

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

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

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

To: The Honorable Curtis L. Wagner, Jr.
Chief Administrative Law Judge

Pursuant to the Chief Judge’s Order Continuing Suspension of Proceedings and Ordering Further Status Reports issued in the above-captioned dockets on November 15, 2013, the California Independent System Operator Corporation (“ISO”) respectfully provides the enclosed status report. As the ISO explains below, there have been no occurrences that alter the conclusion reached by the ISO and active parties¹ to this

¹ Based on attendance at the February 12, 2008 pre-hearing conference, the “active parties” to this case are defined, for purposes of this motion, as the ISO, the California Department of Water Resources

proceeding in previous status reports, and the Chief Judge in his orders, that the procedural schedule in these proceedings should continue to be suspended pending the outcome of the California refund proceeding.

I. BACKGROUND: ISSUES AND THE SUSPENSION OF PROCEEDINGS

This case concerns the accounting for transactions during the California energy crisis of 2000 and 2001. On November 7, 2001, the Commission issued an order in this docket that required the ISO to invoice the California Department of Water Resources (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

("CDWR"), Pacific Gas and Electric Co. ("PG&E"), the Sacramento Municipal Utility District ("SMUD"), Modesto Irrigation District ("MID"), Cities of Santa Clara and Redding, California, and Powerex

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. The Chief Administrative Law Judge 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 the Chief Judge, filed several status reports indicating that although all parties felt 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. Therefore, the ISO, on behalf of the active parties, requested that this proceeding remain suspended until such time as the Commission issued an order approving the ISO's compliance filing in the

Corporation. All of these parties are also parties to the California refund proceeding.

California refund proceeding. The most recent of these status reports was filed on November 24, 2008.

On December 12, 2008, the Chief Judge issued an order finding that it is 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. The Chief Judge directed the ISO to file further status reports every 90 days. The ISO has filed nineteen such reports, with the last being filed on November 11, 2013. After the filing of each of these reports, the Chief Judge has issued orders continuing the suspension of this proceeding and ordering the ISO to file further status reports. In its previous 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.

II. STATUS REPORT

There have been no occurrences since the filing of the ISO's last status report in these dockets on November 11, 2013 that alter the reasons for the Chief Judge's conclusion in his previous orders that the procedural schedule in this proceeding should be suspended pending a Commission order establishing the final balances of the entities that participated in the markets operated by the ISO during the Refund Period. No such Commission order has been issued and the California refund proceeding is still ongoing. Although the parties and the Commission continue to work to resolve outstanding issues, there are still calculations left to be performed before final balances

can be determined.² A more detailed discussion of the steps remaining before the ISO files its refund rerun compliance filing with the Commission, which will set forth the balances of parties that participated in the ISO's markets during this period based on the Commission's orders in that proceeding, can be found in the status report filed by the ISO on the same date as the instant report, in Docket Nos. ER03-746-000, *et al.*³

For this reason, the ISO respectfully requests that the Chief Judge continue to suspend the procedural schedule in this proceeding until the date on which the Commission issues an order in Docket Nos. EL00-95-045, *et al.* that establishes the final balances of those entities that participated in markets operated by the ISO during the Refund Period. At that time, the ISO is optimistic that the parties to this proceeding will be able to expeditiously reach a settlement that resolves all of the issues set for hearing.

² The scope of these calculations may be affected by the disposition of the issues addressed in the hearing procedures held in docket EL00-95-248. An initial decision in this proceeding was issued on February 15, 2013 by Presiding Administrative Law Judge Baten. 142 FERC ¶ 63,011 (2013). That decision is currently awaiting Commission review.

³ A copy of the ISO's refund rerun status report is attached to this report as Attachment A.

III. CONCLUSION

The ISO respectfully requests that the Chief Judge accept the enclosed status report and continue to suspend the procedural schedule in this proceeding.

Respectfully submitted,

/s/ Michael Kunselman

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Dated: February 14, 2014

Attachment A

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

California Independent System Operator Corporation	)	Docket No.	ER03-746-000
)		
)		
)		
San Diego Gas & Electric Company, Complainant,)		
)		
)		
v.	)	Docket Nos.	EL00-95-081
	)		EL00-95-074
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	)		EL00-95-086
)		
)		
Investigation of Practices of the California Independent System Operator and the California Power Exchange	)	Docket Nos.	EL00-98-069
	)		EL00-98-062
	)		EL00-98-073

(not consolidated)

**FORTY-SEVENTH STATUS REPORT OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION ON
SETTLEMENT RE-RUN ACTIVITY**

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The California Independent System Operator Corporation (“ISO”) hereby provides its forty-seventh status report pursuant to the Order Granting Clarification and Granting and Denying Rehearing of the Federal Energy Regulatory Commission (“Commission” or “FERC”), issued on February 3, 2004, in the above-captioned dockets (“February 3 Order”).

