

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

<b>California Independent System Operator Corporation</b>	)	<b>Docket No. ER03-746-000</b>
	)	
<b>San Diego Gas &amp; Electric Company,</b>	)	
<b>Complainant,</b>	)	
	)	<b>Docket Nos. EL00-95-081</b>
	)	<b>EL00-95-074</b>
<b>v.</b>	)	<b>EL00-95-086</b>
	)	
<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. EL00-98-069</b>
<b>Independent System Operator and the</b>	)	<b>EL00-98-062</b>
<b>California Power Exchange</b>	)	<b>EL00-98-073</b>

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO  
RELIANT’S PROTEST TO THE ADDENDUM TO THE ISO’S JULY 11, 2005  
REFUND STATUS REPORT**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2005), the California Independent System Operator Corporation (“ISO”),<sup>1</sup> hereby requests leave to file a response to Reliant Energy Power Generation, Inc. and reliant Energy Services, Inc.’s (“Reliant’s”) protest to the addendum to the ISO’s July 11, 2005 Status Report on Refund Activity (“Addendum”). Although the Commission normally prohibits answers to

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<sup>1</sup> Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

protests, good cause exists to grant the ISO waiver of Rule 213 (18 C.F.R § 385.213) in this instance, because this answer will aid the Commission in understanding the issues in this proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case.<sup>2</sup>

## I. DISCUSSION

### A. Reliant's Concerns with Respect to the PX Interest Shortfall are Moot

Reliant correctly states, in its protest, that the California Power Exchange ("PX") will be required to calculate interest at the "FERC rate" set forth in 18 C.F.R. Section 35.19(a), and that to the extent that there is a difference between the interest due under the FERC rate and the rate earned on the PX Settlement Trust Account, such shortfall shall be allocated equally amongst PX buyers and sellers. Reliant at 3-4. Under the methodology approved by the Commission for performing this allocation, the ISO will be allocated a portion of any such shortfall.<sup>3</sup> With respect to the portion of the shortfall accruing to the ISO, the Commission granted the ISO's request to allocate this amount *pro rata* amongst ISO participants (excluding the PX).<sup>4</sup>

In light of this history, Reliant states that it does not understand the ISO's statement in the Addendum that "[t]he mechanics of the PX adjustment have not

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<sup>2</sup> See, e.g., Entergy Services, Inc., 101 FERC 61,289, at 62,163 (2002); Duke Energy Corporation, 100 FERC 61,251, at 61,886 (2002); Delmarva Power & Light Company, 93 FERC 61,098, at 61,259 (2000).

<sup>3</sup> See 110 FERC ¶ 61,336 at PP 54, 56 (2005) ("The CAISO is both a creditor and a debtor in the CalPX market, and therefore, should be treated similarly to the other creditors and debtors. Accordingly, the CAISO's account balances will be included in the interest shortfall allocation.").

<sup>4</sup> See 109 FERC ¶ 61,218 at P 39 (2004) ("November 23 Order").

been worked out,” and requests that if the ISO or PX still have questions concerning how to perform the necessary interest adjustments, that the Commission instruct the ISO and PX to bring such questions to the Commission for resolution at once. Reliant at 4. The ISO clarifies that this statement was not meant to suggest that it did not understand how to perform the necessary adjustments as mandated by the Commission. Rather, the ISO was referring to the fact that the ISO had not, at the time it filed the Addendum, worked out with the PX how the two entities would exchange data relating to interest calculations made by the ISO and the PX, so that the ISO could perform the necessary adjustments relating to any PX interest shortfall. Between the time of the filing of the Addendum and the present filing, ISO and PX personnel have had further discussions on this issue, and have worked out the pertinent details concerning the exchange of data. Therefore, because the statement with which Reliant expressed concern is no longer operative, Reliant’s concern is moot, and Commission action on this item is unnecessary.

**B. Reliant’s Proposed Treatment of Interest is at Odds with the Commission’s Orders in this Proceeding**

Reliant takes issue with the ISO’s methodology for calculating interest on refunds and amounts past due. In particular, Reliant argues that it would be both unfair and contrary to the Commission’s orders in this proceeding for the ISO to calculate interest on refund obligations based on the Payment Date associated with the invoice for the underlying transaction, while calculating interest for past due amounts based on the Payment Date of the invoice for the underlying

transactions, but taking into account subsequent invoices relating to any adjustments for those transactions. Reliant at 5.

