THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company, Complainant,	)	
v.	)	**Docket No. EL00-95-045**
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. EL00-98-042**

SUMMARY OF THE PREPARED SURREBUTTAL TESTIMONY OF SPENCE GERBER, MICHAEL MCQUAY, AND MICHAEL EPSTEIN ON BEHALF OF THE THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

In their Surrebuttal Testimony, Spence Gerber, Michael McQuay, and Michael Epstein respond to statements and arguments made by witnesses who have filed rebuttal testimony concerning issues set for hearing in Phase 2 of this proceeding.

In Section A of the testimony, Mr. Gerber addresses arguments made by several witnesses relating to a cut-off date they assert should be established for adjustments to the ISO's "pre-mitigation" data. Mr. Gerber explains that the ISO Tariff provides for prior period adjustments to transactions without any cut-off date, provided that certain criteria are met, and that establishing a cut-off date might result in artificially truncating numerous alternative dispute resolution procedures and good faith negotiations

between the ISO and market participants that would result in adjustments to transactions that occurred during the refund period. Exh. ISO-45 at 4:14-21. However, Mr. Gerber explains, the ISO could agree to a cut-off date if an appropriate stipulation between *all* parties in the refund proceeding and all Scheduling Coordinators could be arranged. *Id.* at 4:21-5:3.

In Section B, Mr. Gerber rebuts the contention of Mr. Bradshaw, for PPL Montana and PPL Energy Plus ("PPL"), that energy imports should be mitigated on an hourly rather than interval basis. Mr. Gerber explains that the ISO Tariff expressly provides for paying suppliers based on ten-minute pricing, and that there is no inequity in pricing the transactions at issue on an interval rather than an hourly basis. Exh. ISO-45 at 5:5-16.

In Section C, Mr. Gerber rebuts arguments made by several parties that transactions that they characterize as "bilateral" should be exempt from regulation. In response to these parties, Mr. Gerber explains that the fact that certain transactions were, or were not, paid pursuant to Section 11.2.4.2 of the ISO Tariff does not establish whether those transactions should be classified as "Out-of-Market" ("OOM") transactions, that the Commission has directed that OOM transactions are to be mitigated, and that the fact that suppliers chose to "obtained incremental supplies" or "forego opportunities" to sell to the ISO does not mean that those suppliers were acting solely as financial intermediaries between the ISO and another supplier. Exh. ISO-45 at 6:7-23, 7:7-18, 8:9-18.

In Section D, Mr. Gerber addresses arguments made by Dr. Berry for the California Parties concerning energy exchanges. Mr. Gerber states that the ISO has

not yet fully accounted for energy exchanges in its production settlement system in a manner consistent with the allocation methodology that it has proposed for these transactions, and would endeavor to correct this prior to any subsequent re-run of its settlement system as directed by the Commission. Exh. ISO-45 at 9:10-20.

In Section E, Mr. Gerber responds to the Presiding Judge's request for further information on the issue of the ISO's Neutrality Adjustment charge, and the separate proceeding before the Commission concerning this charge. Mr. Gerber explains that the appropriate treatment of neutrality charges, including the treatment of an alleged "cap" on Neutrality Adjustment charges, is at issue in the separate proceeding in Docket Nos. EL00-111 and EL01-84, and that the latest development in the neutrality proceeding is that a number of parties that included the ISO jointly filed an "Offer of Settlement and Settlement Agreement" ("Settlement Agreement") to resolve all issues in that proceeding. Exh. ISO-45 at 10:8-14. Mr. Gerber goes on to provide a description of the issues and history concerning the neutrality proceeding, as well as the nature of the negotiated settlement embodied in the Settlement Agreement. *Id.* at 10:16-16:20. Mr. Gerber explains that the issues raised in the neutrality proceeding should be resolved in that proceeding, and should not be needlessly be imported into the refund proceeding. Moreover, Mr. Gerber explains, importing consideration of a maximum level on the Neutrality Adjustment charge into the refund proceeding could result in two Commission proceedings with different resolutions of a single issue. *Id*. at 17:4-18:9. Mr. Gerber further explains that, if the Settlement Agreement in the neutrality proceeding is approved, there would be no bar to changes to the Neutrality Adjustment charge resulting from application of the MMCP to other charge types in the refund

proceeding. *Id.* at 18:11-19. On the other hand, Mr. Gerber explains, if the Settlement Agreement is abandoned because, for example, the issue of the alleged "cap" is imported into the refund proceeding and the Commission orders the ISO to apply the "cap" to the refund period, the ISO will be required to charge Market Participants accordingly to obtain funds needed to pay other Market Participants for charges above the "cap". If this were to happen, Mr. Gerber states, a majority of the parties in the refund proceeding could incur charges as a result. *Id.* at 18:21-19:13. Mr. Gerber goes on to explain that the Neutrality Adjustment charge serves to ensure the revenue neutrality of the ISO, and is not a charge to which any Market Clearing Price, mitigated or not, is applied. *Id.* at 19:16-20:2.

