UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company, Complainant,	)	
	)	**Docket No. EL00-95-291**
v.	)	
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 No. EL00-98-263**

REPLY COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR REGARDING COMPLIANCE FILINGS

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,[1] the California Independent System Operator Corporation ("ISO") submits these reply comments to the California Parties' September 23, 2016 Comments on ISO and PX Refund Rerun Compliance Filings. The ISO requests leave to submit these reply comments, as they will assist the Commission in better understanding and addressing the issues raised in the California Parties' comments. The issues and data presented by the California Parties relate to many different components of the ISO's and PX's compliance calculations, and implicate various Commission orders. Given the volume and complexity of these issues, as well as the critical importance of the ISO and PX

[1] 18 C.F.R. § 385.213 (2015).

compliance filings as a key step in concluding these long-running proceedings, the ISO submits that the Commission's decision-making process would greatly benefit from receiving and considering these and other reply comments.

I. INTRODUCTION

On September 28, 2016, the ISO filed with the Commission a motion to establish November 30, 2016 as the date on which parties would be permitted to submit reply comments with respect to the ISO and PX's refund rerun compliance filings.[2] Therein, the ISO explained that a November 30 deadline would provide parties with adequate time to address the numerous issues raised in comments on the compliance filings while providing for time for the parties to attempt to clarify and resolve certain of these issues, in order to hopefully avoid having to have the Commission do so. All of the parties that filed comments on the ISO and PX compliance filings either supported or did not oppose this motion.

The Commission has yet to act on the ISO's September 28 motion. Therefore, out of abundance of caution, the ISO is filing the enclosed comments as to certain issued raised by the California Parties in their comments.[3] The issues addressed herein are those as to which the ISO disagrees with some or all of the California Parties'

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[2] The ISO's and PX's compliance filings were filed in the above-captioned dockets on May 4, 2016 and May 5, 2016 respectively. The ISO's May 4 compliance filing is referred to herein as the "ISO Compliance Filing."

[3] In its September 28 motion, the ISO explained that under the Commission's rules, if the Commission accepted responses to the comments filed on the ISO and PX compliance filings, they would typically be due no later than 30 days after the comments were filed. *See* 18 C.F.R. Section 385.213(d) (providing that any answer to a pleading or amendment to a pleading, other than a complaint or an answer to a motion, and which is not published in the Federal Register, must be made no later than 30 days after the pleading or amendment is filed). If it were applicable, the 30 day deadline would be today. As explained it its motion, however, the ISO believes that parties should have additional time to submit reply comments.

comments. On certain other issues, the ISO is continuing to work with the California Parties to better understand the California Parties' concerns, and expects to file supplemental reply comments on these issues, based on the outcome of these discussions, as soon as possible.[4]

Of the sixteen issues raised by the California Parties, the ISO agrees with the California Parties as to the following issues:

- Issue One – The ISO agrees that the Commission should formally approve the MMCPs for each interval.
- Issue Two – The ISO agrees that the Commission should approve the results of the ISO's and the PX's MMCP mitigation calculations.

The ISO offers no further comments on these issues.

The ISO disagrees with some or all of the California Parties' comments regarding the following issues:

- Issue Four – Although the ISO takes no position on the merits of the California Parties' position, the Commission should consider additional information when deciding whether the ISO acted properly in excluding the fuel cost and emissions offsets of three municipal sellers. It was the Commission that directed the ISO to exclude these offsets. While the California Parties contend that clauses in the settlement agreements with these suppliers require a different result, it is not apparent to the ISO how those clauses apply to these offsets.

[4] The California Parties have informed the ISO that they will not contest such supplemental comments on the basis that they are out of time.

- Issue Six – The ISO correctly calculated BPA shortfall amounts based on the sales and purchases in its markets.
- Issue Seven – The ISO correctly allocated BPA shortfall amounts based on market participants' final refund positions, which include the offsets approved by the Commission relating to fuel costs, emissions, and cost recovery.
- Issue Nine – The ISO appropriately allocated the BPA shortfall amounts to net-refund recipients based on their period-wide refund positions.
- Issue Eleven – The Commission has already rejected the California Parties' argument that the interest shortfall should be allocated based on the interest shortfall in the two markets combined. This issue is pending on appeal, and the California Parties' attempt to raise it again here is procedurally improper.
- Issue Twelve – Summer period amounts should not be added to the interest shortfall calculations for this proceeding.
- Issue Thirteen – Although the Commission need not resolve the disposition of funds from the ISO's accounts at this point in the process, the California Parties do not provide a compelling reason to deviate from the disposition recommended by the ISO.

