

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

NEO California Power LLC

Docket No. EL02-18-001

**JOINT STATUS REPORT OF PARTIES**

To the Commission:

Pursuant to the Commission's order of January 7, 2005, *NEO California Power LLC*, 110 FERC ¶ 61,010, the California Independent System Operator Corporation ("ISO") and NEO California Power, LLC ("NEO California") (together "the Parties") hereby submit this report on the status of settlement negotiations in the above-captioned matter. In short, settlement discussions have not stalled; rather NEO California and the ISO have made substantial progress toward informally resolving the underlying payment dispute. Accordingly, the Parties request that the Commission remove the stay on the settlement judge procedures to allow informal resolution of the proceeding. As discussed further below, the Parties believe that the payment dispute should be resolved with the pending clearing of accounts from the California Power Exchange ("PX") bankruptcy and the Refund Proceeding.<sup>1</sup>

**I. Procedural Background**

On November 13, 2001, NEO California filed a complaint against the ISO, claiming that the ISO had not paid NEO California in full in accordance with the terms of

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<sup>1</sup> *California Independent System Operator Corporation*, Docket Nos. ER03-746-000, *et al.*, and *San Diego Gas & Electric Company*, *et al.* Docket Nos. EL00-95-081, *et al.*

Summer Reliability Contracts (“SRAs”) the ISO had entered into with NEO California.<sup>2</sup> The ISO responded on December 3, 2001. On May 20, 2003, the Commission established hearing procedures and held the hearing in abeyance pending settlement judge procedures. *NEO California Power LLC*, 103 FERC ¶ 61, 206. On June 2, 2003, Chief Administrative Law Judge Curtis L. Wagner assigned the settlement proceedings to Administrative Law Judge Joseph R. Nacy. The first settlement conference took place on June 20, 2003. NEO California and the ISO participated in several settlement conferences on this matter from June 2003 through March 2004.<sup>3</sup>

## II. Factual Background

It has been the ISO’s position in this matter that the terms of the SRAs between the ISO and NEO California for the units in question require that the ISO pay NEO California when it is paid by Scheduling Coordinators (“SCs”) for the services performed by the ISO. See SRA § 9.4. When payments from SCs are not forthcoming, the ISO must, according to the terms of the ISO Tariff, reduce payments to all of its creditors on a pro rata basis pursuant to ISO

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<sup>2</sup> On December 3, 2001, the California Public Utilities Commission; the Cities of Redding & Santa Clara, California; the M-S-R Public Power Agency; Modesto Irrigation District; RAMCO; Southern California Edison Company (“SCE”); and Turlock Irrigation District filed interventions in this proceeding, and the California Electricity Oversight Board filed a motion to intervene and protest. Of these intervenors, only Redding and SCE took part in settlement discussions with NEO, the ISO, and the Commission Staff.

<sup>3</sup> Settlement conferences took place on June 20, August 6, and September 11, 2003, and on March 18, 2004.

Tariff § 11.16.1.<sup>4</sup>

NEO California's position has been that Article 10 of the SRAs requires the ISO to pay NEO California within 30 days of being invoiced, and that relevant Commission precedent requires the ISO to provide either a creditworthy buyer or assurance of payment.

The ISO notes that it has not yet received sufficient collections from the PX, which is in bankruptcy, to enable the ISO to pay its creditors – including NEO California – in full. Although other ISO Debtors still owe the ISO payments on the July and August invoices, by far the largest amount owed (albeit entirely for the July invoice) is owed by the PX. Moreover, the amounts owed by other SCs on the August invoice also can be traced back to the PX bankruptcy. Therefore, the ISO avers that while its Scheduling Coordinators were invoiced in a timely manner, it has been unable to pay any of its creditors in full for the invoiced periods of July and August 2001 because it has not itself received full payment for these periods.