This status report is prompted by the ISO’s February 14, 2014, release for review and comment of further revised calculations of the adjustment for *BPA v. FERC*.

I. BACKGROUND ABOUT THESE STATUS REPORTS¹

In the February 3 Order,² the Commission directed the ISO “to submit to the Commission on a monthly basis, beginning on February 10, 2004, a report detailing the status of the preparatory adjustment re-runs and the dates that it expects to complete both the preparatory re-runs and the settlements and billing process for calculating refunds.” February 3 Order at P 21. The first such status report was filed with the Commission on February 9, 2004. While the preparatory rerun and refund rerun are complete, and the Commission has approved the preparatory reruns, the ISO continues to provide these periodic status reports throughout this process as updated information is available. The ISO believes

¹ In its October 16, 2003 Order on Rehearing, 105 FERC ¶ 61,066 (2003), the Commission ordered the ISO to file within five months of the date of the order the results of the preparatory re-runs along with the appropriate explanations. The ISO considers that this directive has been overtaken by FERC’s later recognition in the Amendment No. 51 proceeding that the ISO could not possibly comply with the deadline in the October 16 Rehearing order, as well as the deadlines in the previous Amendment 51 orders. The ISO is endeavoring to comply, however, with FERC’s directive that the ISO work as fast as practicable and to keep the parties well informed as to the status of its work. For this reason, in addition to the Amendment No. 51 docket, the ISO is also filing this report in the dockets associated with the California refund proceeding.

² 106 FERC 61,099 (2004). The context of the February 3 Order is set forth in prior versions of the ISO’s status report.

that these reports have been a valuable tool for communicating with the Commission and Market Participants. This filing is the forty-seventh such report.

II. CURRENT STATUS OF RE-RUN ACTIVITY

A. COMPLETED STEPS

1. Preparatory Rerun

The ISO's preparatory rerun numbers are final. The Commission issued an order approving the ISO's preparatory rerun compliance filing on July 15, 2011, and then denied the California Parties' motion for rehearing on February 3, 2012.

2. Refund Rerun

As detailed in earlier status reports, the ISO's work on the refund rerun has long been complete. On October 5, 2010, the Commission resolved what the ISO believes was the last remaining challenge to official ISO settlements data for the refund rerun, ruling that the ISO properly declined to substitute the City of Santa Clara in place of PG&E as the supplier for certain sales in December 2000.

3. Distribution and Offset of Excess Generator Fines

The ISO's forty-fifth status report³ summarized the treatment of "Generator Fines," which the ISO assessed to participating generators that failed to comply

³ See 45th Status Report, filed July 19, 2010, at 6-7.

with dispatch instructions during actual or threatened system emergencies.⁴

These fines were in place from December 8, 2000 to June 21, 2001.⁵

The California Parties' global settlement with Sempra Energy and its affiliates, which the Commission approved on December 22, 2010, directed the ISO to distribute \$43,859,403 in excess generator fines. The ISO made that distribution on December 30, 2010. As a result of this distribution, \$1,270,121 remained on the ISO's books as of December 31, 2010 as an amount payable to the pool of ISO market creditors during the refund period, reflecting interest on the excess generator fines.

This payable was further reduced after the ISO netted this obligation to the creditor pool against two obligations that the pool owed to the ISO: \$348,270.06 in FERC fees and \$269,794.08 of grid management charges, both dating from the refund period. The remaining payable is still on the ISO books. Including interest due to and from the ISO through December 31, 2013, the ISO's payable to the creditor pool totals \$393,284.09.

⁴ See *generally* 93 FERC ¶ 61,239 (December 8, 2000).

⁵ See 97 FERC ¶ 61,293, at 62,367 (June 21, 2001) (directing ISO to remove these penalties from the ISO Tariff, effective June 21, 2001).

4. Financial Adjustment Phase: Fuel Cost Allowance and Offsets for Emissions and Overall Entity Costs

As part of the financial adjustment phase, the ISO completed three offset calculations. The ISO completed its calculations of the emissions offset in September 2006 and the fuel cost offset in August of 2007. Details are available in earlier status reports.

