

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

California Independent System) Docket No. ER02-651-002
Operator Corporation)

**REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING
AND MOTION FOR EXPEDITED CONSIDERATION OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

I. INTRODUCTION

Pursuant to Section 313(a) of the Federal Power Act, 16 U.S.C. § 251 (a) (2001), and Rules 212 and 713 of the Commission’s Rules of Practice and Procedure 18 C.F.R. §§ 385.212 and 385.713, the California Independent System Operator Corporation (“ISO”) hereby submits this Request for Clarification, or in the alternative, Rehearing of the April 1, 2004 Order issued in the above captioned docket.¹ Specifically, the ISO requests that the Commission clarify that the ISO will not be required to re-allocate and disburse interest amounts that have been collected (and in some cases already disbursed) for the period covered by the Commission’s orders in the California refund proceeding, *i.e.* October 2, 2000 through June 20, 2001 (the “Refund Period”).² As explained below, such a re-allocation would be both unnecessary and hinder the ISO in its efforts to expeditiously complete the rerun process ordered by the Commission in that proceeding.

¹ California Independent System Operator Corporation, 107 FERC ¶ 61,001 (2004) (“April 1 Order”).

² San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, *et al.*, Docket Nos. EL00-95-045, *et al.*

In addition, because of the impact of this order on ISO resources that would otherwise be used in completing the rerun process mandated by the Commission in the California refund proceeding,³ the ISO is requesting expedited consideration of the issues raised herein.⁴ Expeditious consideration of these issues will aid all Market Participants and allow the ISO to deploy its resources in the most efficient manner, thus allowing the ISO to complete the rerun process in a timely manner. In support thereof, the ISO states as follows:

II. BACKGROUND

On December 28, 2001 the ISO filed Amendment No. 41 to its Tariff. Amendment No. 41 proposed to, *inter alia*, revise Section 6.5.2 of the ISO Tariff to provide that interest on defaulted or past due payments would be applied first to any unpaid creditor balances and then to offset the Grid Management Charge. The Commission in an order dated February 26, 2002, rejected, without prejudice, the ISO's proposal for the allocation of the default interest for lack of supporting information.⁵ In its order on rehearing of the February 26 Order,⁶ however, the Commission specifically directed the ISO to amend its Tariff to provide that default interest payments are to be distributed to third-party suppliers on a pro rata basis in relation to amounts past due, in a manner consistent with

³ San Diego Gas & Electric Co., *et al.*, Docket Nos. EL00-95-000 *et al.*

⁴ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

⁵ California Independent System Operator Corp., 98 FERC ¶ 61,187 (2002) ("February 26 Order").

⁶ California Independent System Operator Corp., 99 FERC ¶ 61,253 (2002) ("June 3 Order").

Section 6.10 of the ISO's Scheduling and Billing Protocol, and to file these revisions within 30 days of the date of this order. The Commission also ordered the ISO to include in its compliance filing a crediting mechanism in order to adjust the payments of interest already made by the ISO pursuant to the methodology set forth in Amendment No. 41.

On July 3, 2002, the ISO submitted its compliance filing in accordance with the June 3 Order ("July 3 Compliance Filing"). In that filing, the ISO proposed separate processes to address the collection and disbursement of default interest for three time periods. During the first period, that of November 1, 2001 through February 7, 2002, the ISO distributed default interest to Market Participants as payment on unpaid Market Invoices. Pursuant to the June 3 Order, the ISO explained that it would make adjustments for this period and re-distribute this interest as default interest payments to those Market Participants with unpaid Market Invoices for Trade Month January 2001 through Trade Month August 2001, consistent with the process articulated therein. Since February 8, 2002, the ISO placed collected default interest amounts into its Market Reserve Fund. In the July 3 Compliance Filing, the ISO explained that it would disburse this interest to Market Participants as default interest using the methodology specified by the Commission in the June 3 Order. Finally, with respect to the prospective period, the ISO indicated that it would distribute interest to Market Participants in accordance with the methodology specified in the June 3 Order. The ISO also proposed to create for the prospective period new charge types for the distribution of default interest that is paid to Market Participants as well as

charge types for late payment interest that is charged to Market Participants. Default interest that is paid to Market Participants was to be reflected in a new interest invoice for each trade month. Default interest charged to Market Participants was to be detailed on the first Preliminary Settlement Statement of the trade month. The ISO also set certain feasibility constraints in the proposal to ensure that distributions of default interest were made only when it was economically feasible to do so.⁷

