

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

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| <b>San Diego Gas &amp; Electric Company,</b>        | ) |   |
| <b>Complainant,</b>                                 | ) |   |
|   | ) | <b>Docket Nos. EL00-95-000, <i>et al.</i></b> |
|   | ) |   |
| v.  | ) |   |
|   | ) |   |
| <b>Sellers of Energy and Ancillary Services</b>     | ) |   |
| <b>Into Markets Operated by the California</b>      | ) |   |
| <b>Independent System Operator and the</b>          | ) |   |
| <b>California Power Exchange,</b>                   | ) |   |
| <b>Respondents</b>                                  | ) |   |
|   | ) |   |
| <b>Investigation of Practices of the California</b> | ) | <b>Docket Nos. EL00-98-000, <i>et al.</i></b> |
| <b>Independent System Operator and the</b>          | ) |   |
| <b>California Power Exchange</b>                    | ) |   |

**RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO  
MOTION OF THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER  
FOR AN ORDER DIRECTING DISBURSEMENT**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2007), the California Independent System Operator Corporation ("CAISO") hereby submits the following answer to the City of Los Angeles Department of Water and Power's ("LADWP") "Motion for an Order Directing Disbursement of Amounts Owed to Governmental Entities" ("LADWP Motion") as filed with the Commission in the above-captioned docket on April 18, 2007.

## I. ANSWER

In its motion, LADWP requests that the Commission, on remand of the Ninth Circuit's decision in *Bonneville Power Administration v. FERC*,<sup>1</sup> establish procedures for the "expedited payment of the unmitigated past due amounts and interest owed to each Governmental Entity for transactions in the CAISO and PX spot markets during the Refund Period."<sup>2</sup> With respect to the CAISO specifically, LADWP requests that the Commission direct the CAISO immediately "(1) to update its calculations of the interest that has accrued at the FERC Interest Rate since December 31, 2006 on the amounts owed to each Governmental Entity; and (2) upon completion of such update, to disburse to the Governmental Entities the full amounts of unmitigated past due amounts and interest owed to them, plus interest at the FERC Interest Rate."<sup>3</sup>

LADWP's motion raises a number of important issues. With respect to the main issue, that is, whether the Commission should order a distribution to be made to Governmental Entities in the near future, the CAISO offers no arguments for or against LADWP's request at this time. However, the CAISO may take a position on this issue in the future. Although *BPA* stands for the notion that FERC cannot order Governmental Entities, such as LADWP, to pay refunds, it does not otherwise mandate how the Commission should administer either the proceedings in this docket (including the timeframe under which it acts) or its responsibilities under the California Power Exchange ("PX") bankruptcy plan. Unfortunately, LADWP's motion does not offer any legal support for its conclusion that the Commission must immediately order

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<sup>1</sup> 422 F.3d 908 (9th Cir. 2005) ("*BPA*").

<sup>2</sup> LADWP Motion at 3.

<sup>3</sup> *Id.* at 9.

disbursements to the Governmental Entities.<sup>4</sup> The CAISO has begun to consider its position on this issue, but has not yet reached any specific conclusions. Therefore, the CAISO reserves the right to take a position on this question in the future, but declines to do so at this time.

Additionally, there are several other issues raised by LADWP's request that the CAISO believes the Commission needs to be aware of. First, if the Commission orders a disbursement of past due amounts to Governmental Entities, the Commission should recognize that the CAISO will not be responsible for collecting and/or disbursing any such amounts. Also, there are several issues relating to interest on past due amounts and the CAISO's preparatory rerun process that could complicate any disbursement to Governmental Entities. Each of these issues is discussed in detail below.

**A. The CAISO Is Not Responsible for Collecting Past Due Amounts for Transactions Entered Into Through its Markets**

The CAISO takes no position on whether or not the Commission should accept LADWP's request and order an expedited disbursement of funds owed to Governmental Entities such as LADWP. However, the phrasing of LADWP's request is problematic, insofar as it assumes that the CAISO will have a central role to play in disbursing funds to LADWP and other Governmental Entities.<sup>5</sup> The CAISO has, on an ongoing basis, made data available to Market Participants concerning past due amounts relating to transactions entered into in the CAISO's markets during the Refund Period, as well as

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<sup>4</sup> LADWP does cite precedent in support of the broad notion that the Commission must ultimately leave the Governmental Entities in the position they would have been in had the Commission not "committed legal error" by ordering the Governmental Entities to pay refunds. LADWP Motion at 5, n. 16. However, this does not stand for the notion that the Commission must follow any specific procedures in order to achieve this objective.

<sup>5</sup> See, e.g., LADWP Motion at 9 ("LADWP therefore asks the Commission to order the CAISO immediately . . . to disburse to the Governmental Entities the full amounts of the unmitigated past due amounts and interest owed to them . . .").

interest calculations pursuant to the Commission's orders that interest be assessed at the FERC Interest Rate on all unpaid amounts and refunds, and the CAISO will continue to update this information at regular intervals. For the reasons explained below, however, the Commission should be clear that, regardless of the timing of any disbursements, the CAISO will have no part to play in collecting or disbursing funds to Governmental Entities except as provided in the CAISO tariff or the confirmed plan of reorganization of the PX.

First, it should be understood that the only party currently in arrears with respect to transactions in the CAISO markets during the Refund Period is the PX. All other parties that transacted in the CAISO's markets during the Refund Period are paid in full. Therefore, any unpaid amounts still owed to Governmental Entities relating to activity in the CAISO markets can be attributed to amounts owed by the PX. As all parties are well aware, however, the PX filed for bankruptcy. Under the confirmed plan of reorganization, the Commission has the authority to determine the allocation of funds to PX creditors in accordance with that plan. Therefore, to the extent that LADWP and other Governmental Entities are seeking payment of amounts owed by the PX (which includes all remaining unpaid amounts for CAISO Refund Period activity), such payments must be made through the auspices of the PX confirmed plan, at the direction of the Commission.