The reasons for the ISO's disagreement with the California Parties on these issues are set forth in Section II below.

The ISO is still in discussions with the California Parties in order to clarify their concerns with respect to issues Three (treatment of generator fines), Ten (ISO interest calculations), and Sixteen (summer period refunds), as well as the California Parties' comments on the sequencing of the remainder of the proceeding. The ISO is hopeful

that it can resolve some or all of these issues without the need for the Commission to resolve them. Regardless, the ISO will, in the near future, file supplemental comments informing the Commission as to the status of these issues and the ISO's position regarding their appropriate resolution.

Finally, the ISO takes no position on the other issues raised by the California Parties (Issues Five, Eight, Fourteen and Fifteen).

II. REPLY COMMENTS

A. Issue Four – The ISO Eliminated the Fuel Cost and Emissions Offsets of Three Municipal Sellers at the Commission's Express Direction

The Commission initially approved fuel cost and emissions offsets for three of the municipal sellers – the Los Angeles Department of Water and Power ("LADWP"), the City of Pasadena, California, and the City of Anaheim, California. However, in its subsequent orders implementing the Ninth Circuit's decision in *Bonneville Power Administration v. FERC*,[5] the Commission directed the ISO to eliminate these offsets, finding that they no longer made sense given that the municipal suppliers could not be compelled to pay refunds.[6] The ISO complied with this directive, and cited the Commission's orders in its compliance filing.[7]

Without mentioning these orders, the California Parties claim that the Commission-approved settlements with these suppliers require the ISO to include offsets for these sellers. They contend that the settlement agreements provide that the

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[5] See ISO Compliance Filing at 29.

[6] *San Diego Gas & Electric Co., et al.*, 125 FERC ¶ 61,214 (2008) at P 22; *see also San Diego Gas & Electric Co., et al.*, 138 FERC ¶ 61,091 (2012) at P 27.

[7] ISO Compliance Filing at 30, n. 54.

municipal sellers "would owe or receive refunds" as if they were not governmental entities.[8]

It is not apparent to the ISO, however, how the provisions of the settlement agreements cited by the California Parties support their argument. These provisions do not mention refunds owed by the municipal suppliers. Section 4.14 of the settlement agreement with Pasadena reads as follows:

> **4.14 Refunds from Other Suppliers; Assignment; Claims and Defenses**. Except as provided in Section 7.2.2, Pasadena shall be entitled to receive refunds for the Settlement Period to the same extent as entities that are not within the scope of Section 201(f) of the Federal Power Act; provided that such refunds shall be calculated using the same methodology FERC uses to calculate refunds for entities not within the scope of Section 201(f), including any netting of refund amounts owed on sales against refund amounts due on purchases. Except as provided in Section 7.2.2, effective as of the Settlement Effective Date, Pasadena hereby assigns, sells, transfers, conveys, and delivers to the California Parties, free and clear of all liens, claims, and encumbrances all of its right, title, and interest in and to all refunds, interest, credits, and other payments it is, or becomes, entitled to receive on and after the Execution Date that are either directly or indirectly through others allocated to Pasadena and associated with transactions in the California Markets during the Settlement Period.

The cited clauses from the Anaheim and LADWP settlements are substantively identical. These clauses apply expressly to refunds that the municipal sellers might "receive" "from [o]ther [s]uppliers" and assign that right to receive refunds to the California Parties. In other words, they relate to how the ISO should calculate what refunds these governmental entities would "receive" but not what refunds these governmental entities would "owe." Therefore, they do not appear to the ISO to contradict or override the Commission's order directing the ISO to eliminate these offsets.

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[8] California Parties' Comments at 11.

The California Parties also rely on clauses from two of the settlement agreements that direct the ISO to "revers[e]" the BPA offset. Section 6.1.3.4 of the LADWP settlement agreement is illustrative:

> **Reversal of Certain Calculations.** Any calculations by the ISO and/or PX relating to the Settlement Period and LADWP's status as a non-public utility prior to the Settlement Effective Date shall be reversed by the ISO and/or PX.

The ISO implemented these provisions by excluding every municipal supplier that had a similar provision in its settlement agreement from the "BPA Adjustment."[9]

Ultimately, the Commission will need to interpret the language of these settlement agreements. The intent of the agreements with respect to the offsets that the Commission precluded is not apparent to the ISO.