The ISO completed work on cost-based offsets in January of 2008. However, as explained in its forty-sixth status report,⁶ it subsequently revised its calculations to account for: a) intervening Commission orders that revised the approved claim amounts; and b) a revised method of allocating claims to more accurately reflect the allocation between the ISO and PX markets. The latter adjustment did not affect either the amount of the approved cost offsets or the allocation of those offsets to other parties. It affected only how the offsets are allocated between the ISO and PX markets.

Two issues concerning to the cost-based offsets as they relate to the ISO's adjustment for the Ninth Circuit's decision in *BPA v. FERC* are addressed later in this status report. A cap that the ISO applied to limit the offset for any given interval to the scheduling coordinator's refunds during that interval is summarized in Section II.B.3.b.iv, below. In addition, the ISO's correspondence with the California Parties regarding the *BPA v. FERC* offset explains how the ISO and the PX allocated between their two markets the cost-based offset claims of Nevada Power and Midway Sunset.⁷

⁶ See 46th Status Report, filed October 21, 2011, at 6-8.

⁷ See the correspondence attached to this report.

B. OPEN ISSUES RELATING TO THE FINANCIAL ADJUSTMENT PHASE

1. Issues that Require Rulings from the Commission

In previous status reports, the ISO identified open issues relating to the refund rerun calculations that could potentially affect refund calculations. At present, only one such issue remains:

- Whether, for purposes of allocating cost recovery offsets, the ISO and PX should determine “net refunds” based solely on the results of the application of MMCPs, or whether “net refunds” should also include offsets for fuel and emissions costs.⁸

The ISO has not waited for a resolution of this issue; but rather has proceeded to make further calculations. The Commission and parties should recognize, however, that a resolution of this issue contrary to that assumed by the ISO will result in the need to revise various refund calculations.

2. ALJ Findings on Remand from *CPUC v. FERC*

On February 15, 2013, Presiding Administrative Law Judge Baten issued his findings of fact and conclusions of law in accordance with the Commission’s order on remand from the Ninth Circuit’s decision in *CPUC v. FERC*. Some of Judge Baten’s findings and conclusions, if accepted by the Commission, would expand the pool of transactions subject to mitigation during the refund period of October 2, 2000 through June 21, 2001 to include non-spot transactions and

⁸ See California Parties’ Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-95-000, *et al.* (December 17, 2007); Response of the California Independent System Operator Corporation to California Parties’ Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-05-000, *et al.* (January 2, 2008).

energy exchanges. That might raise issues about how to implement such a decision, including whether it would require the ISO and PX to revise the refund calculations they have performed to date or whether to implement such a decision through separate calculations and payments.

3. Implementation of *BPA v. FERC*

a. Background

The ISO developed a set of procedures to implement the Commission's order on remand from the Ninth Circuit's decision in *BPA v. FERC* by adjusting the refund calculations to "credit back" refunds that would be owed by non-jurisdictional entities. The methodology has been refined in response to comments from the parties.

The ISO's initial methodology was explained in the forty-third and forty-fourth refund rerun status reports.⁹ On September 8, 2010, the ISO provided to parties the results of its initial calculation through the listserv for EL00-95, together with an explanation of the methodology and an offer to provide a CD with detailed calculations to parties that requested it.

Several parties submitted comments and questions about these calculations. Between these comments and the ISO's own further analysis, the ISO made four significant changes to the methodology, which were explained in the 46th Status Report. In summary, those changes involved:

- Reclassifying transactions by the investor-owned utilities after January 16, 2001 as transactions by CERS;

⁹ See 43rd Status Report, filed May 8, 2009, at 15-20, and 44th Status Report, filed March 10, 2010, at 9.

- Crediting the PX for refunds that would have been owed by non-jurisdictional entities for transactions in the PX market, consistent with the Commission's Order of November 20, 2008;
- Implementing provisions in certain Commission-approved global settlements with non-jurisdictional parties that require the ISO and PX to calculate refunds for the settling party in the same manner as for entities that are not within the scope of section 201(f) of the Federal Power Act; and
- Revising the method of allocating the BPA offset among the other parties to be consistent with the Commission's Order of October 19, 2007.

After making these refinements, the ISO released its revised calculations for review and comment.

b. Further Revisions to the Offsets and the Allocation

The only comments on the further revised calculations were submitted by the California Parties. Based on those comments and intervening developments, the ISO has made three further revisions to the methodology.

i. *Correcting the "CERS Reclassification"*

As noted above, following comments on its initial calculations, the ISO agreed to adjust its calculations to reclassify to CERS the transactions of the investor-owned utilities beginning January 17, 2001, in accordance with the

Commission's orders.¹⁰ In response to the ISO's revised calculations, the California Parties identified a problem with how the ISO made that correction and showed that it did not comport with the Commission's orders about calculating the BPA offset.

