERTIONS?**

21 **A. [Michael Epstein]** No. As described in the letter provided by the ISO to  
22 PG&E and Duke Energy that is contained in Exhibit No. ISO-44, the PX  
23 was the Scheduling Coordinator for the transactions that were the subject

1 of the settlement agreement referenced by Dr. Berry. As also described in  
2 the letter the ISO sent to PG&E and Duke Energy, the ISO was (and is)  
3 unable to act as Dr. Berry wishes.

4  
5 As far as the ISO is concerned, the Scheduling Coordinator (*i.e.*, the PX)  
6 is responsible for all charges assessed to it. Any issue of how these  
7 charges should be allocated among the PX, PG&E, and Duke Energy  
8 should be resolved by those parties among themselves.

9

10 **Q. WHAT POSITIONS DOES MR. FERGUSON TAKE WITH RESPECT TO**  
11 **AMOUNTS HE ASSERTS THAT THE ISO OWES TO HARBOR?**

12 **A. [Michael Epstein]** Mr. Ferguson asserts that the ISO owes Harbor  
13 approximately \$336,000 "attributable to the final amounts due from 2001  
14 pursuant to a Summer Reliability Agreement." Further, Mr. Ferguson  
15 asserts that "there are additional amounts that Harbor may not have  
16 received in respect to the periods under review," but that "Harbor is unable  
17 to accurately ascertain the extent to which additional amounts are owed  
18 because we have not received complete information from EPMI." Mr.  
19 Ferguson states that EPMI was Harbor's Scheduling Coordinator during  
20 the time in question. Exh. [no exhibit number provided] [Ferguson] at 4  
21 [no line number provided].

22

1 Q. DO YOU AGREE WITH MR. FERGUSON'S ASSERTIONS?

2 A. [Michael Epstein] No. Harbor has not demonstrated that the amounts it  
3 claims are subject to mitigation. Even if the amounts Harbor claims are  
4 subject to mitigation, the ISO should deal only with EPMI, which Harbor  
5 asserts is its Scheduling Coordinator, concerning those amounts.

6 Moreover, if the amount asserted by Harbor is payment for Summer  
7 Reliability Agreements, then the amount is included in the "Cal ISO – SRA  
8 Capacity Fund" shown on Exhibit Nos. ISO-32, ISO-42, and ISO-43.

9 Those exhibits show that \$1,347,870.53 is owed to the SRA Capacity  
10 Fund. The ISO treats all entities to which payments for Summer Reliability  
11 Agreements are due identically. There is no reason for Harbor to receive  
12 special treatment simply because it has asserted a claim in this  
13 proceeding.

14

15 Q. WHAT POSITIONS DOES MR. McCLENDON TAKE CONCERNING  
16 AMOUNTS THAT THE ISO PURPORTEDLY OWES TO CALPINE AND  
17 TO GEYSERS?

18 A. [Michael Epstein] Mr. McClendon asserts that Calpine is owed  
19 \$1,921,786.49 by the ISO, not including interest, for default on its payment  
20 obligations to Calpine during the period January 31, 2001 through  
21 February 28, 2001; and that Geysers is owed \$1,814,279.55 by the ISO,

1 not including interest, for RMR services provided to the ISO. Exh. CES-1

2 [McClendon] at 2:12-3:8

3

4 **Q. DO YOU AGREE WITH MR. McCLENDON'S ASSERTIONS?**

5 **A. [Michael Epstein]** No The amounts noted by Mr. McClendon are  
6 primarily amounts relating to RMR units as to which payment would be  
7 due from PG&E, not the ISO. The settling of payments for RMR units is  
8 not part of the ISO market settlement system, and the Commission did not  
9 order a settlement rerun as to any RMR units under contract

10

11 **Q. WHAT POSITIONS DOES MR. PARK TAKE WITH RESPECT TO**  
12 **AMOUNTS THAT THE ISO PURPORTEDLY OWES TO NCPA?**

13 **A. [Michael Epstein]** Mr. Park asserts that the ISO, PG&E, and the PX owe  
14 NCPA \$3,225,328 for sales made under the ESA in early December 2000  
15 and in January 2001; \$2,484,725 for Imbalance Energy sales; \$4,712,782  
16 for Ancillary Services sales; and \$380,557.02 for RMR availability  
17 payments. Exh. NCP-10 [Park] at 7:13-8:16.

