UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company, Complainant,	)	
	)	**Docket No. EL00-95-291**
v.	)	
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents	)	
Investigation of Practices of the California Independent System Operator and the California Power Exchange	)	**Docket No. EL00-98-263**

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO SUPPLEMENTAL COMMENTS OF CALIFORNIA PARTIES

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,[1] the California Independent System Operator Corporation ("CAISO") submits this answer to the supplemental comments filed by the California Parties in these proceedings on December 19, 2016. The CAISO requests leave to submit this answer, as it will assist the Commission in resolving several of the issues addressed in the California Parties' supplemental comments. Specifically, this answer is limited to Issues Four, Six, Seven, Nine, Ten, Eleven, Twelve and Thirteen. This answer also discusses concerns that the CAISO has with respect to the California Parties' statement in their proposed "path to final market

[1] 18 C.F.R. §§ 385.212, 385.213 (2016).

clearing" regarding the CAISO's role in reflecting the impact of the global settlements entered into by the California Parties and numerous sellers on the CAISO's and PX's rerun accounting.

I. ANSWER

A. ISSUE FOUR – The Commission Will Need to Interpret the Provisions of the Relevant Settlements with Respect to the Treatment of Refund Offsets for Governmental Entities.

Issue Four involves the ISO's treatment of offsets for fuel costs and emissions of three governmental entities that subsequently settled their claims with the California Parties. In their supplemental comments, the California Parties claim that despite settlement language approved by the Commission, the CAISO has "refused to apply fuel and emission offsets to the sellers that would have been applied if the sellers were not governmental entities."[2] This formulation misapprehends the CAISO's comments. The CAISO has not "refused" to apply offsets. Rather, as the CAISO explained in its reply comments,[3] it is not apparent to the CAISO how the settlement language cited by the California Parties in their initial comments required the CAISO to include in its refund calculations fuel and emissions offsets for the three relevant governmental entities. The CAISO noted that the Commission would need to interpret the language of these agreements, and the CAISO will obviously conform its accounting based on the Commission's interpretation.

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[2] California Parties' Supplemental Comments at 5-6.

[3] Reply Comments of the California Independent System Operator Regarding Compliance Filings, Docket Nos. EL00-95-291, *et al.* (Oct. 24, 2016) ("CAISO Reply Comments").

The California Parties now point to a different provision in the settlement agreements to support their argument that the CAISO and PX were required to include offsets for these governmental entities in their calculations submitted with their compliance filings:

> The ISO and PX shall calculate the amount, if any, that Pasadena would owe in refunds and/or interest pursuant to FERC's orders in the EL00-95 Proceeding in the same manner as for entities that are not within the scope of Section 201(f) of the Federal Power Act[4]

Even this language is not as unambiguous as the California Parties represent. The question of whether this provision requires the CAISO and PX to continue to include the offsets for Pasadena and the other two governmental entities whose settlements contain substantially similar language depends on the interpretation of the word "refunds." Absent other indications, this term could plausibly be read to mean either refunds as determined solely as a result of the reruns performed by the CAISO and PX to apply the mitigated market clearing price directed by the Commission, or more broadly as including all of the offsets to refunds subsequently approved by the Commission.

The CAISO, when it performed the calculations set forth in its compliance filing, did not understand that the settling parties intended this provision to override the Commission's general directive to eliminate offsets associated with governmental entities that could not be compelled to pay refunds.[5] Moreover, the CAISO had no reason to question its understanding, as the California Parties

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[4] *Id*. at 6-7 (citing Joint Offer of Settlement and Motion for Procedural Relief, Attachment B, Section 6.1.3, Docket Nos. EL00-95, et al. (Feb. 15, 2011)).

[5] *San Diego Gas & Electric Co., et al.*, 125 FERC ¶ 61,214 (2008) at P 22; *see also San Diego Gas & Electric Co., et al.*, 138 FERC ¶ 61,091 (2012) at P 27.

did not identify this provision as requiring this result, either in its initial comments on the CAISO's compliance filing or during one of the multiple comment periods afforded by the CAISO when it circulated its refund and offset calculations for party review prior to making its compliance filing.

