

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	Docket Nos. EL00-95-000, et al.
)	
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)	Docket Nos. EL00-98-000, et al.
Independent System Operator and the)	
California Power Exchange)	

**RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO NV
ENERGY MOTION TO REQUESTING FINAL ACCOUNTING AND DISBURSEMENT
OF RECEIVABLES BY CAISO AND PX**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2007), the California Independent System Operator Corporation (“ISO”) hereby submits the following answer to NV Energy’s “Motion Requesting Final Accounting for the Disbursement of Receivables Held in Escrow by CAISO and the CALPX,” filed with the Commission on August 10, 2009. The ISO provides this answer in order to identify and correct certain inaccuracies in NV Energy’s motion, so that the Commission can fully appreciate the ramifications of NV Energy’s request.

I. ANSWER

In its motion, NV Energy characterizes these proceedings as consisting of two phases: (1) a “206 phase,” consisting of the reruns of the ISO and California Power Exchange (“PX”) markets in order to apply the Commission-mandated mitigated market clearing prices (“MMCPs”) to transactions that took place in those markets during the period October 2, 2000 through June 20, 2001 (the “Refund Period”); and (2) a “309 phase” which involves the proceeding on remand of the Ninth Circuit’s decision in *CPUC v. FERC*¹ that the Commission must consider evidence regarding tariff violations that occurred prior to the refund period pursuant to Section 309 of the Federal Power Act. NV Energy argues that the two phases involve the application of different statutes, proof requirements, and potential remedies, and are therefore legally unrelated. With respect to the “206 phase” of this proceeding (known as the “California Refund Proceeding” or “Refund Proceeding”), NV Energy contends that no issues remain as to its refund obligation and therefore, the Commission should direct the release of “that portion of NV Energy’s money in excess of its reasonably ascertainable Section 206 Refund obligation, which (with accrued interest) now amounts to \$7,369,613.87.”²

NV Energy’s argument rests, however, on two premises that are not entirely accurate. The first is that “each market participant’s net position in the CAISO/CalPX markets has been calculated for each hour during the Refund Period, enabling final billing and settlement.”³ This is not the case. While substantial progress has been made towards reaching this goal, a number of issues and calculations remain outstanding before the final net positions of parties that participated in the ISO and PX

¹ 462 F.3d 1027 (9th Cir. 2006).

² NV Energy at 3-4.

markets during the Refund Period will be known. For instance, as NV Energy recognizes, the Commission has yet to address on remand the Ninth Circuit's decision requiring that multi-day and energy exchange transactions be mitigated. The ISO and PX are also in the process of performing calculations in order to implement the Commission's orders on such issues as removing refunds associated with transactions made by governmental entities and changes to allowable offsets for cost-based filings. Moreover, the ISO will also need to account for the impact of the various global settlements entered into in this proceeding. When these calculations are completed, the ISO and PX will, per the process established by the Commission,⁴ file compliance filings that contain what they have determined to be the final positions of the parties that transacted in their markets during the Refund Period. The approximately \$7.3 million figure cited by NV Energy is based on data provided by the ISO and PX earlier this year (January for the PX and June for the ISO), and as such, only reflects the calculations performed as of those dates. It does not, however, reflect the calculations discussed above that are yet to be completed, nor does it reflect the resolution of issues still before the Commission, including those on remand. As such, it does not represent the "final position" of NV Energy in the Refund Proceeding.

This discussion highlights the second deficiency in NV Energy's argument. As noted above, NV Energy acknowledges that the Commission still has to address the Ninth Circuit's decision that multi-day and energy exchange transactions should be subject to refund liability. However, NV Energy states that this will not affect its position in the context of the Refund Proceeding because it did not engage in any such

³ *Id.* at 3.

⁴ See *San Diego Gas & Electric Co., et al.*, 102 FERC ¶ 61,317 (2003) at PP 135, 144.

transactions in the ISO and PX markets during the Refund Period. As the ISO has made clear from the outset of this proceeding, however, the ISO markets are “pool” markets, and as such, the position of a single market participant cannot be financially insulated from the remainder of the market.⁵ A change in inputs to the price of certain transactions has the potential to affect all entities that participated in the ISO’s markets during that time period, even those that did not engage in the specific transactions. Therefore, there is no guarantee that NV Energy’s balance in the ISO markets for the Refund Period will be unaffected by calculations still pending in this proceeding.

Because the final positions of ISO and PX market participants in the Refund Proceeding are not yet set, if the Commission were to grant NV Energy’s motion, it would, in effect, be giving NV Energy a payment priority ahead of other market participants. The ISO is concerned that even if NV Energy’s balance was to remain relatively unchanged (or the final amount owed to NV Energy was to increase) after completing the calculations discussed above, there is the possibility of a cash shortfall in the clearing of the ISO markets for the Refund Period that would need to be made up by market participants on a *pro rata* basis. For example, as the Commission has already recognized, the difference between the amount of interest earned by the PX on the funds in its Settlement Trust Account and the amount owed to its participants at the Commission’s rate will likely result in the PX being unable to pay all of the interest that it owes in the ISO markets, resulting in a shortfall in the ISO markets.⁶ The Commission approved the ISO’s proposal to allocate any such shortfall by reducing the interest owed

⁵ See Direct Testimony of Spence Gerber, Exh. ISO-24 (submitted in Docket Nos. EL00-95, *et al.*).
⁶ See *San Diego Gas & Electric Co., et al.*, 109 FERC ¶ 61,218 at PP 37-39 (2004).

to all market participants on a *pro rata* basis.⁷ However, the extent of this shortfall will not be known until all PX-related calculations are completed. Therefore, if NV Energy is “cashed out” now based on its existing balance, NV Energy would either need to be directed to “pay back” its *pro rata* share of any shortfalls that do occur, or, alternatively, other market participants would need to bear a greater portion of the financial responsibility for such shortfalls. Thus, if the Commission grants NV Energy’s motion, or any similar motions, the ISO requests that the Commission, at a minimum, provide explicit guidance as to how any shortfalls are to be treated, and state that the ISO and PX will not be liable for making up any amounts that would have otherwise been allocated to entities that are paid prior to the determination of final participant balances for the Refund Period.⁸

⁷ *Id.*

⁸ Such a result would be consistent with the Commission’s orders approving the settlements reached in this proceeding between the California Parties and various other parties, in which the

II. CONCLUSION

The ISO requests that the Commission accept the foregoing answer.

Respectfully submitted,

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Commission has stated that the ISO and PX will be “held harmless” with respect to the implementation of those settlements.