Moreover, the obligation to collect amounts still owed by the PX – including amounts owed through CAISO markets – rests with the Scheduling Coordinator debtors, such as the Governmental Entities, not with the CAISO itself. The CAISO Tariff is clear that the CAISO does not purchase energy on its own account, but for the

account of the Scheduling Coordinators who represent the load that uses that energy.<sup>6</sup> It follows that if one of those Scheduling Coordinators, such as the PX, fails to pay its portion of the cost of the energy for which the ISO contracted, the recourse of the seller is against that Scheduling Coordinator and not the CAISO. Moreover, nothing in the CAISO Tariff suggests that the CAISO, in acting as agent, is to be inserted between the seller and the defaulting Scheduling Coordinator: the right to payment is the seller's against the debtor Scheduling Coordinator, and the obligation to pay is the debtor Scheduling Coordinator's to the seller. Thus, whenever a Scheduling Coordinator fails to pay its portion of the cost of energy purchased by the ISO on its behalf, the seller seeking payment has a claim only against the Scheduling Coordinator and must pursue that Scheduling Coordinator, even in bankruptcy proceedings, unless the CAISO agrees as an accommodation to do so, pursuant to Section 11.20.1 of the CAISO Tariff. The CAISO has no obligation to independently pursue the collection of unpaid amounts.

This framework has been endorsed by the Commission on several occasions, most recently in this very proceeding. In its November 23, 2004 *Order on Rehearing*, 109 FERC ¶ 61,218 (2004) ("November 23 Order"), the Commission rejected arguments made by certain sellers that the CAISO itself was directly financially responsible for certain bilateral transactions, stating that "the CAISO Tariff authorizes but does not require CAISO to seek payment from recalcitrant Scheduling Coordinators on behalf of sellers of energy. Nor is CAISO responsible for payments to a seller if a Scheduling

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<sup>6</sup> ISO Tariff, Section 22.13 ("In contracting for Ancillary Services and Imbalance Energy the ISO will not act as principal but as agent for and on behalf of the relevant Scheduling Coordinators.")

Coordinator defaults. This is consistent with Commission precedent and the CAISO Tariff.”<sup>7</sup>

For these reasons, the Commission must be clear in any order directing disbursement of funds to LADWP and other Governmental Entities that the CAISO will not be responsible for collecting and disbursing any such funds.

**B. Issues Relating to Payment of Interest on Unpaid Amounts**

The CAISO takes no position with respect to the merits of LADWP’s request that it and other Governmental Entities receive, in addition to the principal on any past due amounts, interest at the FERC rate on all such past due amounts. However, the CAISO wishes to bring to the Commission’s attention several issues attendant with this request. First, the CAISO once again notes that any amounts paid to LADWP and Governmental Entities as interest must come from the PX and/or other Market Participants. Although the CAISO has no objection to continuing to calculate and update interest amounts relating to transactions that took place in the CAISO markets, the CAISO has no obligation to collect and disburse such amounts, except as provided under the CAISO Tariff and the PX confirmed plan of reorganization.

In addition, there may be an issue with respect to LADWP’s request for receipt of interest insofar as the PX has been earning interest on the funds in its Settlement Trust Account at a rate less than the FERC Interest Rate. This issue has been extensively litigated before the Commission in this proceeding, with the result that the Commission determined that the PX must reflect interest owed at the FERC rate, but then allocate any shortfall between that amount and the amount actually earned equally between

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<sup>7</sup> *Id.* at P 72 (citing *Pacific Gas & Electric Co., et al.*, 81 FERC ¶ 61,122 (1997) at

buyers and sellers in the PX markets.<sup>8</sup> The CAISO is not certain how this mechanism will operate if the Commission determines that an expedited distribution to LADWP and other Governmental Entities, including interest, should be made as a result of the *BPA* decision. However, the CAISO believes that the Commission and parties should carefully consider this issue so as not to create the risk of additional shortfalls.

### **C. Issues Relating to Preparatory Rerun Adjustments**

Although not explicitly stated in its motion, the CAISO assumes that, based on references therein to the CAISO's preparatory rerun process, LADWP intends that any Commission order directing the disbursement of past due amounts to LADWP and other Governmental Entities would take into account the adjustments performed as part of the CAISO's preparatory rerun process. If this is the case, the CAISO has two comments. First, if the Commission accepts the LADWP Motion, any disbursement of unpaid amounts to Governmental Entities likely would be made prior to the CAISO invoicing the results of the preparatory rerun. Therefore, in order to accurately reflect the amounts owed to Governmental Entities, current CAISO balances would need to be adjusted based on the preparatory rerun data. Second, as the CAISO explained in its Thirty-Second Status Report on Rerun Activity, several claims that could affect the amounts owed by the PX are being pursued by various Market Participants in Alternative Dispute Resolution pursuant to Section 13 of the ISO Tariff, and that the resolution of these disputes may impact the preparatory rerun. The CAISO is currently working to close these matters, and expects that all necessary adjustments to the preparatory rerun data as a result of this process will be completed in the near future.

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61,506-509 (rejecting the argument that the CAISO should bear responsibility for collecting defaulted receivables).

## II. CONCLUSION

The ISO requests that the Commission accept the foregoing answer, and make clear in any order directing disbursement of past due amounts to Governmental Entities that the CAISO will have no obligation to collect or disburse such funds, except as provided under the CAISO Tariff and the PX confirmed plan.

Respectfully submitted,

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