To be clear, the CAISO takes no position on which of these interpretations best reflects the intent of the settling parties. As the CAISO stated in its reply comments, this is an issue that will need to be decided by the Commission. This issue does, however, illustrate the CAISO's concern, as touched on further below,[6] with respect to potentially being placed in a position of having to interpret the terms of these and other similar settlements as part of the process of combining those settlements with the CAISO and PX rerun results.

B. ISSUES SIX, SEVEN AND NINE -- The Commission Should Deny the California Parties' Requests to Require the CAISO to Re-Do Calculations Relating to the BPA Adjustment.

The CAISO developed its processes for calculating and allocating the shortfalls resulting from the Ninth Circuit's decision in *BPA v. FERC* based on a careful analysis of the relevant Commission orders on these issues. Moreover, the CAISO has been fully transparent as to its intended process, providing parties regular updates through status reports filed with the Commission and distributions of the results of its calculations. In doing so, the CAISO has solicited and taken into account parties' comments on various aspects of its process, including the BPA shortfall allocation. The CAISO is thus confident that its

[6] *See infra* Section I.G.

process for calculating and allocating the BPA shortfalls complies with the Commission's orders in this proceeding.

The California Parties nevertheless continue to object to three components of the CAISO's BPA results: (1) the CAISO's calculation of the refund shortfall associated with each exempt governmental entity based on sales and purchases only in its markets, rather than combining the CAISO and PX markets (Issue 6); (2) the CAISO's allocation of the resulting refund shortfalls to refund recipients based on each refund recipient's refund position over the entire refund period, as opposed to its hourly positions (Issue 7); and (3) the CAISO's allocation of the *BPA* shortfalls based on refund recipients' total net refunds, after accounting for cost recovery offsets and other refund offsets that the Commission had approved for suppliers, as opposed to allocating the *BPA* shortfalls based on refunds calculated before factoring in those offsets (Issue 9).[7]

These objections are without merit because they rely on overbroad readings of passages that are taken out of context of the orders in which they appeared, or downplay foundational orders on which the CAISO relied in formulating its processes for calculating and allocating the *BPA* shortfalls. In effect, the California Parties are attempting to re-write the procedural and decisional history of this proceeding. The relevant metric here should not be whether the outcomes preferred by the California Parties are relatively better or worse, in the abstract, than those reached by CAISO, but whether the CAISO's

[7] California Parties Supplemental Comments at 9-13.

processes fairly reflect the directives that the Commission has issued over the years.

For instance, with respect to Issue Six, the California Parties continue to rely on one specific passage in the Commission's order of February 3, 2012 to support their claim that the CAISO and PX were *required* to net all transactions between their respective markets in determining the *BPA* shortfalls. However, as the CAISO explained in its reply comments, this passage related to the manner in which the CAISO and PX markets would be financially cleared. It did not address the *BPA* shortfall calculation.[8] The California Parties nevertheless contend that the most sensible reading of this language is that it signaled the Commission's intention to reverse its previous orders, which clearly envisioned that the CAISO and PX would conduct those calculations separately for their respective markets. On the other hand, with respect to Issue Seven, the California Parties argue that the Commission should ignore relevant discussions in its previous orders regarding the meaning of the term "net refunds" in order to arrive at a result that the California Parties believe is more equitable in terms of sequencing cost offsets and the *BPA* adjustments.

The Commission should reject the California Parties' requests that the Commission continue to revise and refine its directions in this proceeding to improve the outcomes in some abstract sense. The CAISO's calculations should be approved as consistent with the relevant Commission orders.

[8] CAISO Reply Comments at 11-12.

C. ISSUE TEN – The Commission Can and Should Approve the ISO's Methodology for Calculating Interest.

In its supplemental reply comments, the CAISO indicated that it and the California Parties agree that the specific interest numbers reflected in Attachment A to the CAISO's compliance filing will not be the final interest numbers.[9] The California Parties acknowledge this agreement in their supplemental comments.[10] However, the California Parties do not mention that the CAISO and the California Parties also agreed that the methodology for calculating interest that is described in Sections VI.A through VI.F of the CAISO's compliance filing is consistent with Commission's orders in this proceeding.[11] The CAISO wishes to make this clear, so that the Commission does not get the mistaken impression that there is any dispute as to the CAISO's underlying methodology.