18

19 **Q. DO YOU AGREE WITH MR. PARK'S ASSERTIONS?**

20 **A. [Michael Epstein]** No. Any contractual amounts for RMR are owed by  
21 PG&E. Certifications do not include RMR contractual amounts. The  
22 settling of payments for RMR contracts is not part of the ISO market

1 settlement system and RMR units are not subject to price mitigation in this  
2 proceeding. Additionally, Mr. Park's other assertions are addressed by  
3 Mr. Gerber in his rebuttal testimony above.

4

5 **Q. WHAT POSITIONS DOES MR. ROBERTSON TAKE CONCERNING AN**  
6 **AMOUNT OF INTEREST THAT THE ISO ASSESSED TO DUKE**  
7 **ENERGY?**

8 A. **[Michael Epstein]** Mr. Robertson asserts that the ISO has "incorrectly  
9 assessed interest in the amount of \$1,026,136, as reflected in the 'Interest  
10 and Penalty Charges' entries in the ISO invoices," to Duke Energy, and  
11 that the ISO's calculated net cash position amount is incorrect due to the  
12 assessed interest. Exh. DUK-14 [Robertson] at 4:6-5:2.

13

14 **Q. DO YOU AGREE WITH MR. ROBERTSON'S ASSERTIONS?**

15 A. **[Michael Epstein]** No The ISO has assessed interest to defaulting  
16 Scheduling Coordinators pursuant to the ISO Tariff. Duke Energy had  
17 defaulted on invoices for several months and was properly assessed  
18 interest on those defaults.

19

20 **Q. WHAT POSITIONS DOES MR. SCHEUERMAN TAKE WITH RESPECT**  
21 **TO THE PRE-MITIGATION AMOUNT THAT THE ISO PURPORTEDLY**  
22 **OWES TO BURBANK?**

1 A. **[Michael Epstein]** Mr. Scheuerman asserts that the "total amount of  
2 premitigation dollars owed to Burbank for its sales to the ISO, through  
3 Sempra, was \$7,297,920," that "Burbank has only received \$448,355,  
4 through Sempra, for its sales to the ISO during the Refund Period," and  
5 that the total premitigation amount outstanding from the ISO "is  
6 \$6,849,565 (\$7,297,920 less \$448,355)." Exh. BUR-4 [Scheuerman] at  
7 17:11-18:4.

8

9 Q. **DO YOU AGREE WITH MR. SCHEUERMAN'S ASSERTIONS?**

10 A. **[Michael Epstein]** No. The Scheduling Coordinator that the ISO  
11 transacted through was Sempra, not its customer Burbank. Thus, the  
12 party responsible for payment of the amounts asserted by Mr.  
13 Scheuerman is strictly an issue between Sempra and Burbank.

14

15 Q. **WHAT POSITIONS DOES DR. STERN TAKE CONCERNING AN  
16 ALLEGED MISTAKE IN EXHIBIT NO. ISO-32 CONCERNING SCE?**

17 A. **[Michael Epstein]** Dr. Stern asserts that SCE has paid all outstanding  
18 invoices from the ISO to PX for the refund period, although Exhibit No.  
19 ISO-32 mistakenly shows an unpaid balance of \$64,830,000 for one of  
20 SCE's Scheduling Coordinator IDs. Exh. CAL-35 [Stern] at 20:23-22:3.

21

22 Q. **DO YOU AGREE WITH DR. STERN'S ASSERTIONS?**

1 A. **[Michael Epstein]** No. Exhibit No. ISO-32 did not contain a mistake as  
2 Dr. Stern asserts. Exhibit No. ISO-32 simply was provided prior to the  
3 date that SCE made payment on the unpaid balance that Dr. Stern  
4 references. Exhibit No. ISO-42 reflects SCE's payment.

5

6 C. **REFUND AMOUNTS**

7

8 Q. **WHAT METHODOLOGY DID THE ISO USE TO CALCULATE REFUND**  
9 **AMOUNTS, AND WHERE CAN THESE CALCULATED REFUND**  
10 **AMOUNTS BE FOUND?**

11 A. **[Spence Gerber]** The methodology the ISO used to calculate refund  
12 amounts is the one described in the Prepared Direct Testimony I  
13 submitted in this proceeding on March 1, 2002. As explained in that piece  
14 of testimony, I provided in Exhibit No. ISO-30 a tabular spreadsheet that  
15 aggregated the results of the ISO's rerun and indicated what the restated  
16 monthly invoices would have been had invoices been issued applying the  
17 mitigated prices on a trade month basis, and I provided Exhibit No. ISO-31  
18 to correlate the identification numbers shown in Exhibit No ISO-30 with  
19 the names of the Scheduling Coordinators. The refund amounts shown in  
20 Exhibit No. ISO-30 (along with the identification numbers shown in Exhibit  
21 No. ISO-31) are shown in Exhibit No. ISO-43 under the column titled  
22 "Exhibit No. ISO-30 Refund Amount (BAID Number)."