When the ISO initially reclassified the transactions as belonging to CERS, it made the adjustment on the basis of the respective parties' net positions during the refund period after January 16, 2001. In other words, the ISO reassigned each IOU's net position over that period to CERS and added it to CERS' net refund position. The offset amount for non-jurisdictional entities such as CERS, however, was supposed to be based on an hourly netting methodology explained in the Commission's Orders of November 20, 2008.¹¹ The ISO's initial reclassification had not followed that methodology.

Accordingly, the ISO has re-calculated the "net refund" position of CERS on an hourly basis in order to correctly reflect the Commission's methodology.

ii. AEPCO Global Settlement

As noted above, certain global settlements with non-jurisdictional parties specify that those parties will not receive *BPA* offsets. On August 13, 2013, the California Parties filed a proposed settlement agreement with the Arizona Electric Power Cooperative, commonly known as "AEPCO." Like other settlement agreements with non-jurisdictional parties, this settlement specifies that the ISO shall treat AEPCO as if it were a FERC-jurisdictional entity for purposes of

¹⁰ See, e.g., California Independent System Operator Corp., 97 FERC ¶ 61,151 (2001).

¹¹ See 125 FERC 61,214 (2008).

determining the BPA offset. The Commission accepted this settlement in an order issued November 8, 2013.

A complete list of the global settlements that specify adjustments to the BPA offset in a manner similar to the AEPCO settlement follows:

Entity	Filed	Approved
Arizona Electric Power Cooperative	8/13/2013	11/8/2013
City of Anaheim	2/28/2008	6/4/2008
City of Azusa	2/29/2008	6/4/2008
City of Burbank	3/10/2011	6/28/2011
City of Glendale	3/28/2011	6/28/2011
City of Pasadena	2/15/2011	6/16/2011
City of Riverside	2/26/2008	6/4/2008
City of Santa Clara	12/21/2010	6/16/2011
City of Vernon	7/16/2008	10/23/2008
Eugene Water & Electric	8/9/2006	4/26/2007
LADWP	10/28/2009	12/17/2009
Modesto Irrigation District	3/24/2011	6/28/2011
NCPA	2/1/2010	4/29/2010
PUD #2 of Grant County * Section 5.1.3	5/6/2008	5/23/2008
Seattle City Light	2/8/2011	6/16/2011
SMUD	2/22/2011	4/21/2011
Turlock Irrigation District	4/25/2011	7/8/2011

In each settlement agreement, the relevant provision can be found in section 6.1.3 unless otherwise indicated.

iii. Allocation to Governmental Entities

BPA offsets are allocated to net refund recipients based on each party's final net refund position, according to the methodology detailed in the 46th Status Report. In response to the ISO's previous set of *BPA* offset calculations, the California Parties identified an error in the ISO's allocation of the offsets to non-jurisdictional entities. The ISO failed to properly calculate according to the methodology laid out in its 46th Status Report¹² the "net refunds" of non-jurisdictional entities that had not reached global settlements. The 46th Status Report had announced that, as part of determining "net refunds" for the allocation step, it would credit back refunds that the non-jurisdictional entities do not owe by virtue of the *BPA* decision.

The ISO has corrected this error for non-jurisdictional entities that have not reached global settlements and, as a result, certain non-jurisdictional entities that the ISO's calculations previously identified as net refund payers are now identified as net refund recipients and have been assigned a share of the allocation.

iv. Note Regarding Cap on Cost-Based Offsets

During the ISO's review of the further revised calculations, it was noted that the numbers the ISO uses for fuel cost allowance offsets do not match the numbers approved by Commission. The differences reflect the fact that the ISO has capped certain fuel cost allowance claims so that they did not exceed, during any interval, the refunds that the scheduling coordinator owed during that

¹² See 46th Status Report, filed October 21, 2011, at 12 (point 2.c under the heading "BPA Adjustment.")

interval, as required by Paragraph 55 the Commission's Order of May 12, 2004, 107 FERC ¶ 61,166 (2004).

v. Other Issues Raised by the California Parties

While the ISO agreed with the California Parties on the two corrections described above as "CERS Reclassification" and "Allocation to Governmental Entities," the ISO declined to adopt a number of the California Parties' other suggested modifications to the ISO's *BPA* offset calculations. The most significant of these was that the ISO declined to make further adjustments to the allocation side of the calculation, rejecting the California Parties' argument that for purpose of the allocation, "net refunds" should be calculated utilizing the hourly netting methodology described in the Commission's Order of November 20, 2008. Based on a review of this order, the ISO concluded that the Commission intended this hourly netting methodology to apply only to calculating the amount of the offsets themselves and not to allocating those offsets.

