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August 8, 2003

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: California Independent System Operator Corporation
Docket No. ER03-746-001

Dear Secretary Salas:

Enclosed please find the Motion for Leave to File Answer and Answer of the California Independent System Operator Corporation to Comments and Protests, submitted in the captioned docket.

Thank you for your attention in this matter.

Respectfully submitted,

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Counsel for the California
Independent System Operator
Corporation

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	))	**Docket No. ER03-746-001**

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO COMMENTS AND PROTESTS

I. INTRODUCTION AND SUMMARY

On April 15, 2003, the California Independent System Operator Corporation ("ISO")[1] filed Amendment No. 51 to the ISO Tariff in the above-captioned proceeding ("Amendment No. 51").[2] The Commission, on June 13, 2003, issued its "Order Conditionally Accepting and Suspending Tariff Amendments Pending Further Commission Action," 103 FERC ¶ 61,331 ("Amendment No. 51 Order"). In the Amendment No. 51 Order, the Commission conditionally accepted and suspended Amendment No. 51, subject to refund, to become effective the earlier of November 14, 2003 or a date specified in a further Commission order in the proceeding.[3] The Commission also directed the ISO to provide additional information as discussed in the Amendment No. 51 Order.[4] In response, the ISO submitted a compliance filing on July 3, 2003, as

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[1] Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] Additionally, on May 21, 2003, the ISO filed an answer in response to filings submitted concerning Amendment No. 51 ("Amendment No. 51 Answer"), and on June 12, 2003, the ISO filed a response to a further filing submitted by Pacific Gas and Electric Company ("PG&E").

[3] Amendment No. 51 Order at ordering paragraph (1).

[4] *Id.* at ordering paragraph (3).

supplemented by an addendum filed by the ISO on July 9, 2003 (together, the "Amendment No. 51 Compliance Filing").[5]

A number of parties submitted comments and protests concerning the Amendment No. 51 Compliance Filing.[6] Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO hereby requests leave to file an answer, and files its answer, to the comments and protests submitted in this proceeding.[7] As explained below, the Commission should accept the Amendment No. 51 Compliance Filing in its entirety. Further, because the Amendment No. 51 Compliance Filing has fully satisfied the directives in the Amendment No. 51 Order, the Commission should likewise unconditionally accept Amendment No. 51.

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[5] Citations in this answer to the Amendment No. 51 Compliance Filing are to the July 3, 2003 portion of that filing, unless the ISO notes that it is citing to the July 9, 2003 portion of the filing (the "July 9 Addendum").

[6] The following entities filed comments/or and protests: Automated Power Exchange, Inc. ("APX"); the California Generators, which are Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (collectively, "Reliant"), Mirant Americas Energy Marketing, LP, Mirant Energy California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC, Williams Energy Marketing & Trading Company ("Williams"), and Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC (collectively, "Dynegy"); the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency ("Cities/M-S-R"); Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (together, "Duke Energy"); the Modesto Irrigation District ("MID"); the Northern California Power Agency ("NCPA"); PG&E; and Southern California Edison Company ("SCE").

The California Generators submitted two protests: one submitted on July 24, 2003, concerning the ISO's July 3, 2003 filing ("July 24 Protest of California Generators"), and the other submitted on July 30, 2003, concerning the ISO's July 9, 2003 filing ("July 30 Protest of California Generators").

[7] To the extent this answer is deemed an answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R § 385.213) to permit it to make this Answer. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the 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. *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).

II. ANSWER

A. The ISO Has Fully Complied with the Directives in the Amendment No. 51 Order

The Amendment No. 51 Compliance Filing fully satisfies the directives in the Amendment No. 51 Order. The Order required the ISO to: explain why the ISO needed to have the authority requested in Amendment No. 51, provide details concerning the preparatory adjustments and re-runs, explain further the proposed changes to Sections 11.6.3.2 and 11.6.3.3 of the ISO Tariff, provide details concerning the wall-off process; and provide further information concerning the time period for the filing of disputes. *See* Amendment No. 51 Order at PP 14-19. The ISO supplied all of the information that the Commission required. *See generally* Amendment No. 51 Compliance Filing. For example, the Commission directed the ISO to "explain and justify each proposed adjustment for the 18 major revisions." Amendment No. 51 Order at P 15. To comply with this directive, the ISO provided the "Description of Preparatory Re-run Issues" contained in Attachment A to the Amendment No. 51 Compliance Filing, in which the ISO described in detail all the information it had available or could reasonably estimate on each issue concerning the date range, the estimated impact in dollars or in megawatts,[8] the charge types potentially

[8] Some parties fault the ISO for not being able to provide, in Attachment A to the Amendment No. 51 Compliance Filing, an estimate of the impact of some of the preparatory adjustments and re-runs. *See* PG&E at 8; SCE at 2. The ISO has explained to the Commission all that it knows, but has not provided estimates of financial impacts in cases where it was unable to estimate them.

affected, the allocation methodology to be employed,[9] and the reason for the revision.[10]

The ISO believes the Amendment No. 51 Compliance Filing provided the information that the Commission required in the Amendment No. 51 Order. Now, however, parties attempt to argue that because certain topics of special interest *to them alone* – which were *not* the subject of directives in the Amendment No. 51 Order – were not addressed in the Amendment No. 51 Compliance Filing, the compliance filing is somehow deficient. These parties confuse their own concerns with the topics the Commission in the Amendment No. 51 Order directed the ISO to address. Because the Amendment No. 51 Order did not direct the ISO to address concerns such as those that the parties now raise, the ISO did not discuss them in the Amendment No. 51 Compliance Filing.

Nevertheless, in order to provide additional information that may be helpful to these parties, the ISO is willing to address a large number of the party-specific concerns in this answer, and addresses them in Section II.D, *infra*. Further, if parties still have questions on topics of special interest to them even after the ISO has provided the additional discussion in this answer, the ISO is willing to

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[9] As explained in the Amendment No. 51 Answer, Amendment No. 51 does not itself contain an allocation methodology. Amendment No. 51 Answer at 10. Rather, it is the preparatory adjustment and re-run issues that each entail an allocation methodology; the different methodologies for different issues were explained in the Amendment No. 51 Compliance Filing.

[10] The ISO notes that Amendment No. 51 concerned the walling off of the ISO's preparatory adjustment and re-run process from the current market invoice process, not the merits of the preparatory adjustments and re-runs themselves. Amendment No. 51 Answer at 8. In the present answer, the term *preparatory adjustment* means a manual adjustment of charges concerning dates prior to October 2, 2000, which was when the "refund period" began as described in the California refund proceeding in Docket Nos. EL00-95, *et al.* ("Refund Proceeding"), and a *preparatory re-run* means an automated re-run of the ISO's Settlement database concerning dates that fall within the refund period, i.e., that fall within the time period from October 2, 2000 through June 20, 2001.

take the measures described in Section II.B, *infra*, in order to respond to their questions.

Several parties do make arguments that have a relation to the directives in the Amendment No. 51 Order. These arguments include those concerning the preparatory adjustment and re-run process and certain proposed changes to sections of the ISO Tariff, which are addressed in this section below.

1. The Preparatory Adjustment and Re-run Process

NCPA argues that it is not clear "why all of the proposed Amendment No. 51 re-runs are 'prerequisites' to the [re-run in] the California refund proceeding."[11] NCPA later supplies a partial response to its own argument when it states that "[p]resumably, the CAISO intends that the proposed re-runs will provide a more accurate, pre-mitigation baseline to which the refund re-run would be compared."[12] This is indeed a primary reason for conducting the preparatory re-runs (as opposed to the preparatory adjustments). As the ISO has explained, it "needs to complete these re-runs in order to 're-baseline' its systems in preparation for the significant re-run associated with the Refund Proceeding."[13] In re-baselining its systems, the ISO is complying with the Commission's directives to do so in preparation for the Refund Proceeding re-run.[14] With

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[11] NCPA at 2. Other parties make similar arguments. *See* APX at 6; July 24 Protest of California Generators at 2-3.

[12] NCPA at 2.

[13] Transmittal Letter for Amendment No. 51at 2.