1

2 Q. DO ANY PARTIES ASSERT THAT THEY ARE OWED REFUND  
3 AMOUNTS THAT ARE THE SAME AS THE REFUND AMOUNTS  
4 CALCULATED BY THE ISO?

5 A. [Spence Gerber] Yes. As shown by comparing the amounts under the  
6 column in Exhibit No. ISO-43 titled "Party's Asserted Refund Amount  
7 (Exhibit Reference)" with the amounts under the column in Exhibit No  
8 ISO-43 titled "Exhibit No. ISO-30 Refund Amount (BAID Number),"  
9 AEPCO, Coral Power, Pasadena, and PNM assert that their refund  
10 amounts are the same as those calculated by the ISO.

11

12 Q. DO ANY PARTIES ASSERT THAT THEY ARE OWED OR OWING  
13 REFUND AMOUNTS DIFFERENT FROM THE REFUND AMOUNTS  
14 CALCULATED BY THE ISO?

15 A. [Spence Gerber] Yes. As shown in Exhibit No. ISO-43, AES, Burbank,  
16 CERS, Dynegy, EPME, Glendale, LADWP, MID, Morgan Stanley, PGET,  
17 TransAlta, and TID assert that they have calculated refund amounts  
18 different from the refund amounts calculated by the ISO

19

20 Q. DO ANY PARTIES ASSERT THAT THE ISO'S METHODOLOGY FOR  
21 CALCULATING REFUNDS IS FLAWED, BUT DO NOT PROVIDE  
22 CALCULATED REFUND AMOUNTS?



1 A. [Spence Gerber] Yes. As shown in Exhibit No. ISO-43, CPS, PPLM,  
2 Redding, and WAPA assert that the ISO's methodology for calculating  
3 refunds is flawed but do not provide their own refund calculations.

4

5 Q. PLEASE PROVIDE YOUR RESPONSE TO THOSE PARTIES WHO  
6 HAVE CALCULATED REFUND AMOUNTS DIFFERENT FROM THOSE  
7 CALCULATED BY THE ISO, AND TO THOSE PARTIES WHO ASSERT  
8 THAT THE ISO'S METHODOLOGY FOR CALCULATING REFUNDS IS  
9 FLAWED BUT THAT DO NOT PROVIDE CALCULATED REFUND  
10 AMOUNTS.

11 A. [Spence Gerber] The ISO has implemented the methodology for  
12 calculating refunds based on mitigated amounts that the Commission  
13 required in this proceeding. The Commission did *not* give the ISO  
14 discretion to consider alternative methods of calculating refunds. Thus,  
15 the ISO is not permitted (or inclined) to adopt any alternative refund  
16 calculation methods, in the absence of Commission direction that such  
17 methods are permissible. For this reason, the ISO has not undertaken to  
18 examine the various refund methodologies proposed by parties.

19

20 Additionally, in this rebuttal testimony above, I address arguments made  
21 by various parties concerning the refund amounts they assert are owed or

1           owing, though the specific refund amounts asserted are not always called  
2           out in testimony.

3

4   **Q.   WHAT POSITIONS DOES MR. BULK TAKE CONCERNING APX'S**  
5   **PURPORTED ROLE IN THE ISO MARKETS?**

6   **A.   [Spence Gerber]** Mr. Bulk asserts that APX neither buys nor sells  
7           electricity; APX's only role in the ISO markets was to deliver information  
8           furnished by APX's clients to the ISO, send information from the ISO back  
9           to its clients, and act as a financial intermediary for payments and  
10          charges. Exh. APX-1 [Bulk] at 2:15-3 13. Mr. Bulk asserts that APX  
11          charges its clients a fee based only on volumes, and did not benefit from  
12          the prices received in the ISO markets. Exh. APX-1 [Bulk] at 4:16-5:6.  
13          Mr. Bulk asserts that, because APX only operated as a "middle-man," it  
14          should not be liable for refunds in this proceeding, and that any refund  
15          amounts nominally imposed on APX belong to the entities on whose  
16          behalf APX acted as a Scheduling Coordinator. Exh. APX-1 [Bulk] at  
17          5:11-7:19.