On April 1, 2004, the Commission issued its order on rehearing addressing the ISO's July 3 Compliance Filing. In the April 1 Order, the Commission accepted the proposed tariff terms for the distribution of default interest. However, the Commission went on to "grant waiver" of the ISO Tariff for the purpose of distributing default interest for the month of January 2001 in order that the ISO re-allocate interest received from the California Energy Resource Scheduler ("CERS") for the month of January 2001 and disburse those amounts to the parties that supplied Energy and Ancillary Services to CERS from January 17-31, 2001. The Commission also accepted the ISO's proposed crediting mechanism for re-allocating the default interest amounts that it had already disbursed to Market Participants.

⁷ Interest was to have been distributed to SCs under the ISO proposal when the earliest of the following events occurred: (1) The Trade Month Interest Account contains more than \$5,000.00;(2) all over due and unpaid accounts for the Trade Month have been paid in full; or (3) no distributions from the relevant account have been made in 6 months. To the extent that any adjustment for late payment interest distributed previously was necessary, it was to be made in accordance with section 11.20.2 of the ISO Tariff.

III. SUMMARY OF CLARIFICATION/REHEARING

The ISO respectfully requests that the Commission clarify the April 1 Order, or in the alternative, grant rehearing, in the following respects:

- The ISO is not required to re-allocate and disburse interest collected (and in most cases, already disbursed) for the period October 2, 2000 through June 20, 2001, including the interest received from CERS allocated for January 2001.
- The ISO is permitted to disburse the interest amounts that it currently holds in its Market Reserve account relating to the Refund Period *pro rata* to ISO Creditors to satisfy unpaid payment obligations, beginning with the oldest Trade Month as to which there still exists outstanding amounts due.⁸

IV. REQUEST FOR CLARIFICATION, OR IN THE ALTERNATIVE, REHEARING

In the April 1 Order, the Commission accepted the ISO's proposed tariff modifications in Amendment No. 41 relating to the distribution of interest prospectively, but granted waiver of those provisions in order that the ISO apply and disburse interest received from CERS to those parties that supplied energy or ancillary services to CERS from January 17-31, 2001. The Commission also approved the crediting mechanism proposed by the ISO in the July 3 Compliance Filing, pursuant to the Commission's direction in the June 3 Order that the ISO must re-allocate those interest amounts already disbursed by the ISO to Market

⁸ Currently, the oldest outstanding Trade Month is November, 2000.

Participants as payment on unpaid Market Invoices during the period covering Trade Months November 2000 through August 2001.

The ISO's concern, and the reason prompting this request for clarification, or in the alternative, rehearing, is that most of the interest that the Commission has required the ISO to re-allocate in the Amendment No. 41 proceeding relates to the Refund Period, as to which the Commission has, subsequent to the issuance of the June 3 Order, approved a different methodology for the calculation of interest. Specifically, all of the approximately \$44 million in interest that the ISO already disbursed to Market Participants during the period November 1, 2001 through February 7, 2002 is related to the Refund Period. Additionally, the ISO currently has in its Market Reserve account approximately \$6.5 million in interest, \$5.2 million of which relates to the Refund Period.

In its July 25, 2001 order initiating the refund proceeding, the Commission required the ISO, as part of the process of rerunning its settlement and billing system, to calculate interest both on refunds and amounts past due for the Refund Period at the rate set forth in Section 35.19a of the Commission's regulations. 18 C.F.R § 35.19 (2004). The Commission upheld its ruling with respect to interest in its March 26, 2003 order addressing the Presiding Administrative Law Judge's Proposed Findings of Fact. 102 FERC ¶ 61,317 (2003) at P 140 ("March 26 Order").

