

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

<b>California Independent System Operator Corporation</b>	)	<b>Docket No. ER01-889-012</b>
	)	
<b>California Independent System Operator Corporation</b>	)	<b>Docket No. ER01-3013-004</b>
	)	
<b>San Diego Gas &amp; Electric Company,</b>	)	<b>Docket No. EL00-95-059</b>
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange,</b>	)	
	)	
<b>Respondents</b>	)	

**STATUS REPORT OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

To: The Honorable Carmen A. Cintron  
Chief Administrative Law Judge

Pursuant to the Order of Chief Judge Continuing to Hold Proceeding in Abeyance and Ordering Further Status Reports issued in the above-captioned dockets on June 10, 2016, the California Independent System Operator Corporation (“ISO”) respectfully provides the enclosed status report.

For the reasons set forth in Section II below, the ISO respectfully requests that the Chief Judge continue to hold this proceeding in abeyance until shortly after the holidays. Specifically, the ISO proposes that the Chief Judge issue an order indicating

that parties have until January 17, 2017 to identify any issues that might remain in this proceeding and what those issues are. At that point, if no issues are identified, the ISO and any interested parties would request that the Commission dismiss this proceeding. Alternatively, if parties believe that there are still viable issues in this proceeding, they can then formulate a proposal as to how to resolve those issues in the most efficient manner possible.

#### **I. BACKGROUND: ISSUES AND THE SUSPENSION OF PROCEEDINGS**

This case concerns the accounting for transactions during the California energy crisis of 2000 and 2001 – specifically, the net amount owed by the California Department of Water Resources (DWR) for transactions in the ISO market. The issue of DWR's balance is intertwined with and affected by the California refund proceeding (docket EL00-95), which will change the balances of all parties in the ISO market, including DWR. For that reason, this matter has been suspended, awaiting developments in EL00-95, as follows:

On November 7, 2001, the Commission issued an order in this docket that required the ISO to invoice DWR for all transactions that DWR entered into on behalf of the net short positions of PG&E and SCE (collectively, the "IOUs") during the period January 17, 2001 through July 31, 2001, within 15 days of the date of that order. The ISO submitted its compliance filing on November 21, 2001. On March 27, 2002, the Commission issued an order requiring that the ISO "re-invoice those gross amounts owed by DWR for all ISO transactions DWR entered into on behalf of the non-creditworthy [IOUs] . . . and provide a transparent means by which this Commission and other parties can determine whether the invoiced amounts were properly calculated." In

response, the ISO submitted its compliance filing along with the gross invoices of PG&E and SCE, the net invoices of CDWR, and a worksheet and summary of these invoices.

On November 25, 2002, the Commission issued an order in which it determined that the ISO's compliance filing was deficient in explaining whether or not it had properly calculated the amounts invoiced to DWR on behalf of the net short position of the IOUs. The Commission based this decision on a finding that the ISO had failed to provide "adequate supporting documentation that would allow for transparency" in determining whether the ISO had properly calculated the amounts invoiced to DWR. Therefore, finding that there were material issues of fact as to whether the CAISO had properly calculated amounts invoiced to DWR, the Commission set for hearing the following issues:

an accounting and explanation to determine how the CAISO calculated that DWR owed \$3.6 billion (as the creditworthy party for the IOUs) to the CAISO markets for the period January 17, 2001 through July 31, 2001; an accounting and explanation to determine how the CAISO calculated that DWR was owed \$2.7 billion during this time period; how much interest, if any, is included in these amounts due; a determination on whether DWR has fully paid all of the CAISO invoiced amounts; and any other issues that might affect the calculation of the amount that the CAISO should have invoiced DWR.

After several months of discussing a possible negotiated resolution to these proceedings, the ISO, on February 18, 2003, filed an unopposed motion to temporarily suspend the procedural schedule to allow the parties to focus on reaching a complete settlement and preparing an offer of settlement to file with the Commission. Chief Administrative Law Judge Wagner granted the ISO's request and, on February 25, 2003, suspended the procedural schedule until "otherwise ordered."

During the intervening years, the ISO, in response to orders from Chief Judge Wagner, filed several status reports indicating that although all parties believed that settlement was the preferred means of resolving the issues set for hearing by the Commission in this proceeding, negotiating such a settlement would be greatly facilitated by awaiting the conclusion of the compliance process in the California refund proceeding before attempting to conclude and file a settlement in this proceeding. This was based on a recognition by the parties that it would be extremely difficult to finalize a settlement addressing whether the ISO correctly calculated the amounts that were owed to and owed by DWR during the period January 17, 2001 through July 31, 2001 while re-calculations that would impact DWR's balances were still taking place as part of the broader California refund proceeding.<sup>1</sup> In those status reports, the ISO noted that DWR's balances would change in the refund proceeding as a result of the application of the market-wide price mitigation formula directed by the Commission, as well as the Commission's requirement that the ISO recalculate interest owed and owing to all market participants during this period. Based on these ongoing revisions, the ISO, on behalf of the active parties at the time, requested that the ER01-889 proceeding remain suspended until such time as the Commission issued an order approving the ISO's compliance filing in the California refund proceeding.<sup>2</sup> The Chief Judge granted this request in an order issued on May 21, 2004.

On February 12, 2008, Presiding Judge Nancy convened a prehearing conference to determine the status of the instant proceeding. At that conference, the ISO reported

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<sup>1</sup> The California refund proceeding involves the period from October 2, 2000 through June 20, 2001 (referred to herein as the "refund period").