18

19   **Q.   DO YOU AGREE WITH MR. BULK'S ASSERTIONS?**

20   **A.   [Spence Gerber]** I have no factual data that would enable me either to  
21          confirm or refute Mr. Bulk's assertions about how APX operates  
22          Nevertheless, Mr. Bulk is incorrect in saying that APX should not be liable

1 for refund amounts in this proceeding. APX is the Scheduling Coordinator  
2 and the transacting party in the ISO market, and thus is responsible for  
3 amounts allocated to it. The issue of which customers of APX should  
4 ultimately be responsible for payment is an issue strictly between APX and  
5 its customers.

6

7 **Q. WHAT POSITIONS DOES MR. WILLIAMS TAKE WITH RESPECT TO A**  
8 **DISPUTE HE ASSERTS HAS AN EFFECT ON DYNEGY'S ABILITY TO**  
9 **DETERMINE HOW MUCH THE IOUs OR THE STATE OWE DYNEGY**  
10 **FOR POWER PURCHASED DURING THE REFUND PERIOD?**

11 **A. [Spence Gerber]** Mr. Williams asserts that there is a dispute related to  
12 ISO disbursements of payments by CDWR for purchases it made on  
13 behalf of the IOUs between January 18-31, 2001 Mr. Williams asserts  
14 that the ISO contradicted the terms of a compliance filing it had submitted  
15 in Docket Nos. ER01-3013 and ER01-889 by allocating CDWR funds to  
16 pay all January debts, including "debts accrued prior" to January 17, 2001,  
17 rather than settling the market in January 2001 in two parts in order to  
18 appropriately allocate payments from CDWR for that month. Mr Williams  
19 asserts that this action "caused a \$29.6 million shortfall to Dynegy during  
20 the second half of the month when CDWR was liable for payments," and  
21 that other suppliers similarly were underpaid. Mr. Williams asserts that the  
22 ISO has since stated in Commission filings that it never intended to split

1            *January disbursements into two parts. Exh. DYN-16 [Williams] at 31:4-*  
2            *32:2.*

3    **A. [Spence Gerber]** The Commission proceeding to which Mr. Williams  
4            refers is an ongoing proceeding in an entirely separate docket. Issues  
5            being addressed in that proceeding should not be imported into the refund  
6            proceeding. Moreover, to import issues into the refund proceeding would  
7            be to assume the ultimate outcome of the other proceeding

8  
9            Further, the ISO has never proposed a split within a Trade Month for  
10            disbursement of funds to ISO Creditors. Commission approval would be  
11            required for such a departure from the ISO Tariff requirements. The ISO  
12            has not sought such approval nor has the Commission ordered it

13  
14    **D. POST-MITIGATION AMOUNTS**

15  
16    **Q. WHICH PARTIES ASSERT THAT THEY HAVE CALCULATED POST-**  
17            **MITIGATION AMOUNTS OWED AND OWING?**

18    **A. [Michael Epstein]** As shown in Exhibit No. ISO-43 under the column  
19            titled "Party's Asserted Post-Mitigation Amount Owed or Owing (Exhibit  
20            Reference)," Burbank, Glendale, MID, PGET, and SRP assert that they  
21            have calculated post-mitigation amounts owed and owing. The ISO has  
22            not to this point calculated post-mitigation amounts.

1

2 Q. TO WHAT EXTENT DO YOU AGREE OR DISAGREE WITH THE  
3 ASSERTIONS OF THESE PARTIES?

4 A. [Michael Epstein] I take no position at this time as to what the post-  
5 mitigation amounts should be. It is my understanding that there is a  
6 consensus that the MMCPs and refund amounts will change after the  
7 Commission rules.

8

9 E. INTEREST AMOUNTS

10

11 Q. WHICH PARTIES ASSERT THAT THEY HAVE CALCULATED  
12 INTEREST AMOUNTS OWED AND OWING?

13 A. [Michael Epstein] As shown in Exhibit No. ISO-43 under the column  
14 titled "Party's Asserted Interest Amount (Exhibit Reference)," BPA, CPS,  
15 Duke Energy, LADWP, and Sempra assert that they have calculated  
16 interest amounts owed and owing.