The ISO's response to the California Parties is attached to this status report.¹³ The ISO does not intend to revisit these issues.

4. Interest Calculations

To date, the ISO has distributed to parties data concerning four calculations relating to interest that will be included in its forthcoming compliance filing: 1) backing out interest previously charged for transactions in its markets that occurred during the Refund Period, 2) calculating interest at the FERC rate on unpaid invoices, 3) calculating interest at the FERC rate on preparatory rerun transactions, and 4) calculating interest at the FERC rate on refunds (including

¹³ See attachment.

the BPA adjustment, emissions, fuel offsets and cost recovery adjustments). The history relating to the first three of these calculations has been discussed in detail in previous status reports.

Following parties' review of the revised BPA calculations, the ISO will release for review and comment updated versions of the second, third and fourth calculations. See Section III(A), below. The second calculation (interest on unpaid invoices) will be revised to reflect the distributions associated with more recent global settlements. The third calculation (interest on preparatory rerun transactions), will be revised to reflect a new method of allocating shortfalls within calculations; the ISO is now aggregating shortfalls for all components and allocating the shortfalls based on the absolute value of interest after the adjustment for global settlements. The fourth calculation (interest on refunds) will be revised in light of the ISO's most recent revisions to the *BPA* offset adjustment.

Two further interest calculations have yet to be performed or released for review, but will be made after the ISO obtains approval of its compliance filing for the refund rerun and financial adjustment calculations. First, the ISO must allocate an interest shortfall that relates only to the ISO market, because within the ISO's markets the total amount owed to creditors does not exactly match the amount owed from debtors within the refund period. The adjustment to correct the resulting interest shortfall would be made after the ISO receives the global settlement adjustments from the California Parties but before the calculation of the PX market interest shortfall, described in the next paragraph.

In addition, the ISO must adjust balances in the ISO market to account for any allocation that the ISO receives as a result of a shortfall in the PX markets between interest earned in the PX settlement clearing account and the interest that it must pay to creditors using the Commission's rate.¹⁴ The ISO will perform this calculation after it receives final balances from the PX.

III. FORTHCOMING ISO ACTIVITY

The ISO presently contemplates the following remaining steps:

A. REVIEW AND COMMENT ON CALCULATIONS

On February 14, 2014, the ISO released its further revised *BPA* adjustment and its interest calculations for six weeks of review and comment.

The calculations are available to persons who have signed the protective order for these proceedings. E-mail your request to Jennifer Rotz (jrotz@caiso.com) and Dan Shonkwiler (dshonkwiler@caiso.com), along with a statement that you have signed the protective order. The ISO will e-mail a spreadsheet showing the calculations for every party. This spreadsheet will not include the details of the hourly netting that the ISO performed to calculate the "net refunds" of each non-jurisdictional entity for purposes of determining its credit, which are too large to e-mail. Parties who also want copies of these hourly details should request them specifically and provide their shipping address.

¹⁴ In its November 23, 2004 "Order on Rehearing" issued in this proceeding, the Commission accepted the ISO's request to allocate any portion of such shortfall assigned to the ISO pro rata to its participants. 109 FERC ¶ 61,218 at P 39 (2004).

Comments on any aspect of the calculations are due March 28, 2014 to Dan Shonkwiler and Mike Epstein (mepstein@caiso.com).

B. REVIEW OF INTEREST CALCULATIONS

Following the review period for the revised BPA calculations, the ISO will circulate revised interest calculations for review and comment, as described in Section II.B.4, above.

C. COMPLIANCE FILING FOR THE REFUND RERUN AND FINANCIAL ADJUSTMENT PHASE

While the ISO has not yet finalized plans for its compliance filing, the ISO expects that, with the steps detailed above, its calculations will be in compliance with the Commission's current orders. Accordingly, the ISO plans to proceed with its compliance filing without further direction from the Commission.

IV. CONCLUSION

The ISO respectfully requests that the Commission accept the ISO's forty-seventh refund status report about rerun activity in this docket.