[14] *See San Diego Gas & Electric Co., et al.*, 96 FERC ¶ 61,120, at 61,519 (2001); *San Diego Gas & Electric Co., et al.*, 101 FERC ¶ 63,026, at P 774 (2002); Amendment No. 51 Order at P 14 ("[T]he Commission is aware that revisions to data and re-runs of billing statements will be required for the CAISO to comply with our prior order [in the Refund Proceeding]"). The ISO must conduct the re-runs in order to create a pre-mitigation "snapshot" against which the mitigated prices in the Refund Proceeding will be applied in order to calculate the refund amounts and finally determine "who owes what to whom." Amendment No. 51 Answer at 5 & n.10.

regard to the preparatory adjustments, the ISO has explained that it must conduct the adjustments "[t]o ensure proper cost responsibility for the period prior to the dates covered by the Refund Proceeding."[15]

The ISO may not have made the distinction between the rationales for conducting the preparatory re-runs and the preparatory adjustments clear enough in its prior filings in this proceeding, which may be the reason for NCPA's and other parties' confusion. However, the fact remains that it is entirely appropriate and necessary for the ISO to conduct the preparatory adjustments *and* re-runs, for the reasons explained above. The ISO reiterates that the needed preparatory adjustments and re-runs will be conducted in the normal or ordinary course of the ISO's business as any of the ISO's other significant adjustments and re-runs have been. Indeed, the ISO would have had to conduct the preparatory adjustments and re-runs even if the Refund Proceeding had never existed.[16]

NCPA also argues that because the preparatory adjustments and re-runs listed in the Amendment No. 51 Compliance Filing may need to be supplemented in the future based on as-yet unknown adjustments and re-runs, the ISO "cannot demonstrate that the Amendment No. 51 re-run will improve accuracy."[17] NCPA is incorrect. Each needed re-run that the ISO conducts will necessarily improve the accuracy of the re-baselined database, which database will be used in conducting the Refund Proceeding re-run. Similarly, conducting needed adjustments will result in charges being assessed to Market Participants more

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15 Transmittal Letter for Amendment No. 51 at 2.

16 Amendment No. 51 Answer at 7-8.

accurately. The ISO would not be providing the most accurate data possible if it were to decline to conduct preparatory adjustments and re-runs at all simply because there might be additional, as-yet unknown adjustments and re-runs that may be necessary in the future. Moreover, the ISO believes that failure to conduct those re-runs and adjustments for which the need is now known would be unfair to certain Scheduling Coordinators.

In addition, NCPA erroneously asserts that the ISO Tariff provides authority to perform a Settlement Statement re-run only after a Scheduling Coordinator has asked the ISO to perform a re-run, and that the ISO cannot initiate a re-run.[18] As explained in Section 11.6.3 of the ISO Tariff, the ISO "is authorized to perform Settlement Statement re-runs following approval of the ISO Governing Board." The section does not condition the ISO's authorization to perform adjustments and re-runs upon a Scheduling Coordinator's request (though, to be sure, the section also provides for a Scheduling Coordinator to make such a request to the ISO Governing Board). Moreover, NCPA's argument implies an absurd result: under NCPA's interpretation of the ISO Tariff, the Tariff would forbid the ISO from performing the Refund Proceeding re-run ordered by the Commission, because a Commission order (rather than a Scheduling Coordinator's request) is the impetus for the ISO to perform that re-run. Plainly, NCPA misinterprets the Tariff.

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17 NCPA at 3.

18 *Id.* at 3-4.

NCPA also incorrectly asserts that the ISO has arbitrarily selected issues to be re-run, and that the ISO's selection has been unduly discriminatory.[19] The ISO's list of preparatory adjustments and re-runs is entirely rational: it includes all of the adjustments and re-runs that, to the ISO's knowledge, need to be conducted for the time period from 1998 to the end of the refund period, i.e., to June 20, 2001. As the ISO has explained, the preparatory re-runs do not include issues that arose subsequent to June 20, 2001 because such issues postdate the refund period, and thus are not germane to the determination of the re-baselined database needed to conduct the Refund Proceeding re-run.[20]

The supposed proofs that NCPA offers of the ISO's "arbitrary" selection of issues are all inapposite. The issue that NCPA mentions concerning Meter Data under-reported by Enron Power Marketing Inc. and Enron Energy Services relates solely to the time period subsequent to June 20, 2001, and thus falls outside the time period for conducting preparatory re-runs. The issue that NCPA mentions concerning the treatment of Unaccounted for Energy ("UFE") is inapposite because: (1) in the preparatory re-runs to be conducted for the refund period, UFE will be allocated according to market rules in place during the refund period just as other charge types will be, and thus no special re-run for UFE is required; and (2) with regard to the time period that precedes the refund period,

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19 *Id.* at 6-9.

20 Transmittal Letter for Amendment No. 51 Compliance Filing at 4. Further, no preparatory adjustments or re-runs should be conducted for over-reported Meter Data or under-reporting of generation, or a particular settlement between the State of California and Williams. *Id.* at 4 n.5.

The ISO estimates that completing the preparatory adjustments and re-runs will require a total of about 5-6 calendar months, assuming that no other issues must be accounted for in the re-runs. *Id.* at 3 n.5. At some point in the future, the ISO may conduct adjustments and re-runs concerning issues that arise subsequent to the refund period. However, for now the ISO has

the Commission has correctly found that reallocation of UFE (as the ISO explained) "would create an onerous task for the ISO, that would involve the expenditure of a significant number of man-hours and may prove to be an impossibility to accomplish."[21] The ISO is able to conduct the preparatory adjustments described in the Amendment No. 51 Compliance Filing, but it should not be required even to try to conduct UFE adjustments, for the reasons quoted above. As to Issue Nos. 1 and 2, which NCPA argues were not disputed transactions, NCPA does not sufficiently consider that the ISO has a responsibility to include, in the preparatory adjustments and re-runs, identified under-reporting of load such as that reflected in Issue Nos. 1 and 2.[22] The ISO has this responsibility even if the under-reporting of load was not discovered pursuant to a transaction dispute. As to Issue Nos. 12 and 14, which NCPA argues are too small in terms of dollar impact to warrant separate adjustments and re-runs, the ISO notes that it will not re-run them separately, but rather will include them in the larger adjustments and re-runs that it will conduct.

2. Proposed Changes to the ISO Tariff

NCPA asserts that the ISO's explanation of its cost allocation methodology under Section 11.6.3.2 of the ISO Tariff "is a fix in search of a problem," is inconsistent with the language of the section, and does not sufficiently explain how the ISO would determine whether the requested re-run

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more than enough to do simply to conduct the adjustments and re-runs contemplated in the Amendment No. 51 proceeding.

[21] *California Independent System Operator Corporation, et al.*, 103 FERC ¶ 61,042, at PP 16-17 (2003). NCPA (at 8-9) quotes this very order.

[22] Amendment No. 51 Answer at 11. Moreover, the dispute deadlines in Sections 11.6.1.2 and 11.6.1.3 of the ISO Tariff, which NCPA cites, are deadlines by which the *Scheduling*

would benefit the requesting Scheduling Coordinator, the entire market, or both.[23] As to NCPA's first assertion, the ISO notes that it provided its explanation in order to be responsive to a directive in the Amendment No. 51 Order.[24] With regard to NCPA's second assertion, there is no inconsistency: the revision to Section 11.6.3.2 provides that the ISO Governing Board *may* (rather than shall) allocate the cost of a requested Settlement Statement re-run to the Scheduling Coordinator that requested it. The ISO's explanation is entirely consistent with the option given to the ISO Governing Board in the proposed change. As to NCPA's third assertion, the ISO Governing Board would determine the relative financial benefit (in dollars) of the requested re-run to the Scheduling Coordinator and to the entire market, and would allocate the costs of the re-run accordingly. This would be a fact-specific determination by the Board, which it is not possible to describe in a more formulaic manner.[25]

PG&E argues that the ISO's explanation for the deletion of the last sentence of Section 11.6.3.3 of the ISO Tariff does not "explain the original purpose of the eliminated sentence."[26] PG&E ignores the fact that the Commission only required an explanation of the *impact* of the ISO's proposed

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Coordinator must abide, not the ISO. Therefore, these dispute deadlines do not constrain the ISO from raising Issue Nos. 1 and 2.

[23] NCPA at 10-11.

[24] *See* Amendment No. 51 Order at P 16.

[25] Although PG&E states that "it is unnecessary at this time to require additional specificity," it nevertheless appears to find the ISO's proposal problematic in light of the following scenario that PG&E envisions: a Scheduling Coordinator that requests a re-run will primarily benefit from the re-run, but the cause of the error necessitating the re-run lies not with the requesting Scheduling Coordinator, but with another Market Participant or with the ISO. PG&E at 11. As the ISO has explained, no Scheduling Coordinator has yet requested a re-run, let alone has the scenario raised by PG&E occurred. In any case, in the circumstances described by PG&E, the language of Section 11.6.3.2 would still give the ISO Governing Board discretion not to allocate the costs of the re-run to the requesting Scheduling Coordinator.