Since that time the ISO notes that it has provided financial and other information, testimony and settlement data to various parties and the regulatory bodies investigating the charges during periods the PX conducted business and conducting the affairs of the PX in bankruptcy, in order to secure payment on all outstanding invoices, including

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<sup>4</sup> ISO Tariff § 11.16.1 states:

*If it is not possible to clear the ISO Clearing Account on a Payment Date because of an insufficiency of funds available in the ISO Reserve Account or by enforcing any guarantee, letter of creditor other credit support provided by a defaulting Scheduling Coordinator, the ISO shall reduce payments to all ISO Creditors proportionately to the net amounts payable to them on the relevant Payment Date to the extent necessary to clear the ISO Clearing Account. The ISO shall account for such reduction in the ISO ledger accounts as amounts due and owing by the non-paying ISO Debtor to each ISO Creditor whose payment was so reduced.*

July, 2001. Any monies the ISO has secured have been paid out to ISO Creditors on a pro rata basis pursuant to ISO Tariff § 11.16.1.

### **III. Impact of California Energy Crisis**

The PX bankruptcy and the Commission's *on-going investigation of the rates* charged to California's ratepayers, along with the anticipated refunds, is one of the key impediments to satisfying the ISO's obligation to NEO California. The timing of payout from the Refund Proceeding and the amounts currently held in escrow by the PX are the keys to facilitate resolution of this complaint. As noted in the Attachment A, the ISO's twelfth status report on re-run activity, filed with the Commission on January 10, 2005, financial clearing is currently anticipated for June 2005. That schedule is, however, contingent in part upon ISO constraints, Commission decisions and a Fuel Cost Allowance ("FCA") audit.

### **IV. Current Status**

During the course of the settlement negotiations, the outstanding amounts owed to NEO California have been reduced significantly. The only remaining amounts owed to NEO California have been tied up in the bankruptcy proceedings of the PX. With the resolution of the those bankruptcy proceedings and the Refund Proceeding, however, it is anticipated that in the near future the Parties will know whether the ISO will be in a position to pay most (or indeed all) of the outstanding amounts owed to NEO California.

At the present time, the ISO owes NEO California \$734,524.47 in principal and interest for the Chowchilla unit and \$87,114.43 for the Red Bluff unit. As indicated on Attachment B, this figure has decreased since the time when the complaint was filed, as

the ISO received payments from other Market Participants that it could then pass on pro rata to its creditors under the terms of ISO Tariff § 11.16.1.

The ISO notes that it is committed to satisfying its creditors, including NEO California, as quickly as possible consistent with Commission orders and the requirements of the ISO Tariff.

## **V. Going Forward**

The ISO and NEO California do not believe terminating settlement proceedings and going to hearing on this matter at this time is appropriate. Given the size of and the reason for the debt owed to NEO California, and the fact that the PX bankruptcy has yet to be fully resolved, the parties believe that the best approach to resolving this matter is to await the final steps of that bankruptcy and the disbursements from the PX thereupon. Setting this issue for hearing at this time would be a diversion and a waste of resources, including those of the Commission and its staff. This matter ought to be resolved with the financial clearing of the Refund Proceeding re-runs ordered by the Commission.

**VI. Conclusion**

For the above reasons, the ISO and NEO California request that the Commission remove the stay on the settlement judge procedures to allow informal resolution of the proceeding.

Respectfully submitted,

On behalf of the California Independent System Operator Corporation

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Date: January 24, 2005

**CERTIFICATE OF SERVICE**

I hereby certify I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA, on this 24<sup>th</sup> day of January, 2005.

*/s/ Stephen A. S. Morrison*  
Stephen A. S. Morrison

## ATTACHMENT A



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

<b>California Independent System Operator Corporation</b>	)	<b>Docket No.</b>	<b>ER03-746-000</b>
	)		
	)		
<b>San Diego Gas &amp; Electric Company, Complainant,</b>	)		
	)		
<b>v.</b>	)	<b>Docket Nos.</b>	<b>EL00-95-081</b>
	)		<b>EL00-95-074</b>
<b>Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.</b>	)		<b>EL00-95-086</b>
	)		
	)		
<b>Investigation of Practices of the California Independent System Operator and the California Power Exchange</b>	)	<b>Docket Nos.</b>	<b>EL00-98-069</b>
	)		<b>EL00-98-062</b>
	)		<b>EL00-98-073</b>

(not consolidated)