17

18 Q. DO YOU AGREE WITH THE PARTIES THAT HAVE CALCULATED  
19 INTEREST AMOUNTS THAT THEY ARE OWED OR OWING THOSE  
20 INTEREST AMOUNTS?

21 A. [Michael Epstein] No. As I explain below, the interest rate that should  
22 be applied and the amounts to which the appropriate interest rate should

1 be applied are both open questions. Therefore, it is not possible at this  
2 time to calculate the amounts of interest owed or owing with any accuracy.

3

4 **F. INTEREST CALCULATION ISSUES**

5

6 **Q. PLEASE DESCRIBE THE CURRENT TREATMENT OF INTEREST**  
7 **COLLECTED BY THE ISO.**

8 **A. [Michael Epstein]** The ISO bills SC debtors default interest on their  
9 unpaid balances to the ISO market. Any collection of default interest is  
10 paid to SC creditors and applied against the balance of their market  
11 invoices. No interest is calculated on the SC creditors' balances.  
12 Additionally, no interest is assessed on defaulted amounts due from SC  
13 debtors after the date of bankruptcy filing. The ISO has suspended this  
14 treatment as of February 7, 2002 and will implement the method ordered  
15 by the Commission in its order issued on June 3, 2002 in 99 FERC ¶  
16 61,253 ("June 2002 Order").

17

18 **Q. WHAT POSITIONS DO PARTIES TAKE CONCERNING THE PROPER**  
19 **AMOUNTS UPON WHICH INTEREST SHOULD BE ASSESSED?**

20 **A. [Michael Epstein]** A number of parties assert that interest should be paid  
21 on amounts past due. Exhs. PACW-1 [Klein] at 5:10-12; VER-3  
22 [Lanzalotta] at 8:23-9:2; GEN-36 [Tranen] at 33.3-7. Other parties argue

1 that interest should be paid on refund amounts (Exh. AES-2  
2 [Shahpurwala] at 7:11-13), on both receivables past due and on refund  
3 amounts (Exhs. SET-1 [Cantor] at 12:18-20; S-95 [Patterson] at 29:6-12;  
4 REU-1 [Sanderson] at 15:18-21), and on the difference between refund  
5 amounts and amounts past due (Exhs PPL-18 [Bradshaw] at 8:15-17;  
6 SEL-19 [Cicchetti] at 73:16-19).

7

8 Dr. Cicchetti asserts that “[i]f an entity is in bankruptcy, there may be some  
9 restrictions pertaining to recovery of interest. Nevertheless, the most  
10 equitable solution would be to accrue and identify interest using the  
11 methods specified in the respective tariffs. If a bankruptcy court  
12 discharges all or a portion of that obligation, then the affected parties have  
13 whatever recourses the bankruptcy laws allow.” Exh. SEL-19 [Cicchetti] at  
14 74:5-10.

15

16 Mr. Minson asserts that the Commission’s regulations appear to provide  
17 that the same interest approach should apply to refunds and accounts  
18 receivable. Mr. Minson asserts that sellers should also receive an offset  
19 for the security they have posted. Mr. Minson asserts that such an offset  
20 might reflect the cost of obtaining a letter of credit. Mr. Minson asserts  
21 that, alternately, buyers receiving refunds should be required to post

1 security in order to maintain symmetry of treatment. Exh. AEP-14

2 [Minson] at 9:8-10:17.

3

4 Dr. Stern asserts that one of two “mathematically equivalent” methods for  
5 calculating interest on refunds and unpaid charges could be employed

6 Dr. Stern asserts that “[o]ne way would be to calculate the interest on

7 unpaid charges based on the total amount originally invoiced (without

8 mitigation) from the date that the payment was due until the date that the

9 customer made the payment. Interest on refunds would then be

10 calculated from the date that payment was due on the unjust and

11 unreasonable charge. The other way would be to calculate the interest on

12 unpaid charges based on the amount that would have been due after

13 applying the MMCP (the mitigated charges). Interest on refunds would

14 then be calculated only when the seller had been paid its charges, with

15 interest on the refund amount calculated from the date the seller received

16 payment.” Exh. CAL-35 [Stern] at 10 20-11:9.

17

18 Dr. Tabors asserts that interest calculations should begin with the

19 “Monthly Preliminary GMC and Market Invoice T+38B for Trade Month,”

20 calculated 38 days after the close of the month. Exh. PWX-53 [Tabors] at

21 16:17-17:1.

