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May 4, 2016

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: Compliance Filing  
*San Diego Gas & Electric Co., et al. and  
Investigation of Practices of the California Independent System  
Operator, Inc. and the California Power Exchange*  
Docket Nos. EL00-95-000, et al. and EL00-98-000, et al.  
Request for Privileged Treatment Under 18 C.F.R Section 388.112**

Dear Secretary Bose:

Enclosed for filing please find the Compliance Filing of the California Independent System Operator Corporation ("ISO") Regarding Orders About the Refund Rerun, Financial Adjustments and Interest. Please note that we are requesting privileged treatment of Attachment A to this filing pursuant to 18 C.F.R. Section 388.112. We are requesting this treatment because Attachment A contains financial information pertaining to individual market participants that has been kept confidential by the California ISO in the normal course of business and only provided to parties in the above-captioned proceedings pursuant to the protective order adopted therein.

Respectfully Submitted,

/s/ Michael Kunselman

Michael Kunselman

Counsel for the California Independent  
System Operator Corporation

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

<b>San Diego Gas &amp; Electric Company,</b>	)		
<b>Complainant,</b>	)		
	)		
<b>v.</b>	)	<b>Docket Nos.</b>	<b>EL00-95-000, et al.</b>
	)		
<b>Sellers of Energy and Ancillary Services</b>	)		
<b>Into Markets Operated by the California</b>	)		
<b>Independent System Operator and the</b>	)		
<b>California Power Exchange,</b>	)		
<b>Respondents.</b>	)		
	)		
<b>Investigation of Practices of the California</b>	)	<b>Docket Nos.</b>	<b>EL00-98-000, et al.</b>
<b>Independent System Operator and the</b>	)		
<b>California Power Exchange</b>	)		

**COMPLIANCE FILING OF THE CALIFORNIA INDEPENDENT  
SYSTEM OPERATOR CORPORATION REGARDING  
ORDERS ABOUT THE REFUND RERUN,  
FINANCIAL ADJUSTMENTS AND INTEREST**

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The California Independent System Operator Corporation (“ISO”) submits this filing detailing its compliance with three sets of orders issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) in this proceeding. The first set of orders involves the “refund rerun” process, in which the Commission directed the ISO to apply the Commission-mandated mitigated market clearing prices (“MMCPs”) 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 (the “Refund Period”). The second set of orders relates to 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. Finally, this filing also details the ISO’s compliance with the Commission’s directive that the ISO calculate interest on both refunds and past-due receivables.

This filing is an important, but by no means final, step in determining “who owes what to whom” and directing a final distribution of cash among entities that participated in the ISO and California PX (“PX”) markets during the Refund Period, and which have not already settled.<sup>1</sup> The Commission made clear in its earlier orders in this proceeding that it would address cash flow issues as part of a separate order after ruling on the ISO and PX compliance filings.<sup>2</sup> Therefore, the ISO is not asking the Commission to rule at

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<sup>1</sup> See *San Diego Gas & Electric Co., et al.*, 109 FERC ¶ 61,218 at P 80 (2004) (“November 23 Order”).

<sup>2</sup> See *San Diego Gas & Electric Co., et al.*, 105 FERC ¶ 61,066 at P 140 (2003) (“October 16 Order”) (“Once the Commission has also had the opportunity to review [the ISO and PX] compliance filings and comments to these filings, we will direct how refunds will flow to customers.”); see also *San Diego Gas & Electric Co., et al.*, 97 FERC ¶ 61,275 at 62,223 (noting that the Commission’s order establishing the MMCP refund procedures “does not specify the mechanism by which refunds should flow

this time on the steps necessary to reach a point where cash can flow among the remaining parties, let alone direct any money to flow now. This filing asks only that the Commission approve the calculations described and included herein and direct parties to file proposals after it approves the ISO and PX compliance filings regarding the appropriate steps necessary to reach a final cash clearing. Although the ISO is not requesting that the Commission rule on these “next steps” issues now, in order to help the Commission and parties understand the role that this filing will play in the larger process of concluding the proceeding, the ISO includes a section (Section X) explaining its tentative views as to the general sequence of steps between this filing and the conclusion of this proceeding.