D. ISSUE ELEVEN – The Commission Denied the California Parties' Request to Combine the CAISO and PX Markets for Purposes of Interest Shortfall Calculations in Opinion No. 536-A.

In their supplemental comments, the California Parties continue to argue that interest shortfall positions should be calculated based on each party's combined CAISO/PX position.[12] It bears emphasizing that this issue (and Issue

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[9] Supplemental Reply Comments of the California Independent System Operator Corporation Regarding Compliance Filings, Docket Nos. EL00-95-000, *et al.* (Nov. 30, 2016) ("CAISO Supplemental Reply Comments") at 5-6.

[10] California Parties Supplemental Comments at 14.

[11] These sections include only the ISO's calculation of interest due, before any shortfall adjustments.

[12] California Parties Supplemental Comments at 14-15.

Twelve, below) need not be decided now. As noted in the discussion of Issue Ten, the CAISO and the California Parties agree that the specific interest numbers reflected in Attachment A to the CAISO's compliance filing will not be the final interest numbers. This means that the interest shortfall adjustments are not final either, nor are they part of the interest methodology that the CAISO is asking the Commission to approve in connection with Issue Ten.[13]

However, in the event the Commission were to address this issue now, the CAISO wishes to clarify the record on this issue. The California Parties assert, contrary to the CAISO's reply comments, that the Commission, in Opinion No. 536-A,[14] did not address the issue of how CAISO and PX balances should be treated for purposes of the refund interest shortfall calculations. Although the Commission did not explicitly reiterate the California Parties' request to combine CAISO and PX balances in the decisional paragraph cited by the CAISO, the Commission did note the California Parties' request in its recitation of parties' positions.[15] In the decisional paragraph, the Commission stated that it was denying the California Parties' request for clarification on *issues* relating to the interest shortfall calculations.[16] The only sensible reading of this statement is that the Commission's denial involved all of the California Parties' requests for

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13 *See supra* n. 6 and accompanying text.

14 *San Diego Gas & Electric Co., et al.,* 153 FERC ¶ 61,144 (2015) at P 145.

15 *Id*. at P 133.

16 *Id*. at P 145.

clarification regarding interest shortfall calculations, including its request that the shortfall be calculated on the basis of combined CAISO and PX balances.

E. ISSUE TWELVE – The Rerun Compliance Process Should Not be Delayed in Order to Include Summer Period Refunds.

In their supplemental comments, the California Parties state that the Commission has not resolved the issue of whether interest on transactions that took place during the summer 2000 period should be factored into the interest shortfall calculations relating to transactions that took place during the period at issue in the CAISO and PX rerun compliance filings.[17] As noted above in the discussion of Issue Eleven, this issue does not need to be addressed by the Commission as part of ruling on the CAISO and PX compliance filings.

However, in the event the Commission were to address this issue now, the CAISO offers the following for consideration. As the California Parties note, in Opinion No. 536-A the Commission invited further comment on this issue, particularly from the CAISO and PX. In its compliance filing and reply comments, the CAISO provided its comments, explaining that it agreed with the Commission's statements in Opinion No. 536-A that the refund period interest shortfall process does not appear applicable to the summer 2000 period.[18] The California Parties provide no further justification in their supplemental comments to support comingling summer period interest with the refund period interest

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[17] California Parties Supplemental Comments at 15.

[18] Compliance Filing of the California Independent System Operator Corporation Regarding Orders About the Refund Rerun, Financial Adjustments and Interest, Docket Nos. EL00-05, *et al*. (May 4, 2016) ("CAISO Compliance Filing") at 41-42; CAISO Reply Comments at 20-21.

shortfall calculation. As such, there would be no reason to hold up the resolution of the refund period rerun process in order to await final resolution of the summer refund claims.

F. ISSUE THIRTEEN - While it is Not Necessary for the Commission to Resolve the Disposition of the CAISO Accounts at this Point, the California Parties' Reply Provides No Reason to Doubt the CAISO's Proposed Disposition.