Respectfully submitted,

By: /s/ Daniel J. Shonkwiler

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Dated: February 14, 2014

ATTACHMENT



February 14, 2014

Via E-Mail

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**Re: *San Diego Gas & Electric Co., et al*, FERC Docket No. EL00-95:
BPA v FERC Offset Calculation**

Dear Mr. Berman,

Concurrent with its October 21, 2011 filing of the Forty-Sixth Status Report on Settlement Rerun Activity, the California Independent System Operator Corporation (“ISO”) released updated versions of its adjustments to reflect the Commission’s orders on remand from the Ninth Circuit’s decision *BPA v FERC*.¹ In those orders, the Commission directed the ISO and California Power Exchange (“PX”) to perform adjustments to their refund rerun results to remove refund liability relating to governmental entities and to reflect those reductions as shortfalls in refunds owed to net refund recipients. The only comments that the ISO received on its October 2011 adjustments were contained in two letters received from you on behalf of the California Parties, dated December 2, 2011 and February 28, 2012.

The ISO thanks the California Parties for their comments. The ISO’s responses to the individual issues raised in the two letters are set forth below.

A. Issues Raised in the December 2, 2011 California Parties Letter

1. Netting of CERS’ Purchases And Sales in Calculating *BPA* Shortfall

In the December 2, 2011 letter, you contend that the ISO failed to calculate and allocate the BPA shortfall based on an hourly netting basis of CERS refunds associated with its sales and purchases. With respect to the calculation of the refund shortfall associated with CERS, the ISO agrees with the California Parties that for those transactions in the ISO markets where CERS purchased power on behalf of the IOUs, both the sales and refunds must be netted in each relevant hour. The ISO has made the

¹ *Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005) (“*BPA*”).

appropriate revisions to reflect this result in the latest version of its BPA adjustments, which will be released shortly.

With respect to the allocation to CERS of its share of the overall shortfall associated with the *BPA* adjustments, however, the ISO disagrees with the California Parties that this allocation should be performed on an hourly basis. The reasoning for the ISO's position is explained in the discussion relating to Issue A.3 below.

2. Allocation of the *BPA* Shortfall to Governmental Entities

In the December 2, 2011 letter you state that the ISO's *BPA* adjustment calculations mistakenly depict certain governmental entities as net refund payers for purposes of allocating refund shortfalls. The California Parties maintain that for purposes of determining which suppliers are "net refund recipients," the ISO's *BPA* adjustment calculations should remove the refunds originally calculated as owed by non-settled governmental entities,² because the calculation is based on the assumption that governmental entities will not be liable for those refunds through the EL00-95 proceeding. Performing this calculation correctly would, according to the California Parties, result in non-settled governmental entities being net refund recipients, and they must therefore be allocated an appropriate share of the *BPA* shortfall.

The ISO agrees that, for purposes of allocating the *BPA* shortfall to non-settled governmental entities, the refunds that would otherwise be owed by such entities, absent the *BPA* decision, should not be included in the calculation.³ The ISO has made appropriate revisions to reflect this approach in its latest version of its *BPA* adjustments. As a result, certain governmental entities that the ISO's calculations previously identified as net refund payers are now correctly identified as net refund recipients and are allocated an appropriate share of the overall *BPA* shortfall.

As discussed in Issue A.3 below, the ISO disagrees with the California Parties' position that allocations to net refund recipients should be performed on an hourly basis.

3. Methodology for Allocating *BPA* Shortfall

In the December 2, 2011 letter, the California Parties take issue with the ISO's conclusion that the *BPA* shortfall amounts should be allocated to net refund recipients based on parties' net refund position for the entire refund period (i.e. October 2, 2000 through June 20, 2001). In its Forty-Sixth Status Report on Refund Activities, the ISO

² The term "non-settled" governmental entities refers to those governmental entities that have not entered into a settlement with the California Parties in this proceeding. This distinction is meaningful in the context of this issue because the settlements between the California Parties and certain governmental entities contain language stating that the ISO's and PX's calculations will, for illustrative purposes, continue to treat governmental entities as owing refunds regardless of the *BPA* decision.

³ See the ISO's Forty-Sixth Status Report, filed October 21, 2011, at 12 (point 2 under the heading "BPA Adjustment.") The ISO failed to correctly implement the methodology described in its earlier status report.

explained that it adopted this approach based on the language of the Commission's order on remand from the *BPA* decision, which directed the ISO and PX to allocate the BPA shortfall as a "*pro rata* reduction to refund recipients based on their *final net refund position* in relation to *total net refunds*."⁴ The most plausible reading of this language, in particular the phrase "final net refund position," is that the Commission contemplated an allocation of the *BPA* shortfall based on parties' total refund receivables. The California Parties contend, however, that even if this is what the Commission intended in the *BPA* Remand Order, the Commission modified this approach in its order on rehearing,⁵ and therein directed the ISO to allocate the *BPA* shortfall amounts based on the hourly positions of parties in the market.