**TWELFTH STATUS REPORT OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION ON SETTLEMENT RE-RUN ACTIVITY**

Pursuant to the Order Granting Clarification and Granting and Denying Rehearing of the Federal Energy Regulatory Commission ("Commission" or "FERC"), issued on February 3, 2004, in the above captioned dockets ("February 3 Order"), the California Independent System Operator Corporation ("ISO") hereby provides its twelfth regular monthly status report.<sup>1</sup>

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<sup>1</sup> The Commission's Order at paragraph 21 states, "The CAISO is hereby directed to submit to the Commission on a monthly basis, beginning on February 10, 2004, a report detailing the status of the preparatory adjustment re-runs and the dates that it expects to complete both the preparatory re-runs and the settlement and billing process for calculating refunds, as discussed in the body of this order." 106 FERC ¶ 61,099 (2004).

## I. BACKGROUND<sup>2</sup>

On April 15, 2003, the ISO<sup>3</sup> filed Amendment No. 51 to its Tariff, to which the Commission assigned Docket No. ER03-746 ("Amendment No. 51 filing"). In the Amendment No. 51 filing, the ISO proposed to conduct a preparatory re-run in preparation for the Commission-mandated re-run in the California refund proceeding (Docket Nos. EL00-95-045, *et al.*) and requested approval of Tariff amendments to "wall off" that re-run from the settlement processes currently in use to clear the ISO Market.

On December 15, 2003, the ISO filed its request for rehearing of the Commission's November 14 order in Docket No. ER03-746. Therein, the ISO informed the Commission that it could not provide the ordered compliance filing by January 30<sup>th</sup>, but instead would make the filing as soon as practicable. In the February 3 Order, the Commission granted the ISO the additional time needed to make the compliance filing for the preparatory re-run, but also required the ISO "to submit to the Commission on a monthly basis, beginning on February 10, 2004, a report detailing the status of the preparatory adjustment re-runs and the dates that it expects to complete both the preparatory re-runs and the settlements and billing process for calculating refunds." February 3 Order at P

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<sup>2</sup> In its October 16, 2003 Order on Rehearing, 105 FERC ¶ 61,066 (2003) the Commission ordered the ISO to file within five months of the date of the order the results of the preparatory re-runs along with the appropriate explanations. The ISO considers that this directive has been overtaken by FERC's later recognition in the Amendment 51 proceeding that the ISO could not possibly comply with the deadline in the October 16 Rehearing order, as well as the deadlines in the previous Amendment 51 orders. The ISO is endeavoring to comply, however, with FERC's directive that the ISO work as fast as practicable, keep the parties well informed, and file monthly status reports. For this reason, in addition to the Amendment No. 51 docket, the ISO is also filing this report in the dockets associated with the California refund proceeding.

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

21. The first such status report was filed with the Commission on February 9, 2004. This filing constitutes the twelfth such report required by that Commission Order. While the preparatory re-run is complete, the ISO will continue to provide monthly status reports throughout the refund re-run because the ISO believes that these reports have been a valuable tool for communicating with the Commission and Market Participants, in addition to meeting the Commission-mandated reporting requirement.

## **II. CURRENT STATUS OF RE-RUN ACTIVITY**

The refund re-run settlement statement publishing began on October 27, 2004. This work utilizes the MMCPs which were previously calculated and published to Market Participants along with the transactional data from the preparatory re-run. The publishing activity went on hold November 19th due primarily to the increased activity associated with settlements of a new market design, the Phase 1B implementation of MRTU. As of November 19, 2004, the ISO had published re-run statements through February 2, 2001.

Re-run production was restarted January 5, 2005. At the current production rate, publishing of re-run statements will be completed mid-February, 2005. This was communicated via market notice on January 4, 2005 which gave notice of the re-start and the projected completion date of this phase of the work activity (Mid February 2005). The ISO's notice went on to state that it will publish several manual re-run corrections on January 5, 2005 to adjustments made previously as a part of this re-run process. The largest of the manual adjustment issues relates to generators that were paid over the bid cap and were

inadvertently not mitigated. A number of the other corrections were related to individual billing inquiries submitted by various parties.

In response to several questions from Market Participants the ISO posted on its website in the FERC refund re-run section<sup>4</sup>, a description of the method that it plans to use to mitigate import transactions on the interties. In addition to the description, the ISO has included a series of transactional examples in its posting.