The ISO understands that because of the complex nature of these issues and the long procedural history of this case, as well as the likely desire to review this filing in conjunction with the PX’s compliance filing, parties will almost certainly want more time than the usual period provided for answers under the Commission’s rules. For these reasons, the ISO does not oppose the Commission establishing an extended deadline for comments on this filing that takes these factors into account (e.g. 60-90 days). Also, if the Commission believes that additional procedures would be helpful to clarify or explain aspects of this filing, the ISO would recommend that the Commission establish a Commission staff-led workshop at which parties and Commission staff could ask questions of the ISO and PX.

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to customers,” and stating that the Commission would address this issue after issuing “an order addressing refunds.”).

## I. BACKGROUND

In November of 2000, the Commission found that the market structure and rules for wholesale sales of electric energy in California were seriously flawed and that these structures and rules, in conjunction with an imbalance of supply and demand, caused unjust and unreasonable rates.<sup>3</sup> In an order issued on July 25, 2001<sup>4</sup>, the Commission established a methodology for calculating refunds related to transactions in the spot markets<sup>5</sup> operated by the ISO and the PX during the Refund Period. The Commission also initiated formal evidentiary hearings before a presiding administrative law judge in order to further develop the record with regard to implementing the Commission's method of applying mitigated market clearing prices and determining the resulting refunds. In the July 25 Order, the Commission directed the presiding judge to certify findings of fact with respect to the following issues:

- 1) the mitigated price in each hour of the Refund Period;
- 2) the amount of refunds each supplier owed according to the Commission's MMCP method; and
- 3) the amount currently owed to each supplier.<sup>6</sup>

The Commission also directed the ISO to calculate and provide the presiding judge with a re-creation of mitigated prices resulting from the MMCP methodology for every hour

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<sup>3</sup> *San Diego Gas & Electric Co., et al.*, 93 FERC ¶ 61,121 at 61,349 (2000).

<sup>4</sup> *San Diego Gas & Electric Co., et al.*, 96 FERC ¶ 61,120 (2001) ("July 25 Order").

<sup>5</sup> The Commission defined "spot market" transactions as sales that are 24 hours or less in duration and that are entered into the day of or day prior to delivery. *San Diego Gas & Electric Co., et al.*, 95 FERC ¶ 61,418 at 62,545, n.3 (2001).

<sup>6</sup> July 25 Order at 61,520.

during the Refund Period and directed the ISO and PX to rerun their settlement billing processes and provide the presiding judge and the parties with these data.<sup>7</sup>

On December 12, 2002, the Presiding Judge issued Proposed Findings on numerous matters relevant to the three main issues set for hearing by the Commission.<sup>8</sup> On March 26, 2003, the Commission issued its order on the Presiding Judge's Proposed Findings.<sup>9</sup> Therein, the Commission largely adopted the Presiding Judge's findings, with some exceptions. Subsequently, the Commission has issued numerous orders in this proceeding addressing a variety of issues relating to the refund rerun process, including some that were litigated in the hearing phase of this proceeding, and others that arose after the conclusion of the hearings conducted by the Presiding Judge. Many of the orders issued since the hearing phase of this proceeding have involved the calculation and allocation of various "offsets" to sellers' refund liabilities, including an offset to account for the Ninth Circuit's decision on appeal from earlier Commission orders in this proceeding that the Commission did not have the authority to require governmental entities to pay refunds based on their sales in the ISO and PX markets. Most recently, in Opinion No. 536, issued in November 2014, the Commission issued an order regarding additional matters remanded to the Commission on appeal from earlier orders, including the treatment of transactions entered into during the summer of 2000, and the mitigation of "non-spot" transactions.<sup>10</sup> Significantly, the Commission clarified

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<sup>7</sup> *Id.*

<sup>8</sup> *Certification of Proposed Findings of Fact on California Refund Liability*, Docket No. EL00-95, et al. (December 12, 2002).

<sup>9</sup> *San Diego Gas & Electric Co., et al.*, 102 FERC ¶ 61,317 (2003) ("March 26 Order").

