

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

Independent Energy)	
Producers Association)	
)	
v.)	Docket No. EL05-146-____
)	
California Independent)	
System Operator Corporation)	

**INFORMATIONAL REFUND REPORT OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”)¹ submits this report on refunds to be made by the ISO consistent with the “Order on Remand” issued in this proceeding on August 18, 2009.² Although the Commission did not direct the ISO to submit a refund report, the ISO is filing this report to make its calculations and related reasoning transparent to interested parties. No Commission action is required in response to this filing in the absence of a protest or request for clarification.

I. Background

The lengthy history of this proceeding is described in the Order on Remand and need not be repeated here. For purposes of this refund report, the

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the ISO tariff.

² *Indep. Energy Producers Ass’n v. Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,165 (2009) (“Order on Remand”).

first relevant event was a decision in 2009 by the United States Court of Appeals for the District of Columbia Circuit, which had the effect of requiring refunds of the Reliability Capacity Service Tariff (“RCST”) rates from June 1, 2006 through a date to be determined by the Commission on remand. Specifically, the Court vacated the Commission’s orders in this proceeding to the extent they made the refunds retroactively applicable to June 1, 2006, and remanded the case for further consideration as to when the RCST rates became “legally fixed,” and thus became effective consistent with the Federal Power Act.³

In the Order on Remand, the Commission found that the RCST rates became legally fixed as of February 13, 2007. The Commission directed sellers of “eligible capacity” (as defined under the terms of the settlement filed earlier in the proceeding) to refund all RCST revenues collected from June 1, 2006 to February 13, 2007, and to file refund reports on compliance.⁴ The affected sellers of eligible capacity were directed to pay the refunds to the ISO with interest calculated at the Commission interest rate as set forth in 18 C.F.R. § 35.19a. The Order on Remand did not include any directives to the ISO regarding the provision of refunds or interest.

³ *City of Anaheim, Cal., et al. v. Federal Energy Regulatory Commission*, 558 F.3d 521, 525-26 (D.C. Cir. 2009).

⁴ Order on Remand at P 31 and ordering paragraph.

Certain sellers filed refund reports, which the Commission accepted.⁵ As explained in those reports, the sellers provided the refunds and interest to the ISO.⁶ The ISO promptly deposited all of the refund and interest amounts it received from the sellers of eligible capacity into an interest-bearing investment account, separate from the other accounts maintained by the ISO.

The ISO is now prepared to process all settlement adjustments that affect trading days before its new market began operation on March 31, 2009, with the exception of adjustments that will be required as a result of the electricity crisis of 2000-01 (Docket EL00-95). In addition to the refunds directed in this docket, the ISO will also be processing refunds from Docket No. ER04-835 (see status report filed December 20, 2013), as well as adjustments stemming from disputes and other funds collected from that period. Although the ISO was not able to process these refunds during the time it was preparing to launch the new market, it has been working diligently since then to process all legacy reruns together. These various adjustments could not have been processed efficiently on an individual basis because they require the use of systems and software that the ISO no longer uses in daily production.

⁵ Specifically, a review of the docket for this proceeding shows the following sellers of eligible capacity filed refund reports: Calpine Corporation, Mirant Energy Trading, LLC, RRI Energy Services, Inc., and Williams Gas Marketing, Inc. The Commission accepted each refund report by letter order.

⁶ See, e.g., refund report of RRI Energy Services, Inc., Docket No. EL05-146-009 (Oct. 2, 2009); refund report of Calpine Corporation, Docket No. EL05-146-011 (Nov. 13, 2009).

As the ISO explained in a market notice issued on December 20, 2013, each scheduling coordinator that is affected by the legacy reruns will receive a disc on December 23 detailing the proposed adjustments. Comments will be due January 30, 2014. Unless substantial revisions are necessary, the adjustments will appear on settlement statements, and the credits or charges will be invoiced on February 4, 2014. Interest on the adjustments, as applicable, will be invoiced within 30 days after February 4.

II. Refund Report: Elements of the Refund Calculations

The ISO will refund to the market participants that paid the RCST charges the payments it received from the suppliers and also invoice true-up adjustments for suppliers that did not pay the full refunds they owe. The credits and charges will consist of four distinct elements:

- (A) Reversal of a billing dispute associated with RCST rates;
- (B) Refunds and interest that the ISO received from sellers that filed refund reports;
- (C) Amounts that the ISO calculates are due (both principal and interest) from “sellers of eligible capacity” that did not file refund reports; and
- (D) Additional interest that the ISO has earned on the amounts in category B from the time the refund and interest amounts were deposited in the ISO’s interest-bearing account until the date the ISO makes the refunds.

Each of these elements is explained in further detail below.

A. Reversal of Dispute

In addition to processing the RCST refunds, the ISO must also reverse adjustments from a dispute that is intertwined with the RCST refunds. The reversal of this dispute affects the calculation of interest on all the adjustments.