[26] *Id.* at 12.

deletion;[27] thus, the "original purpose" of the sentence is irrelevant. Moreover, the removal of the sentence will have no impact on how the ISO would collect funds from or disburse funds to Scheduling Coordinators as a result of a market re-run (i.e., "cost-shifts").[28] The procedures proposed in Amendment No. 51 will not *itself* cause any cost-shifts. Rather, it is the various adjustments and re-runs that may cause (justified) cost shifts.

APX argues that Sections 11.6.3.4 and 11.9 of the ISO Tariff should be modified to provide that the ISO "shall" invoice re-runs, post closing adjustments, and the financial outcomes of Dispute Resolution separately from monthly market activities, rather than that the ISO "may" invoice them separately from monthly market activities.[29] The Commission should reject APX's proposed change. There is no need for the ISO to go through the process of walling off re-runs, post closing adjustments, and the financial outcomes of Dispute Resolution in every situation. In the Amendment No. 51 Compliance Filing, the ISO explained the criteria it would use to determine whether to wall off future adjustments and re-runs, namely that they: (1) involve trade days over 12 months old, (2) involve participant bankruptcies or major defaults that would prevent total cash clearing, or (3) involve amounts above $15 million.[30] Except in such situations, walling off adjustments and re-runs would be too inefficient and time-consuming compared with the benefit of walling them off.

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27 Amendment No. 51 Order at P 17.

28 Transmittal Letter for Amendment No. 51 Compliance Filing at 7.

29 APX at 3.

30 Transmittal Letter for Amendment No. 51 Compliance Filing at 3. As the ISO has explained, where the impact of a manual adjustment is *de minimis*, it is not necessary to conduct a preparatory re-run to reflect that manual adjustment or to wall off the effect from the current market. *Id.* at 3 n.4.

B. The ISO Has Provided Sufficient Information Concerning the Walling-Off Process and Each of the Preparatory Adjustments and Re-runs, and Commits to Provide Further Details to Be Responsive to the Specific Questions of Market Participants, Although the Latter Effort is not Required by the Amendment No. 51 Order

As explained in Section II.A, *supra*, and in the Amendment No. 51 Compliance Filing, the ISO has complied with all of the directives in the Amendment No. 51 Order. Even though the ISO has fully complied with those directives, a number of parties express an interest in obtaining further information concerning the details of implementing the wall-off process and the preparatory adjustments and re-runs.[31] The ISO provides responses to a number of the parties' questions in Section II.D, *infra* (to the extent the ISO does not provide responses in other parts of this answer). In order to address any remaining questions of interested Scheduling Coordinators, the ISO is willing to conduct a telephone conference in the near future to address any remaining questions of interested Scheduling Coordinators concerning the implementation of the walling-off process and the preparatory adjustments and re-runs.

The ISO has suggested this telephone conference to be responsive to questions that Scheduling Coordinators may have at that time. The ISO's interest in providing complete information is also reflected in the fact that the ISO previously agreed in this proceeding to do the following: (1) provide, prior to the completion of the preparatory adjustments and re-runs, a comprehensive list and explanation of each category of adjustment and re-run that is being made as a part of the preparatory adjustment and re-run process, reasons for the

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[31] *See* APX at 2-4; Cities/M-S-R at 3-4; July 24 Protest of California Generators at 3.

adjustments and re-runs, and the cost allocation methodology; (2) provide a proposed calendar for the adjustment, re-run, and invoicing activity, including dispute deadlines; (3) host a telephone conference with Scheduling Coordinators, prior to commencement of the preparatory adjustments and re-runs, followed by periodic update calls if needed; (4) provide, during the production process for the preparatory adjustments and re-runs, the Settlement detail files associated with each entity's Settlement Statements concurrently or prior to when it provides those Settlement Statements, so that the Settlement Statements can be validated; and (5) extend the dispute window for Settlement Statement disputes relating to the preparatory adjustments and re-runs from the standard eight business days to fifteen business *days after the end of each trade month*.[32] The ISO has explained that these procedures "strike a reasonable balance between assuring that Market Participants understand the adjustments and calculations that are occurring to the pre-mitigation database, giving Market Participants an adequate opportunity to raise questions or disputes with the ISO, and minimizing the delay associated with completing the refund process."[33] Some parties that submitted comments and protests on the Amendment No. 51 Compliance Filing apparently have overlooked or ignored these proposed ISO procedures. The ISO submits that its proposed procedures will address these parties' stated concerns that further procedures are required.[34]

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[32] Amendment No. 51 Answer at 8-9.

[33] *Id.* at 9.

[34] *See* Cities/M-S-R at 3-4; MID at 3-4. Additionally, in response to a series of rapid-fire questions presented by PG&E (at 13-14) and in the July 24 Protest of California Generators (at 6), the ISO now provides the following further details concerning the preparatory adjustment and re-run process:

These procedures will be more than sufficient to address the concerns of parties. There is no need for the ISO to seek prior approval from the Commission for each preparatory adjustment and re-run, and no need for a Commission-imposed comment period associated with each preparatory adjustment and re-run, as some parties request.[35] The procedures these parties request are not required by the ISO Tariff. Moreover, the various steps that these parties propose would not increase the level of information they will receive concerning the preparatory adjustments and re-runs; they would only serve to

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* The information relating to the preparatory adjustment and re-run process will be assigned to Preliminary Settlement Statements, with updated information showing on Final Settlement Statements. For the Refund Proceeding re-run, information is expected to be published to a secondary medium (e.g., tape) prior to its being shown on Preliminary Settlement Statements. Both processes will settle financially after all information is posted.

* About five days of preparatory adjustment and re-run information is expected to post on each Preliminary Settlement Statement. As described in the text above, the dispute window has been extended to fifteen business days after the ISO has posted the last trade date of the re-run month. Thus, there will be more than sufficient time in which to review the results of the adjustments and re-runs.

* Adjustments to all re-run data will be published on a subsequent Preliminary Settlement Statement. Every approved dispute will be published to a Preliminary Settlement Statement for market review prior to closure of the preparatory adjustments and re-runs.

* Based on an order issued by the California Public Utilities Commission, it will be up to the IOUs to deal with the California Department of Water Resources ("CDWR") on their own with regard to invoicing, rather than have the ISO deal with CDWR. *See* "Opinion Ordering Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company to Enter into and Comply with the Attached Operating Order," Decision 02-12-069 (issued Dec. 19, 2002).

* The California Power Exchange ("PX") will still calculate and provide information to its former participants consistent with the role it had prior to its bankruptcy. The ISO notes that the Commission has determined that the proceeding concerning Amendment 23 to the PX tariff, which was recently filed in Docket No. ER03-830-000, should not be consolidated with the proceeding concerning Amendment No. 51 to the ISO Tariff. *California Power Exchange Corporation*, 104 FERC ¶ 61,007 (2003). Questions relative to the PX's filing should be raised in that Amendment 23 proceeding.

[35] *See* Cities/M-S-R at 3-5; July 24 Protest of California Generators at 4-5; MID at 3-6; PG&E at 10-11. Further, as the ISO has previously explained, the preparatory adjustments and re-runs should not be considered a part of the compliance phase of the Refund Proceeding (contrary to the assertions of the California Generators). *Compare* Amendment No. 51 Answer at 4-8 *with* July 24 Protest of California Generators at 4-6.

delay the process by an extended period of time – probably years.[36] Further, as mentioned above, the preparatory adjustments and re-runs will be conducted in the normal or ordinary course of the ISO's business as any of the ISO's other significant adjustments and re-runs have been. The ISO has simply never operated its markets subject to the kind of extraordinary procedures that parties now espouse; such procedures would be administratively unworkable. For these reasons, Commission oversight of the type that parties now request is unnecessary, costly, and ill-advised.

In making their requests for further information concerning the preparatory adjustments and re-runs, parties appear to misunderstand the nature of the ISO's documentation of re-runs. Except for the information the ISO has already provided in this proceeding, at this point the ISO simply has no additional relevant documentation concerning the preparatory adjustments and re-runs that it could provide to the parties.[37]

C. The Proposed Dispute Window of Fifteen Business Days for the Preparatory Adjustments and Re-runs is Sufficient and Should Not Be Extended

The ISO has previously explained that it proposes to extend the window for Settlement Statement disputes relating to the preparatory adjustments and re-

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[36] The ISO anticipates, using the duration and amount of contention in the Refund Proceeding as its yardstick, that the process the parties request would require, at the least, protracted and painstaking Commission evaluation of both the ISO's and the parties' filings.