The ISO disagrees with the California Parties' reading of the *BPA* Rehearing Order. The Commission's discussion of netting in that order was focused entirely on the methodology for calculating the amount of refunds that would, absent the *BPA* decision, have been owed by governmental entities – *i.e.*, the *BPA* shortfall itself. The Commission directed the ISO to calculate this shortfall by netting, for each hour, the "sales and purchases" made by governmental entities.⁶ The Commission did not discuss the mechanism for allocating shortfall amounts, other than to reiterate the directive from the *BPA* Remand Order that it be based on parties' final net refund position in relation to total net refunds. The fact that the Commission left its earlier conclusions regarding the allocation mechanism undisturbed in the *BPA* Rehearing Order is understandable given that the shortfall calculation methodology, rather than the allocation methodology, was the subject of the California Parties' request for rehearing.⁷ For these reasons, there is no basis for the California Parties' conclusion that the *BPA* Rehearing Order modified the allocation methodology established in the *BPA* Remand Order, or otherwise required the ISO to allocate the *BPA* shortfall to parties on an hourly basis.⁸

Also, the ISO disagrees with the California Parties' characterization of the ISO's *BPA* shortfall allocation methodology as "monthly" in nature. As explained in the Forty-Sixth Status Report, the ISO determined net refund recipients and calculated their share of the *BPA* shortfall based on their refunds owed and owing for the entire refund period. The use of the term "monthly" on page 13 of the Forty-Sixth Status Report simply refers

⁴ 121 FERC ¶ 61,067 at P 39 (2007) ("*BPA* Remand Order") (emphasis added).

⁵ 125 FERC ¶ 61,214 (2008) ("*BPA* Rehearing Order").

⁶ *Id.* at P 16.

⁷ *Id.* at P 15 ("The California Parties are concerned that the Remand Order could be interpreted as requiring that the CAISO calculate amounts owed to governmental entities based upon a gross sales methodology irrespective of the purchases made by such entities within the same time interval.").

⁸ The California Parties also point to paragraph 40 in the Commission's July 15, 2011 order accepting the ISO's and PX's preparatory rerun compliance filings. 136 FERC ¶ 61,036 ("*Preparatory Rerun Order*"). However, this paragraph merely reiterates the Commission's finding in the *BPA* Rehearing Order and clarifies that it applies to the PX as well as the ISO.

to the fact that the ISO, after determining each net refund recipients' share of the BPA shortfall, assigned those amounts to individual months in the refund period. This assignment was performed solely for the purpose of interest calculations, and did not affect the actual allocation of the BPA shortfall among net refund recipients.

4. Other Offset Calculations and Allocations

The December 2, 2011 letter states that because the Commission's orders require the ISO to perform net refund allocations on an hourly basis, any adjustment to offsets to determine a party's net refund position should be performed on an hourly basis. For the reasons explained in the preceding section, the ISO disagrees with the underlying assertion that the Commission has required the ISO to perform the BPA adjustment allocation, or any other refund offset allocation, on an hourly basis.

The December 2, 2011 letter also suggests that the ISO and PX may be "double counting" offsets associated with Midway Sunset Cogeneration Company and Nevada Power, both of which have settled with the California Parties. The letter indicates that the California Parties understood that the PX would allocate those cost offsets in the PX markets, and that it would be inappropriate for the ISO to include cost offsets for those entities in its calculations if the PX is also doing the allocation of the same offsets. The California Parties ask that the ISO confirm that no double-counting is taking place.

The ISO confirms that the ISO and PX are not double-counting offsets for Midway Sunset and Nevada Power, both of which have Commission-approved fuel cost adjustment offsets as follows:

Entity	Total Approved Claim	Subtotal ISO Sales	Subtotal ISO Sales with PX as SC (Amount Processed by ISO)	Subtotal PX Sales
Nevada Power	\$5,965,920	\$860,684	\$2,496,505 (\$2,424,617)	\$2,608,371
Midway Sunset	\$11,570,077	\$0	\$2,948,073 (\$2,896,522)	\$8,622,003

Each component of these claims was processed by either the PX or the ISO, but not both, as follows:

- The "Subtotal ISO Sales" category reflects the portion of these entities' fuel cost claim attributable to sales made directly by these entities in the ISO's markets, and were processed by the ISO and included in its calculations.

