UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

(not consolidated)

MOTION FOR LEAVE TO RESPOND
AND RESPONSE
OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO THE
ANSWER OF POWEREX CORP.

Pursuant to Rules 212 and 213[1] of the Commission's Rules of Practice and Procedure, the California Independent System Operator Corporation[2] ("ISO"), hereby submits its motion to respond[3] and its response to the " Motion for

[1] 18 C.F.R. §§ 385.212, 385.213

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

[3] The ISO requests waiver of Rule 213 (a)(2), (18 C.F.R. § 385.213 (a)(2)) to permit it to make this response. Good cause for this waiver exists because the response 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 (2002) at 61,163; Duke Energy Corporation, 100 FERC ¶ 61,251 at 61,886 (2002); Delmarva Power and Light Company, 93 FERC ¶ 61,098, at 61,259 (2000).

Leave to Answer and Answer of Powerex Corp."[4], filed on March 31, 2005 in the above captioned proceeding. Powerex's original motion was filed on March 4, 2005. The ISO filed its answer to that motion on March 21, 2005[5], in which it pointed out the basic flaws in the Powerex proposed approach. Ten days later, on March 31st, Powerex filed an answer to the earlier answer of the ISO and the California Parties. In support of the ISO's further response to the motion of Powerex, the ISO states the following:

I. RESPONSE

A. Despite Powerex's statements to the contrary, their motion is out of time and a clear Collateral Attack on the Commission's October 16, 2003 Order

Powerex, again in its March 31, 2005 answer, as it did 27 days earlier in its initial motion, collaterally attacks the Commission's October 16, 2003 Order[6] and the ISO's normal settlement practices for imported energy. Powerex does little more than repeat its mantra that the ISO is not following Powerex's preferred methodology for mitigating import transactions. As the ISO explained in its March 21 answer, however, the ISO is following the rules set forth by the Commission in its March 26, 2003, Order On Proposed Findings On Refund Liability,[7] and its October 16, 2003 Order on Rehearing. In the October 16 Order, the Commission stated that, " For purposes of mitigation, as we stated in the discussion of this issue in the [March 26 Order], there is no basis to treat Energy Imports differently from other types of energy. Under the CAISO's rules and

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4 While Powerex styled its pleading as an answer, it quite clearly was an answer to the ISO's original answer in this matter.

5 The CalParties filed their answer to the Powerex motion on March 21, 2005 as well.

6 105 FERC ¶ 61,066 (2003) ("October 16 Order").

7 102 FERC ¶ 61,317 (2003) ("March 26 Order").

procedures, the only difference in how Energy Imports are treated involves accommodation in the CAISO's dispatch process. However, beyond pre-dispatching an accepted Energy Import for each interval in the pertinent hour, the Energy Import receives no special treatment."[8] In that same paragraph the Commission went on to state " Accordingly, our adoption of the presiding judge's finding on this issue simply reflected that Energy Imports should be mitigated like all other types of energy." *Id*. Powerex seems to misunderstand the Commission's ruling. Powerex at 3. Again, Powerex suggests that notwithstanding the Commission's statements, the ISO should deviate from the very treatment that the ISO normally accords such imported energy in its settlement process and construct a sort of a special average hourly "implied" historical price for import transactions against which the ordered price mitigation would be applied. This is not what the Commission ordered. While imports are hourly products, the ISO's method of applying hourly MMCPs to historical 10 minute prices of energy clearly reflects that reality.[9] Powerex's proposed deviation from the ISO's normal settlement practices for imports is discussed at length in the ISO's answer to the Powerex motion and documented in the affidavit of Powerex's own witness, Kevin Wellenious.[10] What Powerex refers to as an "arbitrary methodology" proposed by the ISO is, in fact, its standard and normal method for settling such transactions. Powerex at 5. This, again, is what the Commission ordered.

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8 October 16 Order at P 54.
9 See ISO Answer to Powerex motion at 3-4.
10 ISO Answer at pages 5-7.

In a desperate attempt to show that its motion was not out of time, Powerex states that "the rerun process has been a developing process" and that "issues regarding the process have arisen and been addressed on several occasions over the last several years". Powerex at 7. While this statement may be true for implementation issues, it is completely false with respect to methodological issues that were raised and addressed on rehearing by the Commission. This is just such an issue. No attempt by Powerex to extricate themselves from the web woven by their fellow members of the Competitive Supplier Group ("CSG") can deny that fact. Powerex also claims that the Commission's prior orders on this issue "appear to address something different than what Powerex was requesting. Specifically, it may not have been clear from the request for clarification that Powerex was not asking for different treatment for energy imports." Powerex at 7. Despite Powerex's attempt to re-write the history of this proceeding, however, the record is quite clear that the Commission has already addressed and denied precisely the treatment that Powerex is now requesting. In the CSG's request for rehearing of the March 26 Order (as to which Powerex was a signatory), CSG specifically requested that the Commission clarify, or in the alternative grant rehearing, "that the hourly MMCPs will be used to mitigate the hourly average price of the energy imports, and not the 10-minute price of the energy import in each hour."[11] In the October 16 Order, the Commission explicitly denied CSG's request for clarification and rehearing. If Powerex believed that the October 16 Order was in error or unclear