[37] For example, Cities/M-S-R state that the Amendment No. 51 Compliance Filing does not identify "the direction in which these changes will affect the SC (i.e., higher or lower SC charges)" (Cities/M-S-R at 4), and PG&E asserts that the ISO has not provided sufficient information "to allow individual market participants to evaluate the impact of the adjustment" (PG&E at 8). The ISO will know for certain how the preparatory adjustments and re-runs will affect individual Scheduling Coordinators *only after* it has actually conducted the preparatory adjustments and re-runs. At this point, the ISO is unable to calculate with certainty the dollar impact of the re-runs on

runs from the standard eight business days, as stated in the Tariff, to fifteen business days after the end of each trade month.[38] The ISO proposed the extension of the dispute window for the preparatory adjustments and re-runs to facilitate Market Participants' review of and ability to dispute Settlement Statements.[39]

A number of parties now reiterate some earlier requests that the dispute window be extended to longer than fifteen business days.[40] The Commission should reject these requests. The ISO is already willing to agree to an extension of the dispute window that is nearly twice as long as the dispute window provided for under the SABP. This should allow a more than sufficient amount of time for review of the Settlement Statements sent out by the ISO. Further, in agreeing to the dispute window of fifteen business days, the ISO was expressing its willingness to compromise in response to the parties that requested an extension of the dispute window. However, granting a dispute window of longer than fifteen business days is unnecessary and would only serve to cause delays in the ISO's preparatory re-run process.[41]

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each Scheduling Coordinator – that is why the ISO was only able to provide *estimated* impacts in the Amendment No. 51 Compliance Filing.

[38] Amendment No. 51 Answer at 9-10 & n.23 (citing ISO Settlement and Billing Protocol ("SABP"), § 4.4.1.1); Transmittal Letter for Amendment No. 51 Compliance Filing at 8-9.

[39] Amendment No. 51 Answer at 9-10 & n.24; Transmittal Letter for Amendment No. 51 Compliance Filing at 8-9.

[40] APX at 4-6; Cities/M-S-R at 5; MID at 4; NCPA at 11-12; PG&E at 15-16.

[41] For similar reasons, the ISO has urged the Commission to reject the proposal (originally put forward by the PX) that the fifteen-day dispute window should run from the time that a Scheduling Coordinator transmits the month's statements to its participants. As the ISO has explained, it would be inappropriate for Scheduling Coordinators to determine when the fifteen-day dispute window begins, and adoption of such a proposal could unnecessarily delay the completion of the re-runs by the ISO. Amendment No. 51 Answer at 9 n.23; Transmittal Letter for Amendment No. 51 Compliance Filing at 8-9.

Some of the parties appear to oppose the dispute window of fifteen business days based on the view that there would be a single dispute window of fifteen business days in which to examine the entire group of the preparatory adjustments and re-runs.[42] This will not be the case. As the ISO has explained, the fifteen business days will apply after the end of *each trade month*, rather than as a one-chance-only review period. Moreover, the ISO anticipates that it will provide the data for review in five-day increments.

An example may be useful in illustrating just how much time will be available to review these five-day increments of data.[43] Assume that, in early March of 2004, the ISO is able to provide the results of all of the preparatory re-runs for the month of November 2000. On Trade Date Monday, March 1, 2004, the ISO would provide the results of the preparatory re-runs for November 1-5, 2000 (i.e., the ISO would provide the data in a five-day increment). On Trade Date Tuesday, March 2, 2004, the ISO would provide the results of the preparatory re-runs for November 6-10, 2000, and so on throughout the first week of March 2004. Following the first weekend of March 2004 (during which the ISO does not envision that it would provide the results of the preparatory re-runs), on Monday, March 8, 2004, the ISO would provide the results of the preparatory re-runs for November 26-30, 2000. At that point, all of the results of the preparatory re-runs for the trade month of November 2000 would have been provided, and therefore it is at that point that the clock on the dispute window of fifteen business days would start to run. Thus, Scheduling Coordinators would

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[42] APX at 4-5; Cities/M-S-R at 5; MID at 4.

have more than fifteen business days (i.e., until Monday, March 29, 2003), to review much of the November 2000 preparatory re-run data they had received, and fifteen business days to review the last increment (for November 26-30, 2000).

In sum, Scheduling Coordinators will not be obligated to examine the results of all of the preparatory adjustments and re-runs within a single period of fifteen business days, but rather as explained above. Moreover, Scheduling Coordinators will have the opportunities to review the results of the preparatory adjustments and re-runs described in Section II.B, *supra*. Thus, there is no reason for concern that Scheduling Coordinators will have insufficient opportunity to review those results.

D. The Concerns Expressed by Parties About the Various Numbered Issues Described in the Amendment No. 51 Compliance Filing Are Groundless[44]

1. Issues Nos. 1 Through 6 (Each Relating to Meter Data)

PG&E reiterates its argument from earlier in this proceeding that over-reported Meter Data for load should be the subject of a preparatory re-run.[45] The ISO has already explained that a preparatory re-run concerning over-reported Meter Data is not warranted, because an entity that over-reports Meter Data for load had the ability to report it correctly but failed to do so, thus harming only

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[43] The example is provided only for purposes of illustration. It does not reflect any current ISO plans.

[44] The only concern raised with regard to Issue Nos. 12, 14, and 15 was that the ISO has not provided sufficient documentation concerning those issues. *See* PG&E at 8, 9. As explained above in Section II.B, *supra*, the type of documentation to which PG&E refers will only exist after the ISO has conducted the re-runs. Because no other concerns regarding these issues were raised, there are no subsections in this Section II.D concerning the issues.

[45] *Id.* at 4.

itself but not harming other Market Participants.[46] For the reasons the ISO has already explained, PG&E is incorrect.

PG&E also asserts that the ISO should either correct its data to reflect deliveries of emergency power supplied by municipal entities to the ISO during the energy crisis, or should consult with PG&E and the municipal entities to verify that these deliveries occurred and to discuss payments for such deliveries.[47] PG&E can consult with the ISO on this subject during the telephone conference described in Section II.B, *supra*. Moreover, the ISO is always ready to meet with Market Participants to discuss metering issues.

2. Issue No. 7 (Energy Exchange)

PG&E argues that the ISO's allocation of the costs of Energy exchanges in the preparatory re-run to Scheduling Coordinators based on total negative Uninstructed Imbalance Energy constitutes illegal retroactive ratemaking, is not supported by the Commission's March 26, 2003 order issued in the Refund Proceeding,[48] and is inconsistent with the March 12, 2003 order issued in the neutrality proceeding[49] and the ISO's subsequent compliance filing in the neutrality proceeding.[50] PG&E is incorrect as to all three of these arguments.

With regard to the first two arguments, PG&E does not sufficiently consider that the reason the ISO will allocate the costs to total negative

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[46] Amendment No. 51 Answer at 11-12; Transmittal Letter for Amendment No. 51 Compliance Filing at 4 n.5.

[47] PG&E at 4-5.

[48] *San Diego Gas & Electric Co., et al.*, 102 FERC ¶ 61,317 ("March 26 Order").

[49] *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California, et al. v. California Independent System Operator Corporation*, 102 FERC ¶ 61,274 ("March 12 Order").

[50] *See* PG&E at 5-6. In addition, the California Generators express confusion as to how the ISO will allocate the costs of Energy exchange transactions. July 24 Protest of California Generators at 4.

Uninstructed Imbalance Energy is that the Commission ordered the ISO to do so in the March 26 Order in the Refund Proceeding. The Commission summarily adopted the Presiding Judge's findings of fact as to the issue of the ISO's proposed methodology for accounting for Energy exchange transactions.[51] In relevant part, what the Commission summarily adopted was the Presiding Judge's finding that "it is appropriate to account for Energy exchange transactions under the ISO's methodology as set forth in its Energy exchange agreement with BPA in Docket No. ER01-2886-000."[52] The methodology set forth in the relevant Energy exchange agreement *is* to Scheduling Coordinators based on total negative Uninstructed Imbalance Energy at the time of the needed Energy exchange procurement, just as the ISO had described that methodology in the Amendment No. 51 Compliance Filing.[53] Moreover, the Energy exchange transactions that the ISO now proposes to re-run occurred within the refund period.[54] Thus, in applying this methodology to the costs of Energy exchange

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[51] March 26 Order at P 5(N) (2003).