In Section F, Mr. Gerber addresses the mitigation of RMR transactions. Mr. Gerber begins by offering background information on how RMR transactions are paid and settled, in order to facilitate providing a response to the assertion of Dr. Berry that any RMR transactions for which NCPA relied on the market for payment should be mitigated. Exh. ISO-45 at 20:16-21:20. Mr. Gerber states that, in the ISO's settlement re-run process, the ISO did not distinguish between RMR and non-RMR transactions for purposes of applying the mitigated price to Charge Type 401. *Id*. at 22:1-5. Mr. Gerber explains that he is not taking a position on whether RMR transactions should be mitigated. Instead Mr. Gerber states that he can best assist the Presiding Judge and Commission in their deliberations on this matter by providing information about the unique concerns that mitigating these transactions raise. *Id.* at 22:9-23:2. Mr. Gerber goes on to explain that if an RMR Owner chose to receive payment through the market, it did so based on a comparison of RMR contract rates and the prevailing prices, and

that, with respect to contract path RMR transactions, if the Charge Type 401 payments associated with these transactions are mitigated in the ISO's settlements system, the results of the mitigation would also need to be passed through the RMR invoicing process in order to avoid RMR Owners being deprived of a portion of their contract payment. *Id.* at 23:5-24:10. Mr. Gerber then explains that, with respect to the ongoing dispute between the ISO and NCPA concerning certain transactions of NCPA that were originally settled and paid as RMR transactions but were later re-classified as OOM transactions, he believes the Presiding Judge and Commission should not attempt to resolve the dispute in the current proceeding, but should simply recognize that any transactions that were to be re-classified by the ISO back to RMR from OOM would need to be treated in a manner consistent with the Commission's decision on how mitigation should apply to RMR transactions. *Id.* at 24:13-26:5. Mr. Gerber also notes that the ISO has verified that the sales described above were RMR sales and that it is the ISO's responsibility to initiate alternative dispute resolution procedures to resolve the dispute between the ISO and NCPA. *Id.* at 26:9-27:7.

In Section G, Mr. Gerber addresses the issue of sleeve transactions. Mr. Gerber explains that transactions discussed by Mr. Elliot for Williams should not be considered sleeve transactions for purposes of exempting them from mitigation. Exh. ISO-45 at 28:17-29:13. Next, Mr. McQuay describes additional information he has uncovered since the filing of his Rebuttal Testimony relating to transactions that LADWP claims are sleeve transactions, and explains that the information supports the conclusions concerning those transactions that he and Mr. Gerber reached in the rebuttal testimony they provided in the present proceeding. *Id.* at 29:17-30:20.

In Section H, Mr. Epstein responds to claims raised by Ms. Sztabnik as to amounts owed by the ISO to Nevada Power and Sierra Pacific. Mr. Epstein states that he takes no issue with the amount asserted to be owed to Nevada Power, other than to note that the amount was updated in a subsequent ISO exhibit. Exh. ISO-45 at 31:5-8. However, Mr. Epstein states that, because the amount asserted to be owed to Sierra Pacific is different than the amount calculated by the ISO but no explanation is provided for the difference, he can offer no specific criticism of that amount and simply refers to the discussion in his rebuttal testimony concerning the process by which the ISO arrived at amounts owed and owing for market participants. *Id.* at 31:8-15.

In Section I, Mr. Epstein responds to the proposal of Mr. Tranen for the California Generators that the ISO and PX markets should be combined for the purposes of assessing interest. Mr. Epstein states that Mr. Tranen's proposal may not be workable because the ISO and PX are two separate legal entities, the PX has filed for bankruptcy, and specific legal claims of the ISO and its participants in the PX bankruptcy could be compromised if the markets are commingled as Mr. Tranen proposes. Exh. ISO-45 at 32:6-12. Mr. Epstein then comments on the methodologies for the calculation of interest espoused by Ms. Miller for the PX, and by Mr. Tranen. Mr. Epstein explains that neither methodology sufficient addresses the issues that may arise due to the bankruptcies of the PX and of PG&E. Mr. Epstein states that it is his understanding, based on discussions with bankruptcy counsel, that a claim for interest cannot be made after the bankruptcy filing date, and that therefore claims for interest cannot be made after the bankruptcy filing dates of the PX and of PG&E. Mr. Epstein states that the ISO assessed default interest to the PX in accordance with the method

he understands to be prescribed by bankruptcy law, but that Mr. Tranen's and Ms. Miller's testimony provide for the calculation of interest on bankruptcy amounts that may not be able to be billed. *Id.* at 32:17-33:19. Finally, Mr. Epstein emphasizes that any methodology for the calculation of interest that is adopted must be cash neutral for any month. *Id.* at 33:22-34:2.