As detailed in the refund report filed by Mirant Energy Trading on October 2, 2009, the ISO's initial settlements for June, July and August of 2006 credited Mirant's Pittsburgh 7 unit with minimum load cost payments under the pre-RCST tariff. Mirant disputed these credits, arguing that the ISO should have credited RCST payments instead. The ISO granted the dispute, making two adjustments. First, it charged back to Mirant the minimum load cost payments it had received initially (and issued corresponding credits to the scheduling coordinators that had initially been charged). Second, the ISO credited Mirant with RCST payments (and issued corresponding charges to scheduling coordinators).

As a result of the Order on Remand, the RCST rate was not in place during the period affected by this dispute. Accordingly, the ISO concluded that it must reverse the adjustments associated with this dispute, because there was no basis to grant the dispute absent the RCST rate (as a substitute for the minimum load cost payments that Mirant received initially). As a result, in addition to processing the RCST refunds from Mirant, the ISO has also reinstated the minimum load cost payments Mirant received originally, along with the associated charges to other scheduling coordinators.

The ISO will not be assessing interest on these adjustments because they stem from a dispute. The ISO tariff in effect at the time did not provide for

interest on dispute adjustments. Moreover, the adjustments do not represent RCST refunds by sellers of eligible capacity – the only entities that the Commission directed to pay interest.

B. Refunds and Interest Received from Sellers That Filed Reports

Four sellers of eligible capacity filed refund reports detailing the calculations behind the payments (including interest) they made to the ISO. Because each of these reports was accepted by the Commission, the ISO will not invoice any further adjustments for RCST refunds to these sellers.

C. Amounts Due from Sellers that Did Not File Refund Reports

After calculating the amounts due as refunds, the ISO has identified four sellers that owe refunds of RCST payments but did not file refund reports. One of these four entities made a payment to the ISO in 2009. The other three did not make any payments.

Because these scheduling coordinators did not file refund reports, the ISO will invoice them for RCST refunds based on its calculation of the amounts due as refunds, including interest at the FERC rate through the date of invoicing. For the one entity that made a refund payment following the Order on Remand, the ISO will adjust its interest calculation to account for the payment.

D. Additional Interest the ISO Has Earned

Finally, the ISO will also allocate to refund recipients all interest earned in the ISO's interest-bearing investment account through the date of the invoicing.

While the Commission directed the suppliers to include interest calculated at the Commission interest rate, it did not provide a similar directive to the ISO.

The ISO tariff does not require the calculation or payment of interest under such circumstances. In addition, the regulation that provides for interest on certain refunds (18 C.F.R. § 35.19a) does not apply to complaint proceedings, such as this one, unless ordered explicitly by the Commission.

In light of significant precedent⁷ and the absence of a relevant tariff provision, the ISO has not calculated interest at the Commission rate for the period since it received the refund payments from sellers that filed refund reports. However, consistent with its nonprofit status and its neutrality with respect to market transactions, the ISO believes that it should include in the refunds the actual interest that accrued during the time the amounts were on deposit. The total interest earned on the refund deposits through November 30, 2013 is \$99,913.97.⁸

⁷ For example, in *Louisiana Public Service Commission v. Entergy Corp.*, 124 FERC ¶ 61,275 (2008), a complaint proceeding, the Commission ordered refunds but did not mention interest. The Commission rejected the complainant's motion to direct the payment of interest as an untimely request for rehearing. Similarly, in *New England Power Pool*, 95 FERC ¶ 61,449 (2001), the Commission ruled on a request for clarification regarding a rate for black start services that it had accepted without suspension and had made retroactive to the date when the services were being supplied – even though no rate was yet on file. One party requested clarification that interest should apply to the retroactive payment. The Commission noted that its original order was silent as to interest and no party had sought rehearing. It denied the request as an untimely request for rehearing.

⁸ If the interest were calculated according to 18 C.F.R. § 35.19a on the refunds due from the sellers that filed refund reports, for the period since the sellers paid the ISO (but offset by the amounts actually earned during that period), the ISO calculates that total interest through November 30 would increase by \$2,705,852.21. Because the ISO is revenue neutral, if it were to credit interest at the Commission rate, it would need to recover the additional amount through neutrality charges, which are allocated according to measured demand. See Tariff Section 11.14. The ISO does not believe it would be appropriate to burden the market with these costs absent a directive from the Commission. Any other manner of recovery would require a directive from the Commission.

III. Conclusion

The ISO is filing this report with the Commission to ensure that the Commission and affected parties are fully informed of the ISO's analysis and approach with respect to handling these refunds arising from a prior litigated matter and to provide the opportunity for affected market participants to bring any concerns regarding the calculation of interest to the Commission.

Respectfully submitted,

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