22



1 Q. PLEASE PROVIDE YOUR POSITION ON THE AMOUNTS UPON  
2 WHICH INTEREST SHOULD BE ASSESSED.

3 A. [Michael Epstein] I have no preference as to which methodology to use  
4 to determine which amounts have interest applied to them, so long as the  
5 following condition is met: the application of the methodology must not  
6 result in a violation of the ISO's position as a cash-neutral entity, i.e., the  
7 amount of interest that will be paid or accrued to SC creditors (payables or  
8 "AP") must be equal to the amount of interest that is due from and will be  
9 collected from SC debtors (receivables or "AR"). Differences between AR  
10 and AP lead to different amounts of interest receivable and payable, which  
11 results in a net cash payment to or collection from SCs and thus violates  
12 the ISO's position as a cash neutral entity. Thus, in order for the ISO to  
13 maintain its cash neutrality, the balances of AR and AP must be equal for  
14 each trade month, or if they are not equal every month (which they are in  
15 fact not at present, as discussed below), any imbalance between the AR  
16 and AP must be allocated to a party or parties other than the ISO. I  
17 approve of any methodology that is used to determine which amounts  
18 have interest applied to them so long as the methodology allocates any  
19 interest imbalance among a party or parties other than the ISO.  
20

1 Some complicating factors that cause the balances of payables and  
2 receivables to not be equal and/or that do not allocate any interest  
3 imbalance among a party or parties other than the ISO, are the following:

4

- 5 • The application of interest based on the methodology described in the  
6 order issued in the refund proceeding on December 19, 2001 ("December  
7 2001 Order"). In the December 2001 Order, the Commission directed that  
8 interest be assessed at the Commission interest rate on both refunds and  
9 receivables past due, *i.e.*, on both creditors and debtors. However, the  
10 December 2001 Order did not provide for any adjustment where there is  
11 an imbalance between AR and AP, which imbalances are occurring at  
12 present. Thus, the December 2001 Order does not permit the ISO to  
13 remain cash-neutral.

14

15 The Commission has, however, issued another order that does not violate  
16 the ISO's cash neutrality: the June 2002 Order. In the June 2002 Order,  
17 the Commission directed that creditors are only entitled to receive default  
18 interest collected by the ISO from defaulting parties. The ISO has made a  
19 compliance filing to implement the June 2002 Order and is awaiting  
20 Commission approval of the compliance filing. However, even if the  
21 compliance filing is approved, the December 2001 Order still prevents the  
22 ISO from being cash-neutral.

23

- 24 • The uncertainty as to whether the ISO can assess interest on the bankrupt  
25 parties PG&E and the PX after their bankruptcy dates. The Commission  
26 has not explicitly addressed the issue of whether the ISO can assess  
27 interest on a party in bankruptcy after the bankruptcy filing date. The June  
28 2002 Order in effect (although it did not explicitly say so) provided for the  
29 discontinuance of interest from bankrupt SCs. In the June 2002 Order,  
30 the Commission directed that creditors are only entitled to receive default  
31 interest collected by the ISO from defaulting parties. Moreover, the June  
32 2002 Order did not direct that creditors are entitled to receive interest from  
33 an SC debtor as to which the ISO cannot assess interest (such as a  
34 bankrupt party). Thus, the June 2002 Order cannot reasonably be read as  
35 permitting interest that is accrued to SC creditors relating to defaults on  
36 amounts in bankruptcy to be collected. In the compliance filing submitted  
37 in response to the June 2002 Order, the ISO proposes to continue not  
38 assessing interest on defaulted amounts due from SC debtors after the  
39 date of the bankruptcy filing. However, calculating interest for the refund

1 period, pursuant to the December 2001 Order, means that interest will be  
2 assessed on bankruptcy amounts for all periods. The parties in this  
3 proceeding that have applied a flat interest rate to their calculated  
4 amounts owed and owing are not factoring in the effects of the different  
5 treatments of interest from bankrupt parties as described above.  
6

7 • The additional effects of market reruns. ISO market reruns are booked in  
8 the month in which the rerun is conducted. The original month is not  
9 reissued, but the effects of reruns are included in the current month's  
10 invoices. There were large market rerun amounts relating to pre-  
11 bankruptcy activity of PG&E and the PX that occurred in May 2001  
12 through March 2002, which were months subsequent to those entities'  
13 bankruptcies. There is a queue of reruns of earlier periods waiting to be  
14 processed as well, which include pre-bankruptcy activity that has yet to be  
15 invoiced. The treatment of interest assessment on defaulted bankrupt  
16 amounts will lead to different balances of AR and AP upon which interest  
17 is assessed.  
18