[52] *San Diego Gas & Electric Co., et al.*, 101 FERC ¶ 63,026, at P 536. PG&E overlooks the direction from the Presiding Judge quoted above. Instead, PG&E attempts to argue that "the Commission held only that the accounting treatment of exchanges should be consistent both in the 'pre-mitigation' invoices and in the invoices that reflect the mitigation of the refund proceeding." PG&E is incorrect. What the Presiding Judge actually said (and what the Commission summarily affirmed) is that the methodology set forth in the Energy exchange agreement with BPA in Docket No. ER01-2886-000 "*allows* these transactions to be identically treated in both the ISO's production system and refund calculation and, thus, ensures symmetrical treatment in a just and reasonable manner." *San Diego Gas & Electric Co., et al.*, 101 FERC at P 536 (emphasis added). The Presiding Judge was crystal clear as to the methodology that the ISO must apply.

[53] *Compare* Transmittal Letter for Letter Agreement Between the ISO and Bonneville Power Administration, Docket No. ER01-2886-000 (filed Aug. 20, 2001), at 3, *with* Amendment No. 51 Compliance Filing at page 4 of Attachment A.

[54] *See* Amendment No. 51 Compliance Filing at page 4 of Attachment A.

transactions in the preparatory re-run, the ISO is following the Commission's direction in the March 26 Order.[55]

As to PG&E's third argument, PG&E completely misconstrues the scope and purpose of the neutrality proceeding. In that proceeding, the Commission directed the ISO to submit a compliance filing that: indicated separately the amounts of the charges included in the invoiced "neutrality costs" for each hour of the time period from June 1, 2000 through December 31, 2000 that were credited or debited pursuant to Section 11.2.9 of the ISO Tariff, and the amounts of the charges included in the invoiced neutrality costs for that time period that were recoverable other than under Section 11.2.9, for each Scheduling Coordinator; applied a limitation of $0.095/MWh to the costs credited or debited pursuant to Section 11.2.9 for that time period; and showed the recalculations and reassessments of costs applicable to Scheduling Coordinators based on the

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[55] Moreover, PG&E provides no support for its bald statement that the allocation of charges for Energy exchange transactions in the preparatory re-run constitutes illegal retroactive ratemaking. *See* PG&E at 5. PG&E's premise appears to be that *any* allocation of charges pursuant to a re-run would constitute illegal retroactive ratemaking. The Commission clearly disagrees, in that it plans to direct the ISO to allocate charges pursuant to the re-run to be conducted in the Refund Proceeding. *See San Diego Gas & Electric Co., et al.*, 96 FERC at 61,519.

In approving the methodology described above, the Commission was recognizing that this methodology yields the most equitable result. Consider the following example. Assume that a large entity transacting in the ISO Market underschedules on December 1, 2000, forcing the ISO to procure emergency Energy to meet forecast load. In some cases, this would mean procuring Energy from outside the ISO Control Area through Energy exchange transactions. Assume further that on December 20, 2000, the ISO procures Energy in the Real Time Market to return Energy to the sending Control Area. Because of the Energy pricing methodology that existed at the time, there were charges on December 20 in excess of the Market Clearing Price, which at that time were allocated *entirely* to net negative deviations (typically underscheduled load) in that interval on December 20. In these circumstances, a small entity that underscheduled in the off-peak hours on December 20 would have absorbed the excess costs and been forced to pay in some cases an effective rate of $5,000 per MWh, when the small entity expected to pay no more than $250/MWh. In such circumstances, the large entity would be relying on the Real Time Market to meet its load during peak hours on December 1, forcing the ISO to procure extra Energy to meet the shortfall, and a small entity unrelated to the peak crisis would have to pay for the excess costs caused by the large entity. Such an occurrence could cripple the small entity

separation of costs and the application of the $0.095/MWh limitation.[56] As shown in the ISO's compliance filing in the neutrality proceeding, the ISO found that it did not need to reassess any costs to Scheduling Coordinators *in the neutrality proceeding*.[57] However, that is an entirely different matter from a reallocation of costs pursuant to the preparatory re-run of Energy exchange transactions, which is a prerequisite for determining the re-baselined database needed to conduct the re-run *in the Refund Proceeding*. There is nothing in the Commission's March 12 Order in the neutrality proceeding, or in any other Commission order, indicating that the Commission intended for the ISO's recalculation and reassessment process in the neutrality proceeding to serve as a possible bar to the reassessment of costs *outside of* the neutrality proceeding.

3. Issue Nos. 8 Through 10 (Each Relating to Good Faith Negotiations)

PG&E asserts that, with regard to Issue Nos. 8 through 10, it "does not *per se* oppose adjustments related to good faith negotiations ('GFN')," but that PG&E is unable to determine how these adjustments will affect invoices to Market Participants.[58] As the ISO explained in Section II.B, *supra*, it cannot determine the exact dollar amounts of adjustments and the associated impact on individual Scheduling Coordinators until *after* the ISO has completed its re-run. In

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financially. There is no basis for, nor equity in, this cost shift. The methodology approved by the Commission avoids this inequity.

[56] March 12 Order at PP 42-43, 46-47, and ordering paragraph (C).

[57] ISO Compliance Filing, Docket Nos. EL00-111-006, EL01-84-002, and ER01-607-001 (filed June 10, 2003). The ISO notes that because the costs of Energy exchange transactions were never charged pursuant to Section 11.2.9 (*see* Transmittal Letter for Amendment No. 51 Compliance Filing at 5), there was no possibility that the costs of Energy exchange transactions might be subject to the $0.095/MWh limitation, and thus there was no possibility that the costs of Energy exchange transactions might be subject to reassessment to Scheduling Coordinators in the neutrality proceeding.

response to PG&E's assertion that it is not clear "whether all of the subject GFNs are sufficiently final to be included in the preparatory refund process at this time,"[59] the ISO explains that it included each of the GFNs in the Amendment No. 51 Compliance Filing because it plans to conclude the negotiations concerning them so that they can each be included in the preparatory adjustments and re-runs.

4. Issue No. 11 (Intra-Zonal Congestion)

SCE states that while it supports the ISO's proposal to wall off the preparatory adjustments and re-runs, it does not understand the explanation in the Amendment No. 51 Compliance Filing concerning Issue No. 11.[60] The ISO hopes the following explanation will redress SCE's confusion.

Issue No. 11 concerns charge corrections for two components of Intra-Zonal Congestion: out-of-sequence transactions ("OOS" transactions) and out-of-market transactions that are due to local reliability issues or outages ("local OOM" transactions). Issue No. 11 is intended to correct the following errors: cases where costs in excess of the market clearing price were double-paid and double-charged; cases where local OOM transactions were incorrectly logged as OOS transactions, and vice versa; and cases where incorrect manual adjustments were made.

The two Charge Types related to the excess costs portion of Intra-Zonal Congestion transactions are Charge Types 451 and 452. Charge Type 451 is for

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58 *See* PG&E at 6-7.
59 *Id.* at 6.
60 SCE at 2-5.

payments in excess of the market clearing price and Charge Type 452 is for the allocation of Charge Type 451 payments.

OOS and local OOM transactions in excess of the market clearing price utilize these two Charge Types. The settlement of Charge Type 451 for OOS and of Charge Type 451 for local OOM are the same, but the settlement of Charge Type 452 for OOS transactions differs from the settlement of Charge Type 452 for local OOM transactions: pursuant to Section 7.3.2 of the ISO Tariff, costs in excess of the market clearing price for OOS transactions are allocated to zonal load; and pursuant to Section 11.2.4.2.1 of the ISO Tariff, costs in excess of the market clearing price for local OOM transactions are allocated to the Participating TOs in the Service Area that gave rise to the local OOM transactions.

The ISO's original software coding for Charge Type 401 did not follow the methodology of paying up to the level of the market clearing price for Intra-Zonal Congestion payments through Charge Type 401, and of paying the costs in excess of the market clearing price through Charge Type 451, as should have been done. Instead, the entire amount (the portion up to the market clearing price and the portion in excess of the market clearing price) was paid in Charge Type 401 and allocated to Charge Type 1010. Unaware of the coding issue, the ISO also made the OOS and local OOM payments in excess of the market clearing price in Charge Type 451 and allocated the charges to Charge Type 452, thus creating double payments and charges.

Under Issue No. 11, the ISO proposes to re-run to include the components of OOS and local OOM payments in the correct Charge Types and to allocate the components of OOS and local OOM charges to the correct Charge Types. The modified coding for the treatment of OOS and local OOM payments and charges in the re-run is as follows:

* Charge Type 401 will include payments of OOS and local OOM up to the market clearing price and the charges will be allocated pursuant to a Charge Type which allocates to load and real-time exports.

* Charge Type 451 will include payments of OOS and local OOM that are in excess of the market clearing price.

    * For OOS, Charge Type 452 will allocate costs in excess of the market clearing price to the zonal load.