B. Issue Six - The ISO Correctly Calculated BPA Shortfall Amounts Based on Sales and Purchases in its Markets

Under the heading of "Issue Six," the California Parties contend that the Commission's orders require the ISO and PX to calculate a single *BPA* refund shortfall for each governmental entity based on its net purchases and sales in both the ISO and PX markets for each hour, as opposed to separate ISO and PX refund shortfall totals based on purchases and sales in their respective markets.[10] The California Parties raised this issue with the Commission in a motion filed on July 24, 2015, following the issuance of the ISO's final calculations regarding the BPA refund shortfall.[11] As the ISO explained

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[9] ISO Compliance Filing at 30, n.56 and accompanying text. A discussion of the ISO's approach to these clauses can be found in its Forty-Sixth Status Report, filed October 21, 2011, at 9-10, and its Forty-Seventh Status Report, filed February 14, 2014, at 10-11.

[10] California Parties' Comments at 17-19.

[11] Motion for Clarification on ISO/PX Rerun Issues, Docket Nos. EL00-95, et al. (July 24, 2015).

in its answers to that motion, which the ISO incorporates into these reply comments, the California Parties are mistaken.[12]

The California Parties' argument relies exclusively on orders issued by the Commission on July 15, 2011[13] and February 3, 2012,[14] but completely ignores the November 20, 2008 Order[15] in which the Commission set forth the methodology for calculating the *BPA* refund shortfall. The California Parties' position on this issue conflicts with the fundamental principle underlying that methodology. In the November 20, 2008 Order, the Commission directed the ISO to calculate governmental entities' refund amounts "using the billing and payment procedures set forth in the ISO Tariff," which includes netting purchases and sales during each hour.[16] The ISO's billing and payment procedures in effect during the refund period only provided for netting purchases and sales for transactions that took place in the ISO's markets. They did not require or permit the ISO to net participants' ISO market transactions against transactions that occurred in the PX markets. Therefore, there is no basis to conclude that the Commission intended to the ISO to combine the transactions in its markets with

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[12] Answer of the California Independent System Operator to California Parties' Motion for Clarification on ISO/PX Rerun Issues, Docket Nos. EL00-95, et al. (August 10, 2015); Request for Leave to Answer and Answer of the California Independent System Operator to California Parties' Response Regarding Motion for Clarification on ISO/PX Rerun Issues, Docket Nos. EL00-95, et al. (September 1, 2015). The California Parties' motion is still pending before the Commission.

[13] *San Diego Gas & Elec. Co.*, 136 FERC ¶ 61,036 (2011) ("July 15, 2011 Order").

[14] *San Diego Gas & Elec. Co.*, 138 FERC ¶ 61,092 (2012) ("February 3, 2012 Order").

[15] *San Diego Gas & Elec. Co.,* 125 FERC ¶ 61,214 at PP 17-19 (2008) ("November 20, 2008 Order").

[16] November 20, 2008 Order at PP 17-19 (citing and quoting ISO Settlement and Billing Protocol 3.2.1).

those in the PX markets for purposes of calculating governmental entities' refund shortfalls.

The California Parties' interpretation is also inconsistent with the manner in which the November 20, 2008 Order addressed the issue of how to account for the PX's participation as a scheduling coordinator in the ISO markets. In its original order on remand from the Ninth Circuit's *BPA* decision,[17] the Commission made clear that it could not require governmental entities to pay refunds relating to transactions entered into in the ISO and PX markets.[18] That order, however, did not take into account the fact that the PX, which is a FERC-jurisdictional public utility, was a ISO scheduling coordinator. Absent further clarification, governmental entities that sold in the PX would have been exempted from owing refunds to the PX, but the PX – because it is not an exempt governmental entity – would have owed refunds to the ISO in connection with the corresponding sales that it made in the ISO's markets on behalf of those governmental entities. This would have resulted in a cash shortfall in the PX markets.

To avoid this problem, the Commission, in the November 20, 2008 Order, required the PX to provide the ISO with a reversal adjustment for transactions made on behalf of governmental entities, which the ISO would then allocate to net refund recipients in its own market along with other *BPA*-related shortfalls.[19] This directive would have not have made sense, however, if the Commission had intended for the ISO and PX to combine their transactions in calculating a single *BPA* shortfall for each

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[17] *Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005) ("*BPA*").

[18] *San Diego Gas & Elec. Co.*, 121 FERC ¶ 61,067 (2007) ("October 19, 2007 Order") at P 36.