<sup>2</sup> Joint Status Report, Docket Nos. ER01-889, *et al.* (May 14, 2004).

that calculations were still ongoing in the California refund proceeding, and that the remaining parties still felt that the compliance process in the California refund proceeding should be completed before concluding and filing a settlement in the instant proceeding. On December 12, 2008, the Chief Judge issued an order finding that it was in the public interest to continue the suspension of the procedural schedule in this case pending a final Commission determination in the California refund proceeding that “establishes the final balances of the entities that participated in the markets operated by the ISO during the refund period.”<sup>3</sup> The Chief Judge directed the ISO to file further status reports every 90 days, the most recent of which the ISO filed on May 16, 2016. After the filing of each of these reports prior to the May 16 report, the Chief Judge issued an order continuing the suspension of this proceeding and directing the ISO to file further status reports. In these status reports, the ISO explained that no events had occurred subsequent to the December 12 order that would make a case for resuming the procedural schedule in this proceeding.

After filing the May 16 report, Chief Judge Cintron convened a status conference on June 9, 2016, indicating that the decision to continue or terminate the suspension of the proceeding would be deferred pending the outcome of the status conference. On June 10, the Chief Judge issued an order continuing to hold the proceeding in abeyance for another six months, and directed the ISO to continue to file status reports every 90 days, with these reports “to provide greater detail and elaboration than the most recent

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<sup>3</sup> *Order of Chief Judge Continuing Suspension of Proceedings and Ordering Status Reports*, Docket Nos. ER01-889, *et al.* (2008) at P3.

filings.” Pursuant to this directive, the ISO filed its most recent status report on September 8, 2016.

## II. STATUS REPORT

The ISO continues to strongly believe that it would be wasteful and inefficient to both the remaining parties<sup>4</sup> and Commission to attempt to litigate the issues set for hearing in the instant proceeding. As discussed at the June 9 conference, the ISO filed with the Commission its refund proceeding compliance filing on May 4, 2016.<sup>5</sup> That filing sets forth the modifications to the balances of all entities that transacted in the ISO market, including DWR, that participated in the ISO’s markets during the refund period, as a result of the numerous Commission orders issued in that proceeding.<sup>6</sup> Specifically, the ISO’s compliance filing shows the results of:

(1) the application of the Commission-mandated mitigated market clearing prices in order to calculate refunds for transactions that took place in the ISO’s markets during the period from October 2, 2000 through June 20, 2001;

(2) the calculation of certain offsets to refunds, as directed by the Commission, and the application of the results of these calculations to arrive at net financial positions that reflect Commission-mandated adjustments for each entity that participated in the ISO’s markets during the refund period; and

(3) the calculation of interest on both refunds and past-due receivables in compliance with the Commission’s directives.

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<sup>4</sup> To the best of the ISO’s knowledge, due to settlements occurring in the California refund proceeding, the only remaining active parties to the instant proceeding are the ISO itself and the California Parties – i.e., the California Energy Resource Scheduler Division of DWR, the People of the State of California *ex rel.* Kamala D. Harris, Attorney General, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison.

<sup>5</sup> Compliance Filing of the California Independent System Operator Corporation Regarding Orders About the Refund Rerun, Financial Adjustments and Interest, Docket Nos. EL00-95, *et al.* (May 4, 2016) (“ISO Refund Compliance Filing”).

<sup>6</sup> The most recent order relevant to the ISO’s calculations in the refund proceeding was issued in November 2014, and related to matters remanded to the Commission on appeal from earlier orders. See *San Diego Gas & Electric Co., et al.*, Order on Rehearing, 153 FERC ¶ 61,144 (2015).

Comments on the ISO's compliance filing were due on September 23, 2016. The comments received were limited in scope, and did not appear to the ISO to directly implicate the issues set for hearing in the present proceeding. Therefore, at this juncture, the ISO is not itself aware of any issues within the scope of the hearing established by the Commission in this proceeding that remain in controversy, such that there would be a need to keep the present docket open. The ISO has also had discussions with the California Parties, who have been the only other active parties in this proceeding for a number of years, in an effort to determine whether they believe that any such issues still exist, and if so what options exist for concluding them and this proceeding as quickly as possible. The California Parties have advised the ISO that they are currently in the process of evaluating whether any issues within the scope of this proceeding remain, and if so, what they are.

The ISO respectfully requests that the Chief Judge continue to hold this proceeding in abeyance until shortly after the holiday season in order to allow the California Parties time to complete their evaluation, as well as for any other parties to consider whether they have any further interest in this proceeding. Specifically, the ISO proposes that the Chief Judge issue an order indicating that parties will have until January 17 to identify any issues that might remain in this proceeding and what those issues are. At that point, if no issues are identified, the ISO and any interested parties would request that the Commission dismiss this proceeding. Alternatively, if parties believe that there are still viable issues in this proceeding, they can then formulate a proposal as to how to resolve those issues in the most efficient manner possible.

### III. CONCLUSION

The ISO respectfully requests that the Chief Judge accept the enclosed status report and issue an order as requested above.

Respectfully submitted,

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Dated: December 7, 2016

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the email listserv established for the EL00-95 proceeding.

Dated at Washington D.C. this 7<sup>th</sup> day of December, 2016.

/s/ Michael Kunselman

Michael Kunselman