<sup>10</sup> *San Diego Gas & Electric Co., et al.*, Opinion No. 536, 149 FERC ¶ 61,116 (2014).



that the appropriate remedy for tariff violations that occurred in the ISO and PX markets during this period was not a market-wide rerun, but rather, disgorgements by individual respondents of payments that exceeded the applicable marginal cost proxy price.<sup>11</sup> This process will be separate from the ISO's refund calculations. On November 4, 2015, the Commission clarified Opinion No. 536, but otherwise denied requests for rehearing.<sup>12</sup>

Pursuant to these various orders, the ISO has calculated the Commission-mandated MMCPs and re-run its settlement and billing systems in order to apply those MMCPs to eligible transactions that took place during the Refund Period. The ISO has also calculated and allocated offsets relating to emissions costs, fuel costs, cost-of-service filings, and adjustments to account for the backing out of refunds relating to non-FERC-jurisdictional utilities. Finally, in accordance with the Commission's directive, the ISO has calculated interest on both amounts past due and refunds. Because the Commission has ruled on substantially all of the issues regarding these and other refund rerun matters, and parties have now had an opportunity to review and comment on all of the ISO's resulting calculations, the ISO believes that the time is now ripe to make this compliance filing. Although there are still some ongoing disputes regarding the mechanism by which the ISO has performed certain of its refund offset calculations, those disputes could not be resolved between the ISO and the parties. Because those disputes will need to be addressed by the Commission, there is no reason for the ISO to

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<sup>11</sup> The marginal cost proxy prices were developed based on the Commission's MMCP formula for in-state generators and on opportunity costs for importers. *Id.* at P 54.

<sup>12</sup> *San Diego Gas & Electric Co., et al.*, Order on Rehearing, 153 FERC ¶ 61,144 (2015).

delay this compliance filing pending their outcome. The ISO identifies these disputes in the applicable calculation-specific discussions below.

An order approving this filing will provide the necessary framework for parties to move to the next step of this proceeding, which the ISO believes should involve parties accounting for the various settlements approved by the Commission between buyers and sellers in this proceeding.

## **II. FORMAT AND CONTENTS OF THIS FILING**

In its November 23, 2004 order in this proceeding, the Commission indicated that it envisioned one compliance filing by the ISO in this proceeding that would include the results of the rerun of the ISO's settlement and billing system and the adjustments made for the various offsets, with details to support the calculations showing "who owes what to whom."<sup>13</sup> The numerical results of the ISO's settlement and billing rerun and associated adjustments are set forth in Attachment A to this filing.<sup>14</sup> Specifically, Attachment A displays the financial positions of each entity that participated in its markets during the Refund Period, and shows how the ISO arrived at these positions through the application of all of the reruns and adjustments ordered by the Commission in this proceeding.<sup>15</sup> The first page of Attachment A consists of a summary that shows

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<sup>13</sup> November 23 Order at P 80.

<sup>14</sup> Unless otherwise specified, all references to Attachment A in this document refer to the Summary sheet.

<sup>15</sup> The ISO is filing Attachment A under seal, consistent with its treatment of this data to date as covered under the protective order in this proceeding. The ISO has provided this data to parties pursuant to the protective order because the ISO tariff required (and still requires) the ISO to maintain as confidential all information about its market participants that is commercially sensitive. However, given the summary nature of the information in Attachment A, the amount of market participant information from the Refund Period that is already publicly available, the number of years that have passed, and the change in ISO's market structure, among other things, the ISO does not expect that any of the information on Attachment A is still commercially sensitive. Moreover, having Attachment A in the record

the iterative impact of each of the components of the refund rerun process on each party's "baseline" pre-mitigation financial balance in the ISO markets. These baseline positions consist of the following components:

- 1) Amounts receivable or payable based on the original invoices issued by the ISO during the Refund Period (Column 1)
- 2) Cash held by the ISO (Column 2)
- 3) The impact of the Commission-approved preparatory rerun (Column 3)
- 4) The impact of issues resolved through the ISO's dispute resolution ("ADR") process that affect the Refund Period (Column 4)

The three major components of the refund rerun process are as follows:

- 1) The MMCP rerun, in which the ISO re-ran its settlements and billing system to apply the Commission-mandated MMCP to all eligible transactions during the Refund Period and determine the refunds owed and owing to each entity that participated in its markets during the Refund Period. (Column 5a)
- 2) Offsets to refunds directed by the Commission:
  - a. Offsets stemming from the Ninth Circuit's decision that the Commission could not require governmental entities to pay refunds related to transactions in the ISO and PX markets during the Refund Period, and the allocation of such offsets. (Column 5b)

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as a public document would significantly reduce the administrative burden on the parties and the Commission by making it easier for parties to answer the ISO's filing, and for the ISO to answer in turn, if necessary. Accordingly, the ISO intends to re-file Attachment A as a public document within a relatively short time period. Prior to doing so, the ISO will notify parties to this proceeding through the email listserv, solicit comments on this plan, and work with parties to understand and address any concerns that are raised.