Reliant is mistaken both in its suggestion that the ISO's methodology is of recent vintage, and its assertion that this methodology is inconsistent with the Commission's orders in this proceeding. In fact, the elements of the ISO's methodology with which Reliant takes issue with were proposed by the ISO over a year ago, and subsequently approved by the Commission. For instance, the ISO has repeatedly informed the Commission of its intention to calculate interest on unpaid amounts based on the payment date associated with the invoices on which those amounts were reflected. In its October 16, 2003 "Order on Rehearing," 105 FERC ¶ 61,066 (2003), the Commission accepted this element of the ISO's proposal, stating that "[f]or unpaid invoices, the due date is exactly analogous to the collection date for refunds. It is the logical place to begin assessing interest because, prior to the due date, the invoice was in its grace period. Only after the due date passed without payment, did payment of the invoice become an outstanding obligation subject to interest just like the obligation to refund collected overcharges." *Id.* at P 108. Consistent with this approach, the ISO does not intend to calculate interest on any additional payments owing to sellers as a result of adjustments made to transactions during the preparatory rerun in the upcoming financial adjustment phase, because, contrary to Reliant's contention, these amounts have not yet been invoiced by

the ISO.<sup>5</sup> Amounts due to the ISO relating to transactions adjusted in the preparatory rerun will not be invoiced until after the Commission approves the ISO's rerun compliance filings,<sup>6</sup> and directs the ISO to issue invoices to collect monies associated with both the preparatory and refund reruns.

Likewise, the ISO's proposal to calculate interest based on the Payment Date of the invoice on which transactions subject to refund were billed, regardless of any subsequent adjustments made with respect to those transactions, was considered and approved by the Commission over a year ago. The ISO specifically requested clarification on this issue, explaining that it would be extremely burdensome and time consuming for the ISO to separately calculate interest on refund amounts based on the date that overcharges associated with the adjustments to the underlying transactions were collected. Performing interest calculations in this manner would require ISO personnel to determine, for each transaction subject to refund, whether the original price of that transaction had ever been adjusted. Then, for each of the transactions that involved a price adjustment (or adjustments), the ISO would have to compare the original price of the transaction, along with the amount of each price adjustment, to the MMCP, to determine the point at which the price of the transaction constituted an "overcharge," and the amount of each overcharge in relation to the original price of the transaction. The Commission approved the ISO's approach

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<sup>5</sup> Of course, any amounts that Market Participants fail to pay by the Payment Date of the invoices that contain obligations associated with the preparatory rerun adjustments will accrue interest in accordance with the ISO Tariff.

<sup>6</sup> The ISO filed a compliance report detailing the preparatory rerun adjustments on October 6, 2004. In that filing, the ISO requested that the Commission defer ruling on the preparatory rerun adjustments until such time as the Commission rules on the ISO's compliance filing on the refund rerun and associated financial adjustments.

in its May 12, 2004 order addressing request for rehearing and clarification of the October 16 Order, 107 FERC ¶ 61,165 (2004) (“May 12 Order”). Therein, the Commission granted the ISO’s request for clarification of this issue, noting that the Commission had not intended to “raise methodological barriers to the timely completion of the CAISO’s efforts to make a final determination of ‘who owes what to whom.’” *Id.* at P 31. Therefore, Reliant’s argument comes far too late, and should be rejected as a collateral attack on the Commission’s previous orders in this proceeding.

Reliant’s example suggests that its main disagreement with the ISO is the manner in which interest will be calculated for adjustments made to transactions as a result of the ISO’s preparatory rerun. As noted above, the ISO does not intend to calculate interest on amounts due as a result of the preparatory rerun in the upcoming financial adjustment phase because those amounts have not yet been invoiced by the ISO. Reliant would have the ISO calculate interest on adjustments made in the preparatory rerun as if those adjustments had been due on the Payment Date for the invoice relating to the original transaction. However, Reliant’s suggestion that such a methodology would result in creditors and debtors being treated equally is misleading. For instance, if the “mitigated price” in Reliant’s example is assumed to be \$1500, rather than \$500, then, under Reliant’s proposed methodology, SC 1 would be owed interest on the full \$1500 from the date of the original transaction, despite the fact that the \$1000 adjustment has never been invoiced, and thus never due to be paid. On the other hand, because the transaction price never exceeded the mitigated price, no

refund would be due, and thus, no interest would be owed by SC 1. It should also be understood that the total financial impact of the preparatory rerun is much smaller than the refund rerun, by an order of magnitude of nearly 20. Thus, the consequences of not assessing interest on the preparatory rerun adjustments are relatively minor.

If, in spite of its earlier orders and the illogic of Reliant's position, the Commission is nevertheless convinced that Reliant is correct, then the ISO respectfully requests that the Commission only require that the ISO assess interest on preparatory rerun adjustments as if those adjustments had been due on the Payment Date associated with the original transactions. Although this solution could still introduce certain inequities, as shown in the example above, it will address the specific concern raised by Reliant. What is most critical, however, is that the Commission not modify its ruling approving the ISO's methodology for calculating interest on refunds. As explained above, if the Commission were to require the ISO to assess interest on refunds based on the date that overcharges associated with the adjustments to the underlying transactions were collected, rather than the Payment Date associated with the underlying transaction, the ISO would be required to engage in an extremely laborious and lengthy process, one that would most certainly require a significant extension of the present schedule.