The ISO again wishes to note that although the Commission's November 23, 2004 Order on Rehearing<sup>5</sup> in this proceeding resolved many of the "open issues," it did not address the matter of the ISO compliance filing in Tariff Amendment 41 which would require the recalculation of interest for the refund period. A decision on this pending amendment and the ISO's associated request for rehearing may allow the ISO to distribute as much as \$6 million to the ISO Market that is currently being held in escrow pending the Commission's decision.

The ISO has continued to interface with Market Participants via market notices, telephonic conferences, and direct consultation, as necessary. Specifically, the ISO held its most recent regular monthly telephonic meeting with Market Participants to discuss re-run issues on Wednesday, December 1st. The ISO has posted on its web site, and continues to update, a calendar containing

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<sup>4</sup> <http://www.caiso.com/docs/2005/01/03/2005010308312727756.pdf>

<sup>5</sup> 109 FERC ¶ 81,218 (2004)

the schedule for the re-run activity, and has provided the link to that calendar in a market notice.<sup>6</sup>

As of January 6, 2005, the ISO has received a total of 26 billing inquiries from Market Participants with respect to questions related to the Refund re-run statements. Twenty- three of the 26 inquiries have been answered by the ISO's *Market Quality department and returned to the respective Market Participant*. The remaining 3 inquiries are still under investigation.

Upcoming Stakeholder communications will include the regular monthly call with Market Participants scheduled for later in the week of January 10, 2005.

### **III. ESTIMATED SCHEDULE FOR COMPLETION OF THE REFUND RE-RUN ACTIVITY**

Attachment A to this status report contains the ISO's current estimate of the final completion date for the FERC refund re-run phase of the project. As noted above, the preparatory re-run was completed July 16<sup>th</sup>. Note that the compliance filing after the refund re-run will include adjustments for fuel price, emissions and interest, but will not include adjustments for the various global settlements. This schedule is consistent with the Commission's order of November 23, 2004 and with the discussions held with Market Participants and Commission staff on July 26<sup>th</sup> in Washington, as well as the ISO's presentation at the technical conference on October 7th.

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<sup>6</sup> The ISO's re-run calendar, market notices, and re-run procedure manual are located on the ISO's website at <http://www.caiso.com/docs/2004/10/26/2004102612304417309.xls> .( Update link to Refund re-run)

**IV. CONCLUSION**

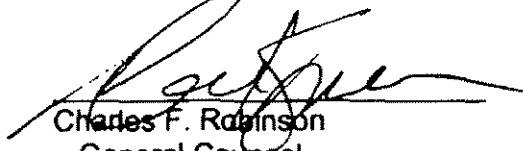
The ISO respectfully requests that the Commission accept the ISO's twelfth status report in compliance with the Commission's February 3 Order, referenced above.