[19] November 20, 2008 Order at PP 35-38.

governmental entity. If the Commission had intended a combined market calculation, the ISO/PX coordination concern would have been entirely different: namely, making sure that any shortfall amount allocated to the PX matched its refund credit from the ISO. There would have been no need, however, for the Commission to require the ISO to provide the PX a credit of its own in the ISO markets.

As these passages in the November 20, 2008 Order make clear, the Commission contemplated that the ISO and PX would determine the refund shortfalls resulting from the *BPA* decision separately, by calculating each governmental entity's sales and purchases in their respective markets. This outcome is also consistent with the Commission's underlying methodology for calculating refunds in the first instance, which required the ISO and PX to perform reruns of their settlements systems to apply the Commission-mandated mitigated market clearing price ("MMCP") based on purchases and sales in their individual markets.[20]

The Commission did not alter this approach in either the July 15, 2011 or February 3, 2012 Orders, which the California Parties rely on exclusively to support their argument.[21] To the contrary, in the July 15, 2011 Order, the Commission concluded that the rationale set forth in the November 20, 2008 Order for hourly netting when the ISO calculates the shortfall amount for each governmental entity should apply with equal force to the PX, and explicitly directed the PX "*to perform its final refund*

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[20] *See, e.g., San Diego Gas & Elec. Co.*, 96 FERC ¶ 61,120 at 61,519 (2001) ("Once the ISO has calculated the hourly market clearing prices for the refund period, this data should be used by both the ISO and PX to rerun their settlement/billing processes and all penalties.")

[21] California Parties' Comments at 18-19; *see also* California Parties Motion at 5 (citing *San Diego Gas & Elec. Co.*, 136 FERC ¶ 61,036 (2011) (July 15, 2011 Order), *order on reh'g*, 138 FERC ¶ 61,092 (2012) (February 3, 2012 Order)).

calculations netting purchases and sales over hourly intervals to reflect the period during which the obligation was incurred."[22] This discussion of a separate PX shortfall calculation would make no sense if the Commission intended the ISO and PX to jointly calculate BPA shortfalls based on governmental entities' net positions between their markets.

The California Parties point to Paragraph 23 of the February 3, 2012 Order, asserting that it found that netting across the ISO and PX markets should occur, and that the issue had already been resolved in the July 15, 2011 Order. The relevant context, however, belies this assertion. The Commission *denied* the California Parties' request for clarification. Accordingly, the only way in which this paragraph could reasonably be read as an endorsement of the California Parties' position regarding a joint ISO/PX calculation of the *BPA* shortfall would be if the Commission had previously affirmed the California Parties' position, therefore obviating the need for further clarification. The opposite is true. The Commission's previous orders about the *BPA* shortfall can be read sensibly only with the understanding that the Commission envisioned that the ISO and PX would conduct those calculations separately for their respective markets. Moreover, the passage in the July 15, 2011 order which the Commission declined to further clarify was limited to requiring that the principal amounts due to each governmental entity account for any net remaining balance between the ISO and PX markets "so that the ISO and CalPX markets can be *financially cleared* together."[23] It did not address the *BPA* shortfall calculation at all. It stands to reason

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[22] July 15, 2011 Order at P 40 (emphasis added).

[23] *Id*. at P 30 (emphasis added).

that if the Commission had intended to change course from these earlier orders and require the ISO and PX to calculate the *BPA* shortfall jointly, it would have said so explicitly. [24]

Finally, as discussed in greater detail in the PX's answer to the California Parties' July 25, 2015 motion, having the ISO and PX calculate combined BPA refund shortfall amounts raises practical issues with respect to the different invoice cycle and payment due dates in the ISO and PX markets. These issues would need to be resolved before the ISO and PX could perform a joint calculation. This would require the ISO and PX to either seek Commission guidance prior to performing such a calculation, thereby further delaying the resolution of this proceeding, or simply decide these issues between themselves, which would still involve a risk of delay if any party subsequently challenged the ISO's and PX's decisions and prevailed.