    * For local OOM, Charge Type 452 will allocate costs in excess of the market clearing price to the Participating TOs in the Service Area that gave rise to the local OOM.[61]

This will correct the issue relating to double payments and double charges and the mislogging of OOS and local OOM. At the same time, adjustments will be made to correct the manual adjustments issues mentioned above.

5. Issue No. 13 (Rescission of Unavailable Ancillary Services)

Parties raise both legal arguments concerning Issue No. 13, and questions about the factual and methodological basis on which the ISO proposes

[61] The ISO notes that for OOM dispatches that are due to system conditions (i.e., OOM dispatches that are not for local purposes and thus are not local OOM), prior to December 12, 2000, the entire payment amount will be included in Charge Type 401 and the charges will be allocated pursuant to a Charge Type which allocates based on load and real-time exports. For OOM dispatches that are due to system conditions, starting on December 12, 2000, the payment up to the market clearing price will be paid in Charge Type 401 and allocated pursuant to a Charge Type which allocates to load and real-time exports; the cost in excess of the market clearing price will be paid in Charge Type 481 and allocated pursuant to Charge Type 487, which allocates to net negative deviations.

to determine the adjustments in Issue No. 13. Each of these sets of arguments is addressed below.

a. Legal Arguments Concerning Issue No. 13

The California Generators argue that the ISO is engaging in retroactive ratemaking in proposing to rescind payments to Scheduling Coordinators that scheduled Ancillary Services capacity into the ISO's markets, but that did not actually make the Ancillary Services available because they generated energy from the relevant capacity (i.e., that engaged in "Double Selling").[62] There is no retroactivity at all: Double Selling has been a violation of Tariff provisions in effect since the ISO began operations on April 1, 1998. Under Section 2.5.21 of the Tariff, Ancillary Service Schedules "represent binding commitments made in the markets between the ISO and the Scheduling Coordinators concerned."[63] Section 2.5.27 of the Tariff, which sets forth the Scheduling Coordinators' entitlement for payment for Ancillary Services, states that the ISO will make payment to Scheduling Coordinators *providing* each of the Ancillary Services.[64] Further, the ISO Scheduling Protocol provides for payment only for capacity that is "made available."[65] The obligation to keep Ancillary Service capacity unloaded and available was also addressed in a market notice issued by the ISO on July 17, 1998.[66] Thus, there has never been a basis in the ISO Tariff for Scheduling Coordinators to claim that payment is due for Ancillary Services that are

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62 Duke Energy at 2-5.

63 July 9 Addendum at page 3 of Appendix 1 (quoting Section 2.5.21 of the ISO Tariff).

64 *Id.* at page 6 of Appendix 1 (citing Section 2.5.27 of the ISO Tariff).

65 *Id.* at page 3 of Appendix 1 (quoting Sections 9.6.2, 9.7.2, and 9.8.2 of the ISO Scheduling Protocol).

66 *Id.* at page 2 of Appendix 1 and at Attachment 1 (providing a copy of the market notice).

unavailable[67] Moreover, in the order concerning Amendment No. 13 to the ISO Tariff (cited by the California Generators),[68] the Commission recognized that the ISO Tariff imposes on Ancillary Service providers an obligation to hold their generating resources in reserve, and that this obligation *pre-dates* Amendment No. 13.[69] Therefore, contrary to the arguments of the California Generators, the ISO is not engaging in retroactive ratemaking in rescinding payments pursuant to Issue No. 13. Rather, the ISO is simply enforcing provisions that have always existed in the ISO Tariff.

Moreover, elementary principles expressed in the common law and the Uniform Commercial Code make clear that a seller of products should not be paid for products it has not provided.[70] For a seller to engage in Double Selling, without being required to disgorge amounts incorrectly paid to the seller, would constitute unjust enrichment.[71]

The ISO also notes that the ISO began making manual adjustments for unavailable Ancillary Service capacity in June 1999, fifteen months before the ISO's "No Pay" authority, which was originally proposed in Amendment No. 13 to eliminate both capacity and Energy payments for unavailable Ancillary Services,

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67 Additionally, each Participating Generator Agreement provides that "[w]hen the Scheduling Coordinator on behalf of the Participating Generator submits a bid for Ancillary Services, the Participating Generator will, by the operation of this Section 4.3.1, warrant to the ISO that it has the capability to provide that service in accordance with the ISO Tariff and that it will comply with ISO Dispatch instructions for the provision of the service in accordance with the ISO Tariff." *Pro Forma* Participating Generator Agreement, § 4.3.1.

68 July 30 Protest of California Generators at 2.

69 *California Independent System Operator Corporation*, 86 FERC ¶ 61,122, at 61,418 (1999) ("The ISO states that Ancillary Service providers currently have incentives to violate their obligation to hold their generating resource in reserve . . . . Withholding the energy imbalance payment removes the economic incentive for Ancillary Service providers to violate their obligations, while removing the compensation for Ancillary Services that were not provided as promised, creates a strong incentive for generators to honor their obligations.").

70 July 9 Addendum at page 6 of Appendix 1 (citing various authority).

became effective.[72] However, no supplier raised a protest concerning these manual adjustments. If such adjustments did in fact constitute retroactive ratemaking, surely someone would have protested them. The fact that no one did indicates that the California Generators are simply throwing out their argument in this proceeding concerning retroactive ratemaking, in hopes that somehow it will stick. For the reasons explained above, it should not.

Duke Energy argues that capacity payments for Replacement Reserve, a specific Ancillary Service, should not be rescinded. In making these arguments, however, Duke Energy entirely ignores the Tariff provisions described earlier in this section, which provide that the ISO will make payments only for Ancillary Service capacity that is made available; the Tariff states no exceptions. Thus, the Tariff provisions apply to each type of Ancillary Service, including Replacement Reserve. As with the other kinds of Ancillary Services, the ISO has full authority and discretion in determining how the capacity the ISO has purchased should be Dispatched. Therefore, Duke Energy's arguments that capacity payments for Replacement Reserves should be exempt from rescission are specious.[73]

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[71] *Id.*

[72] *See id.* at page 5 of Appendix 1. The ISO received authorization to exercise its No Pay authority in the order concerning Amendment No. 13, which was issued on February 1999, but the ISO did not have the software necessary to implement this authority until September 10, 2000.

[73] Duke Energy also argues that the ISO's July 17, 1998 market notice only concerned Operating Reserve, not Replacement Reserve. Duke Energy at 5-6. Duke Energy ignores the fact that the market notice was specifically addressed to all of the Market Participants "regarding Operating Reserve *and Other Ancillary Services*." July 9 Addendum at Attachment 1 (emphasis added). Additionally, as explained above, that market notice is far from the only basis for rescinding payments as the ISO proposes in Issue No. 13.

Duke Energy also contends that the ISO's proposed rescission of payment for Double Selling transactions improperly interferes with the Commission's Show Cause proceedings.[74] Duke Energy is incorrect. In fact, the Show Cause proceedings and the ISO's proceedings concerning Issue No. 13 are different in a number of ways (the basis for taking action, the time periods and parties and transactions involved). However, even where there is overlap between the two sets of proceedings, relevant events in the Show Cause proceedings (e.g., settlements as to some transactions) can easily be taken into account in the Issue No. 13 proceedings so that no party is subject to "double-rescission" of a payment. In short, each set of proceedings can go forward on its own track, as explained further below.

The Commission instituted the Show Cause proceedings through an order issued June 25, 2003.[75] A comparison of the directives in the Show Cause Order with the proposals in Issue No. 13 makes clear that the Commission's and the ISO's proceedings have different theoretical bases, cover different matters, and may provide for different remedies:

- The theoretical basis for the Show Cause Order is that gaming behavior, as described in the ISO Market Monitoring and Information Protocol, must be investigated and made subject to remedy. The Commission will take action if it finds that the supplier in question took advantage of market rules by engaging in the gaming behavior. In comparison, the theoretical basis for Issue No. 13 is Settlement adjustments based on the

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74 Duke Energy at 2-4.

requirement that a supplier must provide the Ancillary Service to be entitled to capacity payments, the requirement that the capacity must be unloaded, available, and capable of performing an Ancillary Service, and the various other provisions of the ISO Tariff (as noted above). Under Issue No. 13, the ISO will perform Settlement adjustments in cases where a supplier received a capacity payment without providing the required Ancillary Service (subject to the exceptions described in the July 9 Addendum and the results of the additional investigations described below).[76] In contrast to the Show Cause proceedings, where the Commission will determine whether or not gaming occurred, the ISO's proposed adjustments for Issue No. 13 are based on a simple finding of non-performance of an Ancillary Service obligation to be unloaded and available for Dispatch by the ISO.