[11] Request for Rehearing of the Competitive Supplier Group, Docket Nos. EL00-95-045, et al. (April 25, 2003).

on this point, then the proper recourse would have been for Powerex to seek clarification and/or rehearing of that order within the appropriate 30-day timeframe, rather than re-raising the issue over a year and a half after the issuance of that order. It is hard to imagine a more clear-cut example of an out of time collateral attack.

In addition, if the Commission allows Powerex to "boot strap" this out of time argument pursuant to the notion that because the rerun process has been lengthy, and because new or unresolved issues have been raised and answered as part of it, issues already decided can be re-raised, the refund proceeding will probably never end. As long as the ISO makes any kind of a rerun that relates to the refund period Powerex, and other Market Participants dissatisfied with portions of the Commission's rulings, will treat this process as "open season" on methodological issues simply because "the rerun process has been a developing process." This approach is, of course, nonsensical. There must be finality of the issues that the Commission has heard and decided. Powerex would open a hole in the Commission's procedures for review of its orders that would likely never close.

B. An Affidavit is Not Required Every Time that an Implementation Time Estimate is Provided

Powerex attempts to make much of the fact that the ISO has not attached an affidavit to its answer to fully document and substantiate the statement in its March 21 answer that " it believes that any attempt to implement the general approach suggested by Powerex would involve significant additional resources, time and expense by the ISO". Powerex at 5-6. The Commission should attach

no significance whatever to the fact that the ISO has not attached an affidavit to its answer to document such a general statement. If Powerex's argument were to be accepted, there would need to be an affidavit attached to nearly every pleading the ISO files. The statement in question is one that may be documented, a priority, from one's own knowledge of what type of actions cause incremental costs to be incurred. To apply a new unapproved methodology at this stage of the refund process, when the rerun to apply price mitigation to historical transactions has been completed, would necessarily involve the incurrence of incremental costs and additional time. These are costs and man-hours that the ISO does not have available to expend needlessly. Indeed, Powerex displays this distorted reasoning by implying that because it took the ISO only two days to turn around the mitigation of energy imports after it allowed parties to dispute the import data, the actual development of the database and the code to accomplish the mitigation must have occurred within that two day time span. Powerex at 6, n. 1. Nothing, of course, could be further from the truth. All of the work to perform the mitigation had been done before the parties were given the opportunity to dispute the data. The two days that Powerex refers to would normally be required for posting and certain coordination activities, rather than the actual calculations themselves. If the Commission were to require the ISO to adopt Powerex's methodology, despite the fact that it already denied Powerex's request to do so over a year and a half ago, the ISO would be required to do another complete rerun of its settlement system, a process that

would require a number of weeks, rather than the several days suggested by Powerex.

II. CONCLUSION

For the foregoing reasons, the ISO again, respectfully urges the Commission to reject, as an improper collateral attack on the Commission's October 16, 2003 Order, Powerex's motion to re-open the issue of mitigation of import transactions. In the alternative, the ISO requests that the Commission deny Powerex's request because Powerex has provided no convincing rationale for the creation of a "special" methodology to calculate refunds relating to sales of instructed and uninstructed import energy during the Refund Period.

Respectfully submitted,

/s/ Gene L. Waas

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Dated: April 7, 2005

April 7, 2005

BY ELECTRONIC TRANSMISSION

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

Re: ***California Independent System Operator Corporation***
Docket No. ER03-746-000

San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and California Power Exchange
Docket No. EL00-95, et al.

Investigation of Practices of the California Independent System Operator and California Power Exchange
Docket No. EL00-98, et al.

Dear Secretary Salas:

Enclosed for electronic filing please find a Motion for Leave to Respond and Response of the California Independent System Operator Corporation to the Answer of Powerex Corp's in the above-referenced dockets.

Thank you for your assistance in this matter.

Very truly yours,

/s/ Gene L. Waas
Gene L. Waas

Counsel for the California Independent System Operator Corporation

Enclosures

cc: All parties of record

CERTIFICATE OF SERVICE

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

Dated at Folsom, CA, this 7th day of April, 2005.

/s/ Gene L. Waas
Gene L. Waas