C. Issue Seven - The ISO Correctly Allocated BPA Shortfalls Based on Market Participants' Final Refund Positions, Including Fuel Cost, Emissions, and Cost Recovery Offsets

In its Compliance Filing, the ISO set forth its process for integrating the *BPA* refund shortfall allocation with the allocation of cost recovery offsets, both of which the Commission required the ISO to allocate based on market participants' "net refunds." The ISO explained that because the cost recovery offsets are allocated based solely on the

[24] If the California Parties are correct that the Commission's statement reaffirming that the ISO and PX markets will be "financially cleared together" should be broadly read to mean that the ISO and PX must calculate *BPA* refund shortfalls jointly, the implications of this would be far-reaching. Because there is nothing in the Commission's statement limiting it to the *BPA* calculations, adopting the California Parties' interpretation would presumably require the ISO and PX to jointly perform all of the various other refund and offset calculations. The ISO and PX would then need to re-do not only the *BPA* calculations, but most of their other calculations as well. In context, it seems extremely unlikely that the Commission intended this brief statement of reaffirmation to modify the manner in which the ISO and PX have performed their calculations to date.

result of the MMCP rerun, the ISO would allocate cost offsets first and then use those results, as well as the results of the fuel cost and emissions offsets, as the basis for allocating the *BPA* refund shortfalls.

Under the heading of "Issue Seven," the California Parties assert that the ISO is applying the offsets "in the wrong order" and should have calculated the cost recovery offset after the BPA shortfall calculation and allocation.[25] Although the California Parties discuss this as a question of "order," the central issue is how best to resolve the fact that the Commission directed the ISO to allocate both the cost recovery offsets and *BPA* shortfalls based on market participants' "net refunds."[26] The answer, and the basis for the ISO's process, can be found by reading the Commission's May 12, 2006 Order addressing the allocation of cost recovery offsets[27] in conjunction with its October 19, 2007 Order on *BPA* shortfalls. This issue, albeit framed somewhat differently, was previously addressed by the California Parties and ISO in the context of the California

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[25] California Parties' Comments at 20-22. In the comments that they provided when the ISO circulated its *BPA* calculations for party review, the California Parties did not assert that the ISO had allocated the cost recovery offsets and *BPA* shortfalls in the wrong order, but rather, pointed out the challenges in attempting to allocate all of the various offsets to cross-market hourly results. The ISO agrees with this sentiment, and it further demonstrates that the ISO's process is based on the most logical reading of the Commission's orders, because it avoids any challenges associated with attempting to perform a cross-market hourly allocation.

[26] As the California Parties note, they previously filed a motion raising the issue of whether the refund offset relating to the cost of fuel incurred by generators "should be applied prior to the Cost Offset allocation," and suggest that the June 18, 2009 Order in these proceedings "makes clear that the fuel adder allocation should come before the Cost Offset allocation." California Parties' Comments at 21, n.80. The ISO agrees that the June 18, 2009 Order required the calculation of the fuel cost offset first, insofar as it directed the ISO to add any fuel cost amounts allocated to sellers with cost recovery offsets to that seller's cost recovery offset before allocating those offsets to net refund recipients. As explained on page 28 of its Compliance Filing, the ISO complied with this directive. However, this does not mean that the Commission intended the ISO to include the allocation of fuel costs in determining net refunds, for purposes of allocating the cost recovery offsets. The Commission made clear in its May 12, 2006 Order addressing cost recovery filings that the allocation of the approved cost recovery amounts should be performed based on the MMCP results alone.

[27] *San Diego Gas & Elec. Co.*, 115 FERC ¶ 61,171 (2006) ("May 12, 2006 Order").

Parties' December 18, 2007 Motion for Clarification on Specified Rerun Calculations and Allocations.

As the ISO explained in its response to that motion, even though the Commission used the term "net refunds," in both the May 12, 2006 and October 19, 2007 Orders, the ISO concluded that the Commission used this term to mean different things in the different orders. In the May 12, 2006 Order, the Commission used the term to mean a participant's refund position based solely on the results of the MMCP rerun, before accounting for offsets for fuel cost and emissions.[28] In contrast, the Commission's October 19, 2007 Order directed the ISO and PX to allocate the *BPA* shortfall as a "pro rata reduction to refund recipients based on their *final* net refund position in relation to total net refunds."[29] The reference to "*final* net refund position[s]" clearly encompasses all of the adjustments to participants' refund positions, including any relevant offsets. This difference in usage reflects the fact that "net refunds" is not a term of art that has the same meaning regardless of context, but merely a description of the different calculations and goals in the two orders. Based on the definition in the May 12, 2006 Order, the ISO believes that the Commission intended it to allocate cost recovery offsets based solely on MMCP results, and then combine those results with the results from allocating the other offsets to arrive at market participants' final net refund positions, which, in accordance with the

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[28] *Id*. at P 34 (stating that net refund positions would be determined by "netting each market participant's refund obligation (amount of energy sold at prices above the MMCP) with its refund receipt (amount of energy purchased at prices above the MMCP)"). *See also* Response of the California Independent System Operator to California Parties' Motion for Clarification on Specified Rerun Calculations and Allocations and Request for Additional Time to Respond to Issues Regarding Fuel Cost and Emissions Offsets, Docket Nos. EL00-95-164, et al. (January 2, 2008) at 2-4.