- b. Offsets to any refunds determined to be owed in the MMCP rerun for those entities that incurred eligible emissions-related costs, and the allocation of such offsets. (Column 5c)
  - c. Offsets to refunds for those entities that incurred eligible fuel-related costs, and the allocation of such offsets. (Column 5d)
  - d. Offsets to refunds for those entities that the Commission determined had demonstrated that the refund methodology results in an overall revenue shortfall for their transactions in the ISO markets during the Refund Period, and the allocation of such offsets. (Column 5e)
- 3) Calculation and application of interest both on amounts past due and refunds. (Columns 7a through 7j)

The total impact of these various adjustments for each entity are displayed in the columns labeled “Preliminary SC Positions,” under the “Debtors” or “Creditors” column depending on the entity’s balance.

Subsequent pages display monthly details relating to each of the baseline position categories as well as the major components of the refund rerun and adjustment process.

In Sections IV and V of this filing, the ISO discusses each of the refund components and explains the results reflected in Attachment A. The ISO also discusses in Section VIII certain ISO-specific accounts that are impacted by this proceeding. Finally, in Section X, the ISO presents what it believes are the appropriate next steps in order to bring this proceeding to a close.

It is important to understand that the results presented in Attachment A and discussed herein do not, with the exception of two specific issues identified below, reflect the results of the various settlements that have been entered into between parties to this proceeding. Pursuant to these settlements, most of the entities that were net sellers of energy in the ISO markets during the Refund Period, and therefore would owe refunds, have settled with the major purchasers of energy in the ISO markets (the investor-owned utilities and the State of California). As a result of these settlements, a substantial amount of the cash at issue in this proceeding has already flowed.

Although the ISO must ultimately adjust its books and records to reflect the results of these settlements, the ISO has consistently stated in this proceeding that its initial compliance filing would not include adjustments for these settlements. There are two main reasons for this. First, because there are still suppliers that have not reached settlements with the California Parties, the ISO must present the results of its calculations pursuant to the Commission's orders in this proceeding so that non-settling parties can understand their final financial position in the ISO's markets for the Refund Period. The majority of the settlements reached in this proceeding explicitly recognize this reality and, in fact, contain provisions to the effect that the ISO should continue to include settling parties in the calculations that it files with the Commission. The Commission has agreed with the ISO that the effect of these settlements should not be reflected in this compliance filing.<sup>16</sup> Second, as the ISO has stated on numerous occasions in this proceeding, the adjustments arising out of these settlements are properly determined by the parties to those settlements, rather than by the ISO itself.

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<sup>16</sup> November 23 Order at P 80.

### **III. PROCESS OF INTERACTION WITH MARKET PARTICIPANTS AND RESOLUTION OF DISPUTES**

Throughout this proceeding, the ISO has engaged in extensive efforts to keep market participants informed regarding the nature of the calculations and adjustments that it has performed, the process for making those adjustments, and the results thereof. The ISO has responded to numerous queries by market participants, both on an individual level and through various multi-party forums, such as postings on its website, telephone and internet conferences and face-to-face meetings. At the time of every significant rerun and adjustment calculation, the ISO has provided market participants with detailed data showing the adjustments and their financial impacts, and has given market participants ample opportunity to provide feedback on the ISO's calculations.

The ISO has used a variety of different tools for communicating and coordinating with the parties, including the following:

**1) Market Notices** — The ISO issued numerous market notices during the refund rerun process in order to keep market participants abreast of current issues, milestones, and upcoming meetings relevant to the refund rerun process.