19 • The effects of payment offsets. An example is when a payable in one  
20 month is offset against an amount receivable in a different month, which  
21 leads to AR and AP imbalances.  
22

23 • The effects of charges carried over and incompleting invoices. In various  
24 trade months, AR did not equal AP due to charges or credits carried over  
25 to a subsequent month or invoices incompleting.  
26

27 In light of the imbalances in AR and AP that occur as described above, any  
28 methodology that is used to determine which amounts have interest applied  
29 to them must allocate any interest imbalance among parties other than the  
30 ISO.  
31

1 Q. WHAT POSITIONS DO THE VARIOUS WITNESSES TAKE WITH  
2 RESPECT TO WHAT INTEREST RATE SHOULD BE APPLIED?

3 A. [Michael Epstein] A number of witnesses assert that the methodology for  
4 determining interest provided in Section 35.19a of the Commission's  
5 regulations should be employed in this proceeding. See Exh. PPL-18  
6 [Bradshaw] at 8:19-21; Exh. PNM-1 [Butler] at 13.5-9; Exh. SET-1 [Cantor]  
7 at 8.11-19; Exh. AEP-14 [Minson] at 9:8-11; Exh. S-95 [Patterson] at 29.6-  
8 30:23; Exh. CAL-35 [Stern] at 7:3-4; Exh. PWX-53 [Tabors] at 16:5-8.

9

10

11 Dr. Cicchetti asserts that interest "should be applied at the monthly  
12 average interest rate of 'prime plus two percent' specified in Section  
13 11.12" of the ISO Tariff and Master Definitions Supplement, Appendix A of  
14 the ISO Tariff "for amounts owed to sellers." Exh. SEL-19 [Cicchetti] at  
15 73:6-9. Dr. Cicchetti asserts that "[s]imilarly, buyers that are either past  
16 due or that did not until recently pay their arrears should pay interest at the  
17 same rate." Exh. SEL-19 [Cicchetti] at 73:9-11.

18

19 Q. PLEASE PROVIDE YOUR POSITION ON THE INTEREST RATE THAT  
20 SHOULD BE APPLIED.

21 A. [Michael Epstein] I have no preference as to which interest rate is  
22 applied, so long as the interest rate used does not violate the ISO's  
23 position as a cash-neutral entity as I have described above.

1

2 That said, there are four possible interest rates that could be used: (1) the  
3 ISO prime rate, (2) the ISO Default Interest Rate (which is the ISO prime  
4 rate plus 2%) (3) the PX interest rate, and (4) the rate described in Section  
5 35.19a of the Commission's regulations. The ISO Default Interest Rate  
6 has been assessed on defaulting amounts due to the ISO, and the  
7 application of the ISO Default Interest Rate to these amounts was upheld  
8 in the June 2000 Order. However, in the December 2001 Order, the  
9 Commission stated that the rate described in Section 35 19a of its  
10 regulations is the rate that should apply. Thus, the Commission has not  
11 determined any one, specific interest rate to be appropriate.

12

13 **Q. WHAT POSITIONS DO THE VARIOUS WITNESSES TAKE**  
14 **CONCERNING ANY COMPLICATIONS THAT MAY HINDER THEIR**  
15 **EFFORTS TO APPLY AN APPROPRIATE METHODOLOGY FOR**  
16 **DETERMINING INTEREST AMOUNTS?**

17 **A. [Michael Epstein]** Ms. Patterson asserts that the ISO and the PX have  
18 not provided sufficient information in order to compute interest due on  
19 refunds and amounts owed under the Commission's methodology. Exh  
20 S-95 [Patterson] at 31:4-19.

21

22

1

2 Q. DO YOU AGREE WITH THE POSITIONS OF THESE WITNESSES?

3 A. [Michael Epstein] I disagree with Ms. Patterson's assertions, because  
4 the ISO has provided sufficient information to compute interest. The ISO  
5 has provided all invoicing activity from initial billing, collection, payment,  
6 adjustments, offsets, and CERS rebilling through the most current  
7 balances for every GMC and Market invoice issued from the trade month  
8 of October 2000 through March 2002 for all SCs. Any difficulty in  
9 computing interest does not arise from the nature of the information  
10 provided by the ISO. As I explained above, other factors outside of the  
11 ISO's provision of information prevent the interest amounts from being  
12 computed.