[29] October 19, 2007 Order at P 39.

October 19, 2007 Order, the ISO used as the basis for allocating the *BPA* refund shortfalls.

The California Parties point to the Commission's directive that cost offsets be allocated among overall net refund recipients, and contend that the ISO's process will lead to inequitable results because the *BPA* calculation converts some governmental entities into net refund recipients and it would be inequitable not to allocate them a share of the cost recovery offsets.[30] This "equity" argument, however, begs the very question at issue – how should the ISO resolve the fact that the Commission directed the ISO to allocate both cost offsets and *BPA* adjustments to "net refund recipients?" As explained above, the ISO reasonably read the Commission's orders on these issues to provide for the allocation of cost offsets based solely on MMCP results, with the BPA adjustments being allocated in the last step based on market participants' final net refund positions, including cost offsets. There is no inequity involved in the results of the ISO's calculations because the Commission did not contemplate that "net refund recipients," for purposes of allocating cost recovery offsets, would factor in the *BPA* adjustments. If the California Parties believe that the Commission's orders in these proceedings lead to inequitable results, then the appropriate mechanism for expressing those concerns was through a request for rehearing of those orders. Raising the issue of "equity" now is, in effect, a collateral attack on the Commission's orders, and should be rejected.

Moreover, the California Parties' preferred process is no less vulnerable to an argument regarding equities. For instance, the California Parties concede that fuel costs should be factored into the allocation of BPA shortfalls "because they impact the amount

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[30] California Parties' Comments at 20-21.

of refunds that are owed to any buyer on account of its sales in any hour, and thus failure to consider them in the [*BPA* shortfall] calculation will yield incorrect net refund amounts in the [*BPA* shortfall] calculation and allocation in that hour."[31] Yet the same can be said of cost recovery offsets, because they also "impact the amount of refunds that are owed to any buyer." Thus, if the *BPA* shortfalls and cost recovery allocations were instead performed in the order requested by the California Parties, the result would be inequitable under the California Parties' own rationale, as it would require the ISO to allocate the *BPA* shortfalls without considering the impact of cost recovery offsets on participants' net refund positions. Put another way, one of the two offsets – for cost recovery amounts or for the *BPA* shortfalls – must be allocated first, and the California Parties' equitableness argument would apply with equal force to either approach. Accordingly, the California Parties' argument fails to provide a basis for requiring the ISO to perform its calculations differently.

Under "Issue Seven," the California Parties also contend that emissions offsets should be performed after the *BPA* allocation, instead of before, as the ISO did. The California Parties claim that because emissions offsets are allocated based on monthly load, they are "not tied to a refund position" and "there is no non-arbitrary way to factor [them] into the hourly [*BPA*] shortfall calculation."[32] However, as the California Parties acknowledge, emissions offsets "will affect [market participants'] overall period-wide net refunds."[33] Therefore, by incorporating emissions offsets into the *BPA* shortfall allocation,

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31 California Parties' Comments at 21.

32 *Id*. at 22.

33 *Id*.

the ISO complied with the Commission's directive to allocate the *BPA* shortfall as a "pro rata reduction to refund recipients based on their *final* net refund position in relation to total net refunds."[34]

D. Issue Nine - The ISO Correctly Allocated the BPA Shortfall to Net Refund Recipients on a Refund Period-Wide Basis

In the October 19, 2007 Order, the Commission agreed with the ISO that *BPA* shortfalls should be allocated through a simplified *pro rata* reduction of refunds to each refund recipient, and directed the ISO to implement such an approach based on each refund recipient's "*final* net refund position in relation to *total* net refunds."[35] The most plausible reading of this language, given the terms "final" and "total," is that the Commission contemplated that the ISO and PX would allocate the *BPA* shortfall based on parties' aggregate refunds for the entire refund period, rather than, as the California Parties argue, based on whether parties happened to be net refund recipients for some granular portion of the refund period (e.g. hourly).[36] This interpretation is further supported by the fact that the Commission analogized the treatment of *BPA* shortfalls in the October 19, 2007 Order to the manner in which it decided to allocate the interest shortfall amongst PX participants: "based upon the *final net interest position* for each

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[34] October 19, 2007 Order at P 39.