The CAISO's compliance filing identifies certain CAISO-specific accounts that are affected by or interrelated with the refund period adjustments.[19] While the disposition of these funds must be resolved before the final cash clearing, they do not need to be resolved now because the issue is distinct from the core issues in the CAISO and PX compliance filings. The California Parties do not dispute this.[20]

In the event the Commission were to decide now how these funds should be used, the CAISO wishes to respond to the new argument raised in the California Parties' reply suggesting that the CAISO's recommendations would be somehow inconsistent with a combined market clearing of the CAISO and PX.[21] While the CAISO supports a combined clearing, combining the CAISO and PX for cash clearing purposes is irrelevant to this issue, because it would not affect either the underlying settlement charges or the policy decisions about how to use funds that are not governed by the CAISO's tariff or other Commission orders.

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19 *See* ISO Compliance Filing, Section VIII, pp. 44-52.

20 *See* California Parties Supplemental Comments at 15-16.

21 *Id*. at 16.

With respect to accounts described in Sections VIII.C and VIII.D of the CAISO's compliance filing,[22] a combined clearing would not alleviate or undermine the need to repay the groups of entities that were ultimately assessed too much for emissions and startup, for example. Contrary to the suggestion of the California Parties, the CAISO is not proposing to "carve out" these funds from any general treatment or to establish an exception to any general rule. Rather, the CAISO is proposing to dispose of the funds consistent with its tariff and cost causation principles.

With respect to accounts described sections VIII.A and VIII.B of the CAISO's compliance filing, the CAISO stands by its recommendation that these funds should be applied toward all market creditor balances from the Refund Period. Although this will include market participants that will be allocated a portion of the interest shortfalls, it will not be so limited.[23]

G. The Commission Should Not Explicitly Direct the CAISO and PX to "Assist in the Settlement Overlay" in Connection with its Ruling on the CAISO and PX Compliance Filings.

The California Parties' initial comments, in a section addressing the next phase of this proceeding after compliance filings are approved, asks the Commission to "direct the ISO and PX to … implement the settlement overlay."[24] The California Parties' supplemental comments potentially extend this request further when they ask the Commission to direct the CAISO and PX to "*assist* in

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22 CAISO Compliance Filing at 48-50.

23 *See* CAISO Reply Comments at 22-23.

24 California Parties Initial Comments at 40.

the settlement overlay."[25] The CAISO objects to this request because it is vague and could be construed to impose improper obligations on the CAISO.

As a threshold matter, this issue is premature. The Commission can approve the CAISO and PX compliance filings (or direct adjustments to them) without settling on the details of the next phase of the case. As the CAISO noted in its compliance filing, it is seeking a ruling only on its refund calculations.[26] While it would make sense to solicit input about how the next phase of the case should work, it is too early to establish those details.

When the time comes for the Commission to assign responsibility for implementing the global settlements, the CAISO would have serious concerns about any vague, open-ended obligation to "assist" that goes beyond the implementation requirements specifically provided for in the global settlements. The CAISO should not be required to interpret the various settlement agreements, or to calculate the adjustments that make up the settlement overlay. A good example of the hazards of interpreting the settlements is Issue Four as framed by the California Parties. As explained above, the California Parties' current reading of those agreements, including which provisions are relevant, differs from not only the interpretation the CAISO gave those agreements after

[25] California Parties Supplemental Comments at 17 (item 4 in the Conclusion) (emphasis added).

[26] CAISO Compliance Filing at 55.

careful reading, but also the interpretation that the California Parties articulated in their initial comments.[27]

To be clear, the CAISO supports the settlements reached by the parties, and has provided extensive background support for parties considering those agreements, as well as for the implementation of agreements entered. But formal legal responsibility for implementing those agreements, beyond the obligations that the agreements impose specifically on the CAISO, must continue to rest with the parties to those settlements.

II. CONCLUSION

The CAISO respectfully requests that the Commission accept the enclosed answer and consider it as part of the record in ruling on the CAISO and PX refund rerun compliance filings.

Respectfully submitted,

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[27] *Compare* California Parties Initial Comments at 11, n.43 (identifying Sections 4.11 and 4.14 as the key provisions of the agreements) *with* California Parties Reply Comments at 6 (identifying Section 6.13 as the key provision); *see also supra* Section I.A.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon the email listserv established by the Commission for this proceeding.

Dated this 9th day of January, 2017 in Washington, DC.

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