**2) Provision of Settlement Statements, Settlement Detail Files, and Data on Adjustments and Offsets** – As discussed in Section IV.B below, during the period in which the ISO conducted the rerun of its settlement and billing system, the ISO provided market participants with data on a rolling basis that allowed them to understand the individual changes made by the ISO in the refund rerun, to validate those changes, and to make inquiries or lodge disputes with the ISO if the customer believed that the data was in error. Moreover, when the ISO performed the offset

calculations mandated by the Commission, the ISO distributed detailed data to market participants showing the impact of these offsets and the manner in which the offsets were allocated. After distributing data on a particular calculation, the ISO provided market participants with a period of time in which to review the ISO's calculations and provide feedback to the ISO. If parties discovered errors or omissions in the ISO's data, the ISO made appropriate revisions to its calculations and re-submitted the data for review by market participants. Most recently, the ISO distributed for review final data regarding the last two adjustments: (1) the final calculation and allocation of offsets relating to the removal of refunds for governmental entities; and (2) the various components of interest. The timing of this filing is based in part on the fact that those review periods have ended, and the ISO therefore considers the results of these, and other, calculations ready for Commission review and approval.

**3) Calendar of Important Rerun Dates** — Throughout the refund rerun process, the ISO has maintained on its website a calendar displaying the progress of the refund rerun along with the relevant publishing dates for settlements data and associated deadlines for submitting disputes. For each day of the refund rerun, this calendar showed the Refund Period trading days that were processed, the statements published to market participants on that date, and the dispute deadline associated with those statements. This calendar also displayed any adjustments made to the original schedule, and the updated dispute deadlines.

**4) Conference Calls with Market Participants** — During the period in which the ISO was engaged in re-running its settlements systems, the ISO hosted a number of conference calls with market participants, in order to keep market participants abreast of the progress of the rerun, as well as to respond to market participants'

questions (both those submitted in advance of the calls, and those that came up during the calls). These calls were held approximately once a month, beginning in December 2003 and ending in March 2005.

**5) Status Reports** — The ISO has filed 48 status reports in these proceedings detailing its progress in completing the various reruns and adjustments that make up the overall refund rerun process. In addition to keeping the Commission and market participants up to date on the status of its rerun efforts, the ISO also used the status reports as another tool to alert market participants to important issues that arose during the refund rerun.

**6) Dispute Processing and Resolution** — During the course of performing the refund reruns and adjustments involved in this proceeding, the ISO has made it a priority to resolve any disputes regarding its calculations collaboratively. As stated above, the ISO provided parties with the opportunity to review and comment on all of its calculations shortly after they were completed, and has used feedback from this process to help identify and correct any errors. Also, as described in more detail in Section IV.B below, the ISO conducted a rolling inquiry and dispute process during the period in which it was conducting its settlement and billing rerun to deal with any concerns that parties had with their revised settlements data. Resolving issues as they arise has been particularly important because of the iterative nature of many of the calculations performed by the ISO in this proceeding. That is, errors in earlier calculations have the potential, in many instances, to impact subsequent calculations.

Recognizing the need to resolve all disputes as early as possible to avoid impacting future calculations, the Commission, in an order issued on August 8, 2005,



directed parties with any remaining unresolved disputes concerning the ISO or PX rerun calculations to file such disputes with the Commission as soon as possible, and in no case later than December 1, 2005.<sup>17</sup> On August 23, 2006 and March 25, 2008 the Commission issued orders addressing these disputes, in which the Commission denied all of the disputes relating to the ISO's calculations.<sup>18</sup>

Given these rulings, and the fact that the ISO has been completely transparent in its calculations to date, the ISO believes that there is no justification for parties to raise, or the Commission to consider, new disputes regarding the ISO's calculations that were the subject of the Commission's 2005 order. Moreover, all of the information presented in this filing has already been provided to parties, and the ISO has allowed parties ample opportunity to review and comment on it, and if necessary, bring disputes directly to the Commission. Therefore, the ISO does not anticipate that any issues will be raised regarding these calculations except for those relating to Commission directives and calculations that occurred after the August 8, 2005 order, and which the ISO and parties discussed but on which they were unable to reach agreement as to the appropriate resolution.