[35] *Id*.

[36] The California Parties also argue that the allocation of *BPA* refund shortfalls should be performed jointly based on hourly net refund positions between the ISO and PX markets. This argument is without merit for the reasons set forth in Section II.A *supra*.

participant in relation to the *total* amount of the interest shortfall."[37] The Commission has directed that the PX interest shortfall be allocated on a period-wide basis.[38]

Moreover, at the time it issued the October 19 Order, the Commission could not have intended that the ISO allocate *BPA* shortfalls based on hourly net refunds, rather than net refunds over the entire refund period. The hourly netting methodology, which the Commission created for purposes of calculating the underlying *BPA* refund shortfalls, was not developed until over a year later, in the November 20, 2008 Order, and the Commission had not used an hourly netting methodology for any purpose previously in this proceeding. Accordingly, the Commission could not have intended that to be the allocation formula when it issued the October 19, 2007 Order, and the phrase therein directing the ISO to allocate the *BPA* shortfalls based on "total net refunds" should have its natural meaning – *i.e*., net refunds over the entire period.

Even though the ISO raised these points in response to the California Parties' July 24, 2015 motion, the California Parties do not address any of this in their comments. Rather, they assert that the ISO should have allocated the BPA shortfalls on an hourly basis based on a statement in the Commission's June 18, 2009 Order that "the allocation methodology should be consistent with the manner in which the . . . offsets are calculated."[39] However, this statement relates to cost offset allocations, not *BPA* shortfall

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[37] October 19, 2007 Order at P 39, n.49.

[38] *See San Diego Gas & Elec. Co.*, 110 FERC ¶ 61,336, at PP 41, 56 (noting that under the interest shortfall allocation methodology chosen "a share fraction would be derived based upon the absolute value of each participant's interest for its final account balances in relation to the total amount of the interest shortfall. The interest shortfall would then be allocated according to each participant's share fraction.")

[39] California Parties' Comments at 23-24 (citing *San Diego Gas & Elec. Co.,* 127 FERC ¶ 61,250 at P 46 (2009) ("June 18, 2009 Order")).

allocations, and was made in reference to the rationale for combining the ISO and PX markets for purposes of both calculating and allocating the cost offsets. It does not support the California Parties' desired outcome here.

The California Parties also contend that the Commission "expressly rejected period-wide calculations" in the November 20, 2008 Order.[40] This argument is without merit. The Commission's discussion of period-wide netting in the November 20, 2008 Order was focused entirely on the methodology for calculating the amount of refunds that would, absent the *BPA* decision, have been owed by governmental entities – *i.e.*, the *BPA* shortfall itself. The Commission directed the ISO to calculate this shortfall by netting, for each hour, the "sales and purchases" made by governmental entities. The Commission did not address the mechanism for allocating shortfall amounts to refund recipients, other than to reiterate the directive from the October 19, 2007 Order that it be based on parties' final net refund position in relation to total net refunds. The fact that the Commission left its earlier conclusions regarding the allocation mechanism undisturbed in the BPA Rehearing Order is understandable given that the subject of the California Parties' request for rehearing that prompted the passage at issue in the November 20, 2008 Order was how to calculate the shortfall offsets, rather than how to allocate them to refund recipients. For these reasons, there is no basis to support the California Parties' conclusion that the November 20, 2008 Order modified the allocation methodology established in the October 19, 2007 Order, or otherwise required the ISO to allocate the BPA shortfall to parties on an hourly basis.

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[40] California Parties' Comments at 25.

E. Issue Eleven – The Commission Has Already Denied the California Parties' Request to Calculate Interest Shortfalls Based on Combined ISO and PX Markets.

The ISO's compliance filing does not include a calculation of the interest shortfall nor does it request approval for any related methodology. The ISO's filing does, however, explain the Commission's orders about how the interest shortfall is to be allocated, including the directives that interest be calculated separately for the PX and ISO markets, and that the allocation of the interest shortfall should be based on the net interest of each participant within each market as opposed to the participant's net interest between the two markets.[41] Most notably, the Commission recently denied the California Parties' request to clarify this very issue.[42]

Because the Commission has already decided this issue, by raising it again now in the context of the ISO and PX compliance filings, the California Parties appear to be seeking reconsideration of the Commission's prior orders. Such a request would be procedurally improper. The California Parties tacitly acknowledge this, noting that the issue is pending on appeal.[43]

F. Issue Twelve – Summer Period Amounts Should Not Be Added to the Interest Shortfall Calculation for This Proceeding.

As the ISO explained in its compliance filing, the Commission has ruled that the interest shortfall methodology approved by the Commission for this proceeding does not apply to the summer 2000 refund claims.[44] The ISO continues to agree with the

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41 California ISO Compliance Filing Section VI.G, at 39-42; *accord id*. at 55-56.