- The Show Cause Order covers certain transactions of four named parties for the time period from January 1, 2000 through September 9, 2000. Issue No. 13, on the other hand, covers additional parties for that time period. Further, Issue No. 13 covers transactions by various parties from 1998 until January 1, 2000
- The Show Cause Order describes as its proposed remedy the disgorgement of profits, which could possibly mean the disgorgement of profits made on Uninstructed Energy payments as well as the rescission of an Ancillary Service payment. Issue No. 13, in comparison, provides

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[75] *American Electric Power Service Corp., et al.*, 103 FERC ¶ 61,345 ("Show Cause Order").

only for rescission of Ancillary Services payments for capacity used to generate uninstructed Energy.

As this point-by-point comparison shows, there are significant differences between the coverage of the Show Cause Order and the coverage of Issue No. 13. The proceedings concerning Issue No. 13 will in no way improperly interfere with the Show Cause proceedings. In particular, as explained above, an ISO finding in an Issue No. 13 proceeding that a supplier should have its capacity payment rescinded would mean only that the supplier had received a capacity payment without providing the required Ancillary Service. In a result, in a Show Cause proceeding concerning the same supplier, the Commission could still determine whether the supplier's actions constituted gaming behavior, and whether the seller should disgorge more money.

Where overlap exists between the Show Cause proceedings and the Issue No. 13 proceedings, the overlap can easily be accommodated. Appropriate account can be taken in the Issue No. 13 proceedings of any litigated resolutions of generic issues and of any resolutions of specific transactions in the Show Cause proceedings so that corrections of over-payments under Issue No. 13 do not recover payments that were already ordered to be disgorged under the Show Cause process. If a *generic issue* related to whether a particular type of transaction is in fact "Double Selling" is litigated and resolved by the Commission in the Show Cause proceedings, the ISO will recognize that result in the proceedings on Issue No. 13 for all parties and all transactions. With regard to any resolutions of *specific transactions* in the

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[76] *See* July 9 Addendum at page 9 of Appendix 1.

Show Cause proceedings (whether by settlement or through litigation), the ISO will recognize those resolutions in the Issue No. 13 proceedings. On issues where an outcome through litigation or settlement is not reached in the Show Cause proceedings, then the ISO's proposed adjustments under Issue No. 13 will move forward.

As a result, the Show Cause proceedings and the Issue No. 13 proceedings can go forward on their respective tracks without difficulty. In the Show Cause proceedings, a litigated result or a settlement concerning the four named parties and their transactions that are the subject of the Show Cause Orders will be accommodated in the Issue No. 13 proceedings as described above. In the Issue No. 13 proceedings, the ISO will deal with the parties affected there and will either agree or disagree with the responses the parties provide to the ISO's inquiries. If the ISO determines that a payment for a transaction is subject to rescission, and conducts a re-run that implements the rescission, the party can raise the matter through the ISO's Alternative Dispute Resolution procedures and can appeal to the Commission as necessary. In sum, the Issue No. 13 proceedings will not interfere with the Show Cause proceedings, but rather the two sets of proceedings will mesh with one another.[77]

[77] Duke Energy is simply incorrect in asserting that the Refund Proceeding or the Show Cause Order precludes the ISO's rescission of payments for the period before January 1, 2000. *See* Duke Energy at 8-9. In neither proceeding has the Commission suggested that sellers should get a free pass for Tariff violations before that date.

b. Arguments Concerning the Factual and Methodological Basis on Which the ISO Proposes to Determine the Adjustments Proposed in Issue No. 13

The ISO notes that parties have raised objections to the factual and methodological basis the ISO has proposed to determine the rescission of payments in Issue No. 13; these objections, which concern NCPA, Reliant, Dynegy, and the California Generators, are discussed below.[78] The ISO wishes to emphasize that it takes the objections seriously and is conducting a thorough review of them. The ISO is committed to making accurate adjustments as well as to providing suppliers with ample opportunity to evaluate the adjustments and the data upon which they will be based. Toward that end, the ISO forwarded to each Scheduling Coordinator all the data supporting every calculation affecting that Scheduling Coordinator.[79] The ISO also provided, in its July 9 Addendum, a detailed description of the Issue No. 13 adjustments and explanations of the

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[78] The objections concerning Reliant and Dynegy are set out by the California Generators in their July 30 Protest.

[79] PG&E states that it has not received data related to the proposed charges in Issue No. 13. PG&E at 9 n.8. The ISO has sent all of the data related to the adjustments for Ancillary Services that were unavailable from each resource, to the Scheduling Coordinator responsible for that resource. When the PX was scheduling on PG&E's behalf, PG&E resources were associated with the PX, and the PX was provided all of the associated data. The ISO did forward all data for PG&E units to the PX, since the PX was the Scheduling Coordinator that scheduled all Ancillary Services on PG&E's behalf over the period in question. The ISO has not researched the specific date and hour for which ownership and scheduling responsibilities for each resource sold by PG&E were transferred, but will work with PG&E and the PX to determine how PG&E might obtain the data specific to its resources.

PG&E also requests access to the audit or other detailed working papers related to Issue No. 13. *Id.* at 8-9. No formal audit report concerning Issue No. 13 has been prepared. A separate audit was performed of each hourly transaction, the methodology for which was described in the July 9 Addendum. The data provided to each Scheduling Coordinator included those concerning Energy Schedule, Generator Meter Multipliers, Meter Data, Day-Ahead and Hour-Ahead Ancillary Service schedules, Day-Ahead and Hour-Ahead Market Clearing Prices for Ancillary Services, Energy dispatched from Supplemental Energy bids and Ancillary Service capacity bids, P-Max, Ramping Energy, RMR Dispatch Notice instruction, Uninstructed Deviation (calculated), Total Unavailable Capacity (calculated), Unavailable Capacity allocated to each service, weighted price for each Unavailable capacity adjustment, and Settlement Amount.

equations for Issue No. 13. Actual adjustments will not be completed for at least several months, and the ISO expects that deficiencies in the data will be identified based on feedback from the affected Scheduling Coordinators, and corrected where necessary. The ISO proposes to make reasonable corrections to the calculation of adjustments where, for example, evidence of an unrecorded instruction to deliver Energy out of capacity is identified.

The ISO now proposes the following procedures, which are in keeping with its commitment to accurate adjustments and evaluation by suppliers of the ISO's data and adjustments. The ISO proposes to give suppliers 60 days, from the date this answer is filed, in which they can analyze the data that have been provided to them, and during which time the ISO will carefully review the issues raised by suppliers so that all questions of fact can be resolved. The ISO also proposes that, based on the feedback provided by the suppliers during these 60 days, the ISO make a report to the parties, concerning which the parties will then have an opportunity to submit written comments. The ISO would then make any further changes to the data that are needed in light of these comments, and would also make changes to the data that are required by resolution of issues in the Show Cause proceedings. Then the ISO will conduct the Issue No. 13 adjustments. If, after all of these processes are completed, parties still believe that the ISO's adjustments are erroneous, they can raise their concerns through the additional process provided for under the ISO Tariff: they can initiate a Settlement dispute, participate in the ISO ADR Procedures, and, if they believe

these processes do not sufficiently address their concerns, they can file appeals with the Commission.[80]

The ISO respectfully requests that the Commission not render any determinations on the objections raised to date by various parties, which are discussed below. Rather, these objections should be addressed discussed through the ISO processes described above. The objections may well be resolved as a result of the review process the ISO proposed above. The ISO will, however, provide, for the Commission's and the parties' consideration, its current thinking on the objections and the subjects to which they relate.

i. NCPA

NCPA provides a specific example in which it claims that the ISO is proposing to impose an erroneous charge for Ancillary Service capacity, and asserts that the ISO is seeking to eliminate payments for Ancillary Services through Issue No. 13 that were never made. The charge that NCPA cites was for Ancillary Service capacity that was pre-empted by a real-time RMR Dispatch Notice. NCPA uses this example as support for its argument that the ISO's calculation for unavailable Ancillary Services capacity is flawed.[81] In response to an informal inquiry from NCPA, ISO staff provided NCPA staff with a detailed explanation specific to NCPA's example that showed how the charge for unavailable Ancillary Service capacity was still valid for the NCPA example – that is, capacity that was obligated to be unloaded and available, even after

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[80] Cities/M-S-R and MID assert that the magnitude of the potential financial impact of Issue No. 13 (as well as Issue No. 7) "necessitates a thorough and careful review." Cities/M-S-R at 4; MID at 3. The processes the ISO proposes above provide for just such a review.