#### **IV. COMPONENTS OF MMCP RERUN CALCULATIONS**

The first of the two main components of the refund rerun process detailed in this compliance filing is the results of applying the Commission-mandated mitigated prices to "spot" transactions that took place in the ISO's markets during the Refund Period. The impact of this rerun on the financial position of each participant in the ISO markets

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<sup>17</sup> 112 FERC ¶ 61,176 (2005) at P 116.

<sup>18</sup> 116 FERC ¶ 61,167 (2006); 122 FERC ¶ 61,274 (2008).

during the Refund Period is displayed in Column 5a of the summary page of Attachment A. In addition, monthly details for each participant are set forth in the spreadsheet entitled “MMCP Rerun.” In that spreadsheet, there are two entries for January 2001: “pre-CERS” and “post-CERS.” This split reflects the Commission’s ruling that, for purposes of settlements and billing, the ISO must treat CERS – the State of California Department of Water Resources, through its California Energy Resource Scheduling (“CERS”) division – as the scheduling coordinator for Pacific Gas and Electric Company and Southern California Edison Company beginning on January 17, 2001, which is the date that CERS began acting as the creditworthy counter-party for purchases made on behalf of these entities in the ISO markets.<sup>19</sup>

Although more detailed results of the refund rerun can be found in the revised settlement statements and associated settlement detail files that consist of the individual records reflecting market participant transactions in the ISO markets, the ISO is not including this data with the current filing. Due to the nature of this data (literally, millions of automated and manual Settlements records), the ISO does not believe that it would be of great use to the Commission. As discussed below, all of these detail files were provided to parties for their review and comment during the refund rerun process. The ISO adopted this same approach in its compliance filing relating to the preparatory rerun, which the Commission approved.<sup>20</sup>

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<sup>19</sup> See, e.g., *California Independent System Operator Corp.*, 97 FERC ¶ 61,151 (2001).

<sup>20</sup> See *San Diego Gas & Electric Co., et al.*, Order Accepting Compliance Filings and Providing Guidance, 136 FERC ¶ 61,036 (2011), *rehearing denied*, 138 FERC ¶ 61,092 (2012).

### **A. Calculation of Mitigated Market Clearing Prices**

In the July 25 Order, the Commission ruled that refunds for transactions that took place in the ISO and PX markets during the period October 1, 2000 through June 20, 2001 would be determined based on a modified version of the MMCP methodology that the Commission had earlier adopted to mitigate prospective transactions in these markets. The MMCP is based upon the marginal cost of the last unit dispatched to meet load in the ISO's real-time market, and equals the sum of: (1) the product of the maximum heat rate of any unit dispatched and the gas price; (2) a \$6/MWh operation and maintenance adder; and (3) a ten percent credit-worthiness adder.<sup>21</sup> Pursuant to the Commission's ruling, the ISO calculated MMCPs pursuant to this formula for all of the 10-minute intervals in its markets during the Refund Period, and submitted those MMCPs, along with testimony explaining in detail the manner of their calculation, in the hearing proceedings before the presiding judge.

The Commission, in its March 26 Order addressing the presiding judge's findings, largely accepted the ISO's MMCP calculations, but did require a few modifications. The Commission also directed the ISO to review a set of transactions that had been mis-logged by the ISO during the Refund Period to ensure that any such transactions that were eligible to set the MMCP would appropriately be included in those calculations. In addition, the Commission revised the methodology for calculating the gas price input to the MMCP in order to use producing-area prices plus a tariff rate transportation allowance (including a fuel compression charge allowance) instead of California spot gas prices.

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<sup>21</sup> July 25 Order at 61,517-19.

Prior to re-running its settlement and billing system, the ISO calculated new interval MMCPs based on the modifications directed by the Commission. These revised MMCPs were posted by the ISO on its website for comment by market participants. Also, as an additional quality control check, the ISO retained the services of PricewaterhouseCoopers to audit the MMCP calculations. A few minor errors were found, which the ISO corrected. The ISO then reposted the MMCPs for review and comment. The only comments the ISO received on these MMCPs were those stating that no errors had been identified. At this point, the ISO considered the MMCPs to be final, and used this final set of MMCPs to conduct the rerun of its settlements and billing system.