13

14

15 Q. WHAT POSITIONS DOES MR. TRANEN TAKE WITH RESPECT TO AN  
16 AMOUNT OF INTEREST THAT THE ISO APPLIED TO CERS?

17 A. [Michael Epstein] Mr. Tranen asserts that the Commission should direct  
18 the ISO to reverse its application of interest to CERS for energy  
19 purchased on behalf of the IOUs for the period of January 18 through  
20 June 20, 2001, and that the ISO should apply interest as directed in the  
21 July 25, 2001 order in this proceeding, which order Mr. Tranen asserts

1           “direct[ed] the ISO to apply interest to suppliers that were owed money for  
2           this period.” Exh. GEN-36 [Tranen] at 34:14-35.2.

3

4   **Q.   DO YOU AGREE WITH MR. TRANEN’S ASSERTIONS?**

5   **A.   [Michael Epstein]** I agree that the ISO should be permitted to recover the  
6           interest that was received from CERS and then was distributed to other  
7           entities. In response to the June 2002 Order, the ISO submitted a  
8           compliance filing to allow the ISO to get back the interest. The ISO is  
9           awaiting Commission action on the compliance filing so that the ISO can  
10          redistribute the interest amounts to market participants in accordance with  
11          the June 2002 Order.

12

13

**CONCLUSION**

14

15   **Q.   THANK YOU, GENTLEMEN. I HAVE NOTHING FURTHER.**


UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

\_\_\_\_\_  
City of Folsom )  
County of Sacramento )  
\_\_\_\_\_) )  
\_\_\_\_\_)

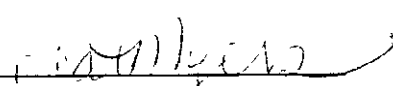
AFFIDAVIT OF WITNESS

I, Spence Gerber, being duly sworn, depose and say that the statements contained in my Rebuttal Testimony on behalf of the California Independent System Operator Corporation in this proceeding are true and correct to the best of my knowledge, information, and belief.

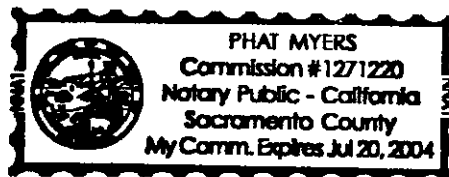
Executed on this 2<sup>nd</sup> day of July, 2002.

  
\_\_\_\_\_  
Spence Gerber

Subscribed and sworn to before me this 2<sup>nd</sup> day of July, 2002.

  
\_\_\_\_\_  
Notary Public  
State of California

*County of Sacramento*





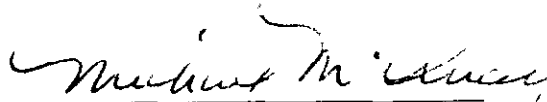
UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

\_\_\_\_\_)  
City of Folsom )  
County of Sacramento )  
\_\_\_\_\_)

AFFIDAVIT OF WITNESS

I, Michael McQuay, being duly sworn, depose and say that the statements contained in my Rebuttal Testimony on behalf of the California Independent System Operator Corporation in this proceeding are true and correct to the best of my knowledge, information, and belief.

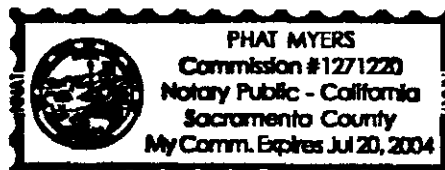
Executed on this 25<sup>th</sup> day of July, 2002.

  
\_\_\_\_\_  
Michael McQuay

Subscribed and sworn to before me this 25<sup>th</sup> day of July, 2002.

  
\_\_\_\_\_  
Notary Public  
State of California

*County of Sacramento  
State of California*



UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

\_\_\_\_\_)  
City of Folsom )  
County of Sacramento )  
\_\_\_\_\_)

AFFIDAVIT OF WITNESS

I, Michael Epstein, being duly sworn, depose and say that the statements contained in my Rebuttal Testimony on behalf of the California Independent System Operator Corporation in this proceeding are true and correct to the best of my knowledge, information, and belief.

Executed on this 31<sup>st</sup> day of July, 2002.

\_\_\_\_\_  
Michael Epstein

Subscribed and sworn to before me this 31<sup>st</sup> day of July, 2002.

Phat Myers  
Notary Public  
State of California

County of Sacramento  
State of California