42 *San Diego Gas & Electric Co., et al.,* 153 FERC ¶ 61,144 (2015) at P 145.

43 California Parties' Comments at 27, n.104.

44 *Id*. at 41-42.

Commission's conclusion, for the reasons set forth in its compliance filing.[45] In their comments, the California Parties once again request that the Commission include summer 2000 amounts in the calculation of the refund period interest shortfalls. The only reason that the California Parties provide in support of this renewed request is that funds held by the PX "safeguard" both summer 2000 and refund period claims. While this may be, it does not change the fact, as explained in the ISO's compliance filing, that the interest shortfalls are solely a product of the refund period rerun process, and there should be no shortfall relating to the summer 2000 amounts. The California Parties do not address this distinction. In light of this distinction between the summer 2000 period and the refund period, there is no reason to hold up the resolution of the refund period rerun process in order to await final resolution of the summer refund claims.

G. Issue Thirteen – While It Is Not Necessary for the Commission to Resolve the Disposition of the ISO Accounts at This Point, the California Parties' Comments Provide No Reason to Doubt the ISO's Proposed Disposition

The ISO's compliance filing identifies certain ISO-specific accounts that are affected by or interrelated with refund period adjustments. The disposition of the funds in these accounts needs to be resolved together with the PX cash clearing.[46] The ISO's compliance filing explains the sources of the funds in these accounts, their relationship to the refund period adjustments, and how the ISO proposes to dispose of the funds. The ISO believes that the funds in some of the accounts should go to ISO creditors generally.[47]

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45 ISO Compliance Filing at 41-42.

46 California Parties' Comments at 44.

47 *See* ISO Compliance Filing Sections VIII.A and .B, at 44-48; contrast the funds mentioned at page 38 n.64 of the ISO Compliance Filing, which the ISO agrees should be used to offset any interest shortfalls.

These funds would be distributed with and accounted for in the clearing of the PX. The ISO believes that the funds in other accounts are due to the market participants that funded those accounts.[48] As the ISO's compliance filing explains, these accounts are both due funds from the PX, and thus the balances in these accounts cannot be distributed until after the clearing of the PX.

The California Parties disagree with the ISO's proposed disposition, suggesting generally that all of the funds should go to a particular subset of market creditors – i.e., those that would otherwise be allocated an interest shortfall.

As a threshold matter, this issue does not need to be resolved now. It is not necessary to decide which groups of market participants will receive the funds in these accounts during the cash clearing phase or later in order for the Commission to rule on the refunds and the financial adjustments presented in the ISO's compliance filing.

If the Commission were, however, to rule now on the disposition of these funds, the ISO offers the following observations. First, the accounts described in Section VIII.A and VIII.B of the ISO's compliance filing are truly "extra funds" that are not owed to any particular market participant or group of participants, as the ISO's compliance filing explains. These accounts are not the cause of any shortfall and their existence did not otherwise contribute to any shortfall. Accordingly, is not apparent why these funds should belong to any particular subset of creditors – namely, creditors that are allocated part of an interest shortfall – as the California Parties urge. The ISO stands by its recommendation that these funds should be applied toward all market creditor balances

[48] *See* ISO Compliance Filing Sections VIII.C and .D, at 48-52.

from the Refund Period. Although this will include market participants who will be allocated a portion of the interest shortfalls, it would not be so limited.

Second, the Summer Reliability Agreement Trust Fund and the Emissions and Startup Funds described in Section VIII.C and VIII.D were funded initially by assessments on particular groups of market participants. Any funds remaining in those accounts should be returned to the same groups of market participants that were assessed to establish these accounts, as the ISO proposes. Contrary to the California Parties suggestion in footnote 120, the ISO is not suggesting that interest is owed by "SRA customers." It is not clear what entities this description refers to.

III. CONCLUSION

The ISO respectfully requests that the Commission accept the enclosed reply comments and consider them as part of the record in ruling on the ISO and PX refund rerun compliance filings.

Respectfully submitted,

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Dated: October 24, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon the email listserv established by the Commission for this proceeding.

Dated this 24th day of October, 2016 in Washington, DC.

/s/ Michael Kunselman

Michael Kunselman

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