**C. The Commission Has Already Approved the ISO's Proposals Concerning the Allocation of Emissions and Fuel Cost Allowances**

In its protest, Reliant argues that the ISO's allocation of emissions and fuel cost allowances is in error. With respect to fuel cost allowances, Reliant argues that the ISO's proposal to allocate fuel cost allowances on an hourly basis does not make sense, because "suppliers must provide the ISO with interval-level FCA data to meet the Commission's requirement that only fuel cost related to mitigated intervals may be offset." Reliant at 8. Reliant suggests that the ISO follow the Commission's "consistent direction" and allocate fuel cost allowances on an interval basis. *Id.*

Reliant's argument should be summarily rejected, because the Commission has already addressed and ruled on this issue. In its September 24, 2004 "Order Denying Rehearing, Clarifying Fuel Cost Allowance Issues, and Accepting in Part Compliance Filing," the Commission explicitly accepted the ISO's proposal to allocate fuel cost allowances on an hourly basis, stating that "we find the CAISO's proposal to allocate recovery of the fuel cost allowance on an hourly basis achieves the best results." *Id.* at P 85. Reliant's belated argument that fuel cost allowances should be allocated on an interval basis constitutes a collateral attack on the Commission's September 24 Order, and must therefore be denied.

With respect to emissions offsets, Reliant appears to suggest that the ISO should allocate these offsets on an hourly basis. However, as is the case with fuel cost allocations, Reliant's proposal must be rejected because the



Commission has already considered and ruled on this issue. In the May 12 Order, the Commission directed the ISO to submit a compliance report detailing the form of data that it needed to complete its calculations concerning emissions offsets. May 12 Order at P 21. The ISO did so, and therein, the ISO explained that it only required from parties seeking emissions offsets one total emissions offset number, which it would then allocate *pro rata* to all Market Participants during the Refund Period based on Control Area Gross Load, consistent with the Commission's October 16 Order.<sup>7</sup> As the Commission noted in its November 23 Order, no party objected to the ISO's proposal, and, therefore, the Commission accepted the ISO's compliance report in that order. Reliant had ample opportunity at that time to express any concerns with the ISO's methodology, to offer alternatives, or to seek rehearing of the November 23 Order. It is far too late in this process to permit Reliant another bite at this apple. Moreover, Reliant's proposal constitutes a collateral attack on the Commission's November 23 Order. Reliant's proposal must therefore be denied.

**D. The ISO Has No Theoretical Objection to Reliant's Proposed Revision to the Test for Determining Mitigated Intervals for Purposes of Allocating Emissions Costs, but Has Not Yet Determined Whether Such a Methodology Can Be Practically Implemented**

In its protest, Reliant requests that the ISO revise its test for identifying mitigated intervals for purposes of allocating emissions offsets so that the ISO only allocates those offsets during intervals in which the historical transaction price exceeds the mitigated price. The ISO has not theoretical objection to this

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<sup>7</sup> See October 16 Order at P 158.

clarification, insofar as Reliant's requested test is consistent with the Commission's ruling concerning the eligibility for recovery of fuel cost allowances, that is, suppliers would be eligible to recover a fuel cost during all instances in which a unit is mitigated, even if the MMCP is greater than the MCP, because of the existence of the soft cap in the ISO's markets.<sup>8</sup>

However, the ISO is not certain that it could implement this allocation methodology in the time allotted under its current schedule for completing the financial adjustment phase of the refund process, because it may require a time-intensive manual review of every interval in the Refund Period. If the ISO cannot do so, then the ISO believes that it would be most appropriate to limit the allocation of emissions costs to those intervals where the historical MCP exceeds the MMCP, which could be done using automated processes. Although the MCP versus MMCP allocation methodology would not be as precise in the assignment of emissions costs to Load that occurred in the exact intervals eligible for emissions recovery as the test requested by Reliant, the ISO believes that the MCP versus MMCP methodology would not result in a significant difference. Balanced against the need for expeditious resolution of this proceeding, the ISO submits that this is the preferred result, if Reliant's methodology proves overly burdensome. The ISO is currently looking into the practicality of implementing Reliant's requested methodology, and expects to reach a conclusion within the next several days. At that time, the ISO will submit to the Commission a filing detailing its findings.

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<sup>8</sup> See May 12 Order at P 56.

**E. The ISO Agrees With Reliant's Requested Clarification Regarding Instructed Energy Charge Types**

Reliant points out that the ISO appears to have mislabeled the Charge Types associated with uninstructed energy in the Addendum. Reliant is correct. The references to Charge Types 401 and 481 on pages 2-3 of the Addendum should have been to Charge Types 407 and 487. The ISO apologizes for any confusion that this inadvertent error might have caused.

**II. CONCLUSION**

Wherefore, for the reasons set forth above, the ISO respectfully requests that the Commission act on Reliant's protest as set forth herein.

Respectfully submitted,

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Dated: September 1, 2005

## Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 1<sup>st</sup> day of September, 2005 at Folsom in the State of California.

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