[81] NCPA at 5-6 & nn.11-12, and Exhibit 2.

consideration of the RMR Dispatch Notice, was used for an uninstructed deviation.

ii. Reliant

The California Generators assert that the ISO has engaged in inappropriate Dispatch of peaking units to provide Ancillary Services. As support for this contention, the California Generators claim that 23% of Reliant's charges are from peaking units where the ISO dispatched only a portion of the Energy, and that a spot check of Reliant's bids and awards for the Mandalay and Etiwanda peaking units shows that although Reliant was submitting bids at full output, the full output was not dispatched.[82]

The ISO's authority to discriminate in awarding Ancillary Services capacity is specifically limited by the ISO Tariff to location and price.[83] This Tariff provision prevents the ISO from distinguishing an inflexible resource that is incapable of performing in accordance with a partial Dispatch instruction, from a resource that is flexible and can perform as Dispatched. Although the ISO intends to better accommodate operating constraints when Phase 1B of its Comprehensive Market Redesign is implemented, nothing in the ISO Tariff guarantees payment for Ancillary Services capacity scheduled on an inflexible resource that is subsequently used for Uninstructed Imbalance Energy.

In many instances, suppliers have scheduled more than one Ancillary Service, or have submitted multiple price-quantity bid segments on such inflexible resources. Either of these actions increases the possibility of a partial

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82 July 30 Protest of California Generators at 6.

83 *See* ISO Tariff, § 2.5.12(a).

Dispatch instruction, and are attributable to the bidding and scheduling practices of the supplier. In contrast, the supplier is not responsible for a partial Dispatch instruction where a single bid segment on a single scheduled Ancillary Service has been provided. However, even in the circumstance of a single bid segment on a single Ancillary Service, there is no basis for excusing non-performance by the supplier (i.e., no entitlement exists to payment for Ancillary Service capacity that is not available due to an uninstructed deviation caused by a partial Dispatch instruction on an inflexible resource).

Although the ISO does not believe there is any basis to find that a supplier is entitled to payment for capacity that is not available in accordance with the ISO Tariff, the ISO believes that should the Commission make such a finding, it should be explicitly limited to circumstances where a single price quantity bid segment is submitted on a single scheduled Ancillary Service.

The ISO conducted its own spot check of 20 unit-hours on which preliminary adjustments were included in the data provided to Scheduling Coordinators where the Etiwanda and Mandalay peaking units appear to be partially dispatched by the ISO. Fifteen of the 20 unit-hours, or 75%, show that multiple bid segments were submitted for the peaking units, rather than a single bid segment, which increases the likelihood of a partial Dispatch instruction. Additionally, if the peaking unit is already generating without instruction, the ISO can only dispatch that unit for the remaining unloaded capacity, which may result in what appears to be a partial dispatch on a peaking unit that has undertaken an uninstructed deviation. In contrast, a unit with a one-part bid curve that has not

undertaken an uninstructed deviation is more likely to be dispatched for the full amount of that bid, unless that unit is at the margin, and Energy from only a portion of the capacity to which that bid segment applies is required to meet the ISO's Imbalance Energy need.[84]

iii. Dynegy

The California Generators state that Dynegy's Division Street GT 1 unit was only dispatched for 3 MW of Replacement Reserve on June 28, 2000 for Hours Ending 15 through 17, while 14 MW of Non-Spinning Reserve was not called. The California Generators claim Dynegy was required to run at full load and deviate into the 14 MW of non-spin capacity.[85] The Energy price on the Replacement Reserve was at the then applicable price cap of $750/MWh. For the reasons explained above with regard to Reliant, the ISO's partial Dispatch instruction to Dynegy was a result of multiple Ancillary Services scheduled on a single inflexible Generating Unit, for which Dynegy must bear responsibility.

The California Generators also assert that there are flaws in the ISO's dispatching system. They provide the example that if a resource was already deviating due to a verbal ISO instruction, then the ISO could not get ADS to dispatch Ancillary Service capacity because it was already loaded.[86] The ISO proposes to consider, before the Issue No. 13 adjustments are made in the Settlement system, whether partial Dispatch instructions subsequent to verbal

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[84] Before the installation of the software for the ISO's Automatic Dispatch System ("ADS"), the ISO's software calculated integrated Energy, and there is no record of the interval in which the instruction was issued. Importantly, a MWh amount that is smaller than the scheduled MW does not necessarily mean that a partial Dispatch instruction was issued.

[85] July 30 Protest of California Generators at 7 n.14.

[86] *Id.* at 7-8.

Dispatch instructions associated with such software limitations may have caused erroneous partial Dispatch instructions.

The ISO also recognizes that there are instances in which, because of software problems or system conditions, the ISO may have sent informal requests to ramp generation to full capacity and, as a result, Ancillary Service capacity became unavailable. The ISO also proposes to review dispatcher logs on all trade dates on which a staged System Emergency was declared, to determine if and when such requests were made.

iv. California Generators

The California Generators assert that adjustments of less than 1 MW are unreasonable.[87] The ISO notes that such transactions represent 46% of the total volume of adjustments, but only 0.3% of the value of adjustments. In the interest of administrative efficiency, the ISO does not object to excluding the proposed adjustments that are smaller than 1 MW for a particular resource in a particular hour.

The California Generators also indicate that the ISO has not always dispatched all Replacement Reserve before declaring a staged emergency, and offer as an example June 28, 2000, where in Hour Ending 1600 the ISO did not Dispatch Replacement Reserve from four different Reliant units.[88] The ISO's software will only dispatch the portion of unloaded capacity on the unit, which may result in some bids not being fully dispatched. However, the ISO will investigate whether any software problems may have contributed to the

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87 *Id.* at 8-9.

88 *Id.* at 9-13.

incomplete Dispatch of Replacement Reserve during the hours noted by the California Generators.

6. Issue No. 16 (Williams)

In response to PG&E's statement that the ISO's description of Issue No. 16 (concerning Williams) "lacks detail regarding the calculation of the adjustment and its impact on market participants,"[89] the ISO directs PG&E's attention to the Commission order (and the Stipulation and Consent Agreement attached thereto) that is referenced in the description of Issue No. 16 in the Amendment No. 51 Compliance Filing.[90] Each Scheduling Coordinator will receive a percentage of the referenced $8 million charge that is equal to the Scheduling Coordinator's portion of total Load and export, excluding any Williams volumes.[91]

7. Issue No. 17 (Mislogging)

With regard to Issue No. 17 (concerning mislogging), PG&E asserts that the ISO's "inclusion of this adjustment in this filing is premature," because the ISO has explained it will be unable to conduct the preparatory re-run concerning Issue No. 17 until after the Commission rules on the ISO's request for rehearing

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89 PG&E at 9.

90 Amendment No. 51 Compliance Filing at pages 2 and 7 of Attachment A. The referenced Commission order is *AES Southland, Inc. and Williams Energy Marketing & Trading Company*, 95 FERC ¶ 61,167 (2001). *Inter alia*, the order provides details concerning amounts and trade days impacted.

91 Additionally with regard to Williams, as the ISO has explained, it did not include a settlement between the State of California and Williams in the Amendment No. 51 Compliance Filing, because the ISO does not believe the settlement should result in a re-run. Transmittal Letter for Amendment No. 51 Compliance Filing at 4 n.5. Based on its understanding of the filing, implementation of the settlement would involve manual calculations and adjustments of the combined invoicing of the preparatory re-runs and the Refund Proceeding re-run. *Id.* The ISO has also explained that the methodology proposed by Williams to implement the settlement is problematic but workable under the ISO Settlement system. Answer of the California Independent System Operator Corporation to Motions for Clarification/Requests for Rehearing of March 26 Order, Docket Nos. EL00-95-045 and EL00-98-042 (filed May 12, 2003), at 13-15.

of the March 26 Order in the Refund Proceeding.[92] PG&E is incorrect. The purpose of the list of preparatory adjustments and re-runs is to explain all of the adjustments and re-runs that the ISO contemplates performing. The ISO anticipates that it will need to perform the re-run of Issue No. 17. In its request for rehearing, the ISO simply raised concerns about the Commission requirement that the ISO determine whether OOS transactions were non-congestion transactions eligible to set the historical refund period market clearing price (and the mitigated market clearing price).

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92 PG&E at 10.

III. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept the Amendment No. 51 Compliance Filing in its entirety. Further, because the Amendment No. 51 Compliance Filing fully complies with the requirements described in the Amendment No. 51 Order, the ISO requests that the Commission unconditionally accept Amendment No. 51.

Respectfully submitted,

BRM

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Date: August 8, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C., on this 8th day of August, 2003.

Bradley R. Miliauskas

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