- The “Subtotal ISO Sales with PX as SC” reflects the portion of these entities’ fuel cost claims attributable to sales made in the ISO’s markets by these entities with the PX acting as the Scheduling Coordinator. These amounts were processed by the ISO and included in its calculations, except for the following:
 - The amount processed by the ISO under this category for Midway Sunset was reduced by approximately \$12,000 pursuant to the Commission’s directive that an entity’s fuel cost offset for a particular interval cannot exceed the refunds that it owes during that interval.
 - The PX, rather than the ISO, processed a small portion of these amounts for both entities (\$71,888 for Nevada Power and \$51,551 for Midway Sunset). This was done because some of the Uninstructed Energy sales made by these entities through the PX as Scheduling Coordinator were made during intervals in which PX’s net sales to the ISO were less than the sales of Midway Sunset and Nevada Power, and thus, reflecting the full FCA credit directly to Midway Sunset and Nevada Power in the ISO markets would allocate too much of the corresponding offset to other ISO Scheduling Coordinators, and too little to PX participants.⁹
- The “Subtotal PX Sales” category reflects the portion of these entities’ fuel cost claims attributable to sales made by these entities into the PX markets, and were processed by the PX.

B. Issues Raised in February 28, 2012 Letter

1. Netting Across Markets

The February 28, 2012 letter states that the ISO and PX should revise their methodologies for implementing the BPA shortfall in order to calculate the shortfall “based on a net shortfall across all ISO and PX markets in an hour, factoring in all of a governmental entities’ purchases and sales in that hour,” as opposed to individual ISO and PX calculations. The California Parties assert that calculating the shortfall in this manner is required by the Commission’s statement in the February 3 Order that the PX must “net purchases and sales of the governmental entities across the CAISO and CalPX markets.”¹⁰

The ISO disagrees with the California Parties’ conclusion that the Preparatory Rerun Rehearing Order requires the ISO and PX to calculate refund shortfalls for governmental entities based on net shortfalls between both ISO and PX markets during each hour. The California Parties are conflating two separate issues: the calculation and

⁹ For further information on this issue, see the ISO’s Thirty-Forth Status Report on Settlement Rerun Activity.

¹⁰ 138 FERC ¶ 61,092 at P 23 (“Preparatory Rerun Rehearing Order”).

allocation of the *BPA* adjustment, which the Commission has described as being performed separately by the ISO and PX,¹¹ and the financial clearing and distribution of the resulting funds. Paragraph 23 of the Preparatory Rerun Rehearing Order simply reinforced the point that the “the CAISO and CalPX markets should be *financially* cleared together,” and as a consequence, the PX must net amounts across the ISO and PX “prior to releasing the principal funds to the governmental entities.”¹² These statements do not state or suggest that the Commission intended that the ISO and PX calculate the underlying offsets and allocations on a joint basis. Therefore, there is no basis for the ISO to do so.

2. Allocation of Offsets

The February 28, 2012 letter indicates that there may not be a “fair” way to allocate all of the various refund offsets to cross-market hourly shortfalls, or that it makes any real difference to the outcome to do such a calculation. The letter suggests that the BPA shortfall should therefore be based on MMCP net refunds only, without regard to or reduction for fuel cost offsets, emissions offsets, or cost-based offsets.

The ISO declines to adopt this suggestion for two reasons. First, the complexities identified by the California Parties appear to be products of two methodological assumptions with which, as explained elsewhere in this letter, the ISO does not agree: (1) the BPA shortfalls should be calculated based on net positions between the ISO and PX markets; and (2) the BPA shortfall should be allocated on an hourly basis. Second, as explained in its various status reports, the ISO believes that it is appropriate to account for the other offsets determining and allocating the BPA shortfall, rather than basing those calculations on the MMCP alone.

Sincerely,



Daniel J. Shonkwiler
Lead Counsel, California ISO

¹¹ See, e.g., Preparatory Rerun Order at P40 (noting that the same rationale regarding the Commission’s directive to the ISO to calculate the BPA shortfall on an hourly net basis applies to the PX, and directing the PX “to perform its final refund calculations netting purchases and sales over hourly intervals to reflect the period during which the obligation was incurred.”).

¹² 138 FERC ¶ 61,092 at P 23.

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 Folsom, California this 14th day of February, 2014.

/s/ Daniel J. Shonkwiler

Daniel J. Shonkwiler

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 14th of February, 2014.

/s/ Michael Kunselman

Michael Kunselman