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Respectfully submitted,



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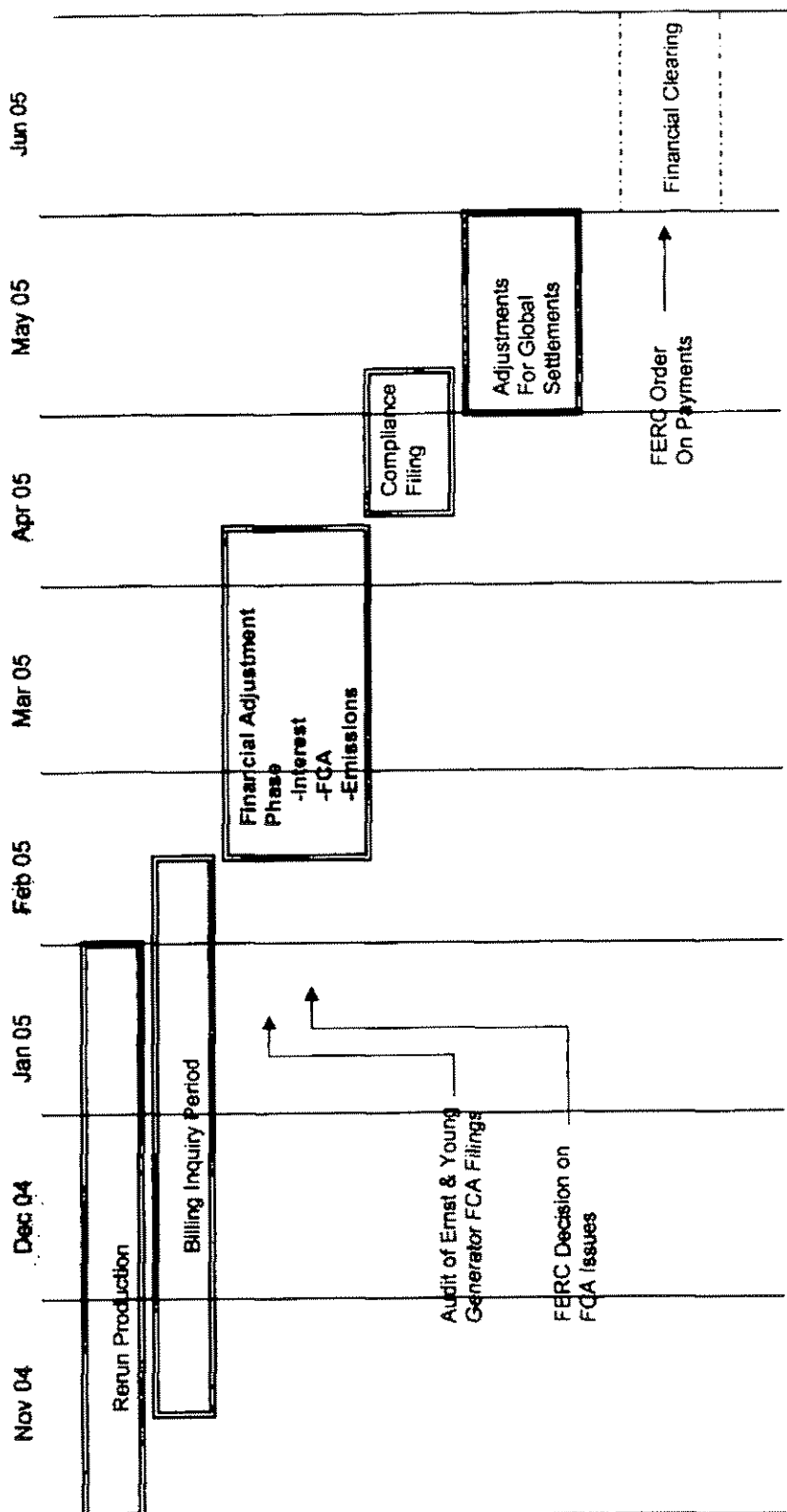
The California Independent System  
Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Telephone: (916) 608-7049

Dated: January 10, 2005

# Refund Re-run Project Attachment A

## January 10, 2005

NOTE: Current ISO constraints and FCA audit could shift schedule up to 4 weeks



## ATTACHMENT A – RE-RUN SCHEDULE

January 10, 2005

### Key assumptions/comments to support the schedule (Updated for the refund re-run)

- *A schedule revision was presented at the FERC conference on October 7, 2004. October 7th marked the completion of the prep re-run phase including the production of settlement statements, filing by participants and resolution of over 5,000 disputes, and the filing of the compliance report with FERC on October 6, 2004.*
- *The ISO envisions the following additional phases of the refund project:*
  - *Refund rerun settlement statement production - this phase began on October 27th. Scheduled for completion in mid February, 2005.*
  - *Financial adjustment phase - scheduled for approximately 6 weeks following completion of the refund rerun statement production and earlier receipt of:*
    - (1) *Resolution from FERC of open issues relative to fuel cost allowance*
    - (2) *Submittal to the ISO of the fuel cost allowances following audit by Ernst and Young*
  - *The ISO will submit its compliance filing at the end of this phase.*
  - *Adjustment for global settlements - the ISO will make adjustments to invoices based on written instructions from the settling parties. These adjustments will affect the owed and owing of the settling parties only and will not affect non-settling parties.*
- *This schedule assumes that SCs submit billing inquiries during the process and do not hold them until the final deadline for inquiries set for two weeks after the publishing of the June 2001 statements. The ISO will begin work in parallel with the final billing inquiries receipt and resolution.*



ATTACHMENT B