The ISO filed with the Commission, on April 25, 2003, a Request for Rehearing and/or Clarification of the March 26 Order. Therein, the ISO proposed a specific and detailed methodology for calculating interest on refunds and

unpaid amounts for the Refund Period, and asked that the Commission clarify that that methodology was consistent with the Commission's orders in the refund proceeding. As part of that methodology, the ISO stated that it would need to reverse all of the original interest calculations that it made relating to transactions during the Refund Period. The ISO explained that this was necessary because, pursuant to Section 11.12 of the ISO Tariff, the ISO charges interest to debtors on unpaid amounts receivable at a rate of prime plus 2%, but does not pay interest on amounts payable. Therefore, in order to assess interest at the rate set forth in Section 35.19a, *all* of the original interest charged on amounts receivable for the Refund Period must be backed out during the calculation of interest for the Refund Period. In its October 16, 2003 Order on Rehearing in the refund proceeding, the Commission accepted the ISO's methodology, with one exception relating to the allocation of interest mis-matches between buyers and sellers. 105 FERC ¶ 61,066 (2003) at PP 104-106 ("October 16 Order").

As the Commission is well aware, the ISO is currently in the process of completing the "preparatory rerun," which will serve as the baseline for the "refund rerun," in which the ISO will apply the mitigated price to all transactions during the Refund Period and determine "who owes what to whom" for that period. Because, as part of the refund rerun process, the ISO will be reversing and recalculating all of the interest amounts for the Refund Period pursuant to the methodology adopted by the Commission in its refund proceeding orders, there is no need to require the ISO to now re-calculate and re-allocate interest amounts for the Refund Period pursuant to the methodology adopted in the April

1 Order, including redistributing interest received from CERS for the month of January 2001 “to those parties that supplied energy or ancillary services to DWR or CERS from January 17-31, 2001.” Therefore, the ISO respectfully requests that the Commission clarify that the ISO will not be required to re-allocate and disburse interest relating to the Refund Period pursuant to April 1 Order, because the interest calculations for all transactions during this period are being handled in the refund rerun process.

The ISO also requests that the Commission clarify that the ISO is permitted to pay out the \$5.2 million in interest that it currently holds in its Market Reserve account relating to the Refund Period *pro rata* to ISO Creditors in order to satisfy past due payment obligations, beginning with the oldest outstanding Trade Month. Allocating these funds to satisfy overdue payment obligations will not adversely affect those suppliers who were paid late during the Refund Period, because, pursuant to the Commission’s orders in the refund proceeding, all such suppliers are still entitled to full interest at the Commission rate on all past due amounts, and the ISO will calculate and invoice such interest in the refund rerun process.

The ISO’s most recent estimate is that it will complete the refund rerun, including the recalculation of interest, by the end of November of 2004. Therefore, even if the ISO was to presently re-allocate and disburse interest relating to the Refund Period, the ISO would just end up reversing that interest disbursement, and re-allocating those amounts a second time, a few months later. The ISO is already devoting significant time and resources, both in terms

of personnel and money, to completing the preparatory and refund reruns in order to bring the refund proceeding to a close as quickly as possible. Requiring the ISO to divert its attention from this process in order to calculate, re-allocate, and disburse interest for the Refund Period will draw resources away from the rerun process, which the ISO believes is of paramount importance, especially given the fact that all interest amounts for the Refund Period are due to be recalculated.

Moreover, the process of re-allocating and re-billing interest amounts relating to the Refund Period would likely lead to additional settlement and financial disputes. The ISO would be required to process these disputes at the same time that it processed disputes associated with the preparatory and refund reruns, which would, in turn, lead to an additional loss of efficiency in completing the rerun process. Also, the process of re-allocating and disbursing interest amounts for the Refund Period pursuant to the April 1 Order, and then reversing all of these adjustments in the refund rerun process, would likely sow considerable confusion among many Market Participants.

For these reasons, the ISO respectfully requests that the Commission grant clarification of the April 1 Order, and find that the ISO will not be required to re-allocate and disburse interest relating to the Refund Period, including re-allocating interest received from CERS relating to January 2001 to those parties who supplied energy during the period January 17-31, 2001, and that the ISO is permitted to pay out the interest amounts that it currently holds in its Market Reserve account relating to the Refund Period *pro rata* to ISO Creditors

beginning with the oldest outstanding Trade Month. If the Commission declines to grant the requested clarification, then the ISO respectfully requests rehearing of the April 1 Order on these issues.

V. CONCLUSION

Wherefore, for the reasons discussed above, the ISO respectfully requests that the Commission clarify, or in the alternative, revise, on an expedited basis, the April 1 Order as requested above.

Respectfully submitted,

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Dated: May 3, 2004

CERTIFICATE OF SERVICE

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

Dated at Folsom, CA, this 3rd day of May, 2004.

/s/ Gene Waas

Gene Waas