Also, in the March 26 Order, the Commission adopted the presiding judge's finding that the ISO should calculate and utilize average hourly MMCPs to mitigate import transactions.<sup>22</sup> In accordance with this directive, the ISO calculated average hourly MMCPs and posted its calculation methodology along with the resulting hourly MMCPs for review and comment. The ISO received no adverse comment on these average hourly MMCPs, and therefore the ISO utilized them to mitigate import transactions in the settlement and billing rerun. Although Powerex subsequently raised an issue regarding the manner in which the ISO applied these hourly MMCPs to import transactions, Powerex's argument was ultimately rejected by the Commission.<sup>23</sup>

Because the MMCPs were completed prior to the Commission's directive in its August 8, 2005 order to submit any remaining disputes regarding the ISO and PX

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<sup>22</sup> March 26 Order at P 79.

<sup>23</sup> See *San Diego Gas & Electric Co., et al.*, 116 FERC ¶ 61,167 (2006) at P 27.

calculations performed to date, and any such disputes were addressed and resolved subsequent to or as a result of that order, the MMCPs are final and no longer subject to challenge.

**B. Application of MMCPs to Transactions in the ISO's Markets during the Refund Period through a Rerun of the ISO's Settlements and Billing System [Attachment A – Column 5a and “MMCP Rerun” Sheet]**

In the July 25 Order, the Commission directed that once the ISO had calculated the MMCPs, the ISO and PX were to rerun their respective settlement and billing processes in order to apply the MMCPs to all eligible transactions.<sup>24</sup> The ISO performed an initial settlement and billing rerun and provided the results to the parties and Presiding Judge as part of the administrative hearing phase of this proceeding. A number of issues relating to this initial rerun were raised in the hearing phase and resolved in the Presiding Judge's Order, the Commission's March 26 Order, and orders on rehearing of the March 26 Order. The resolution of some of these issues, as well as the fact that the MMCPs needed to be revised, required the ISO to conduct a new settlements and billing rerun. For purposes of this filing, references to the ISO's settlements and billing rerun refer to this second rerun, which was, for purposes of this compliance filing, the definitive rerun of the ISO's settlements and billing system.

The ISO performed the settlements and billing rerun by applying the MMCP to those transactions contained in its settlements system that were classified with charge codes representing transactions that the Commission had determined were eligible for mitigation. In accordance with the Commission's directive, the ISO also recalculated

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<sup>24</sup> July 25 Order at 61,519.

amounts relating to penalties levied on generators that did not respond to ISO dispatch instructions during the Refund Period.<sup>25</sup> Prior to beginning the settlements and billing rerun, the ISO provided parties with a final list of all of the charge codes that it would mitigate in the rerun. Also, in order to apply the MMCP to a transactional database that reflected the most recent and accurate information available to the ISO, the ISO determined that a number of “preparatory” settlement adjustments and reruns should be performed prior to beginning the refund rerun (collectively known as the “preparatory rerun”). These adjustments and reruns were aimed at incorporating into the ISO's transactional database a number of outstanding items. This preparatory rerun was the subject of a separate Commission proceeding in Docket ER03-746. The ISO filed a compliance filing detailing the results of the preparatory rerun which was accepted by the Commission in an order issued on July 25, 2011.<sup>26</sup>

The ISO began the settlements and billing rerun in October of 2004 and completed rerun processing in February of 2005. The rerun itself was largely automated. However, in order to properly reflect the application of MMCPs to certain transactions, as well as to correct processing errors, ISO personnel were required to perform many manual adjustments to settlements data. During the rerun process, the ISO provided market participants with settlements data showing the impact of the reruns on a rolling basis. First, the ISO provided, electronically, a revised statement for each trading day affected by the rerun. Additionally, the ISO distributed settlement detail files

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<sup>25</sup> July 25 Order at P 61,519 (noting that the MMCP was to be used to rerun the ISO and PX settlements and billing systems as well as to recalculate penalties). These penalties were classified under the ISO charge code “CT 485.”

<sup>26</sup> *San Diego Gas & Electric Co., et al.*, 136 FERC ¶ 61,036.

covering all of the dates in the settlements and billing rerun. The settlement detail files contain detailed records of charges by trading interval, location, zone and charge type as appropriate. These records contain the billable quantity, price, and amount due as well as a number of other fields that uniquely identify the charge (such as location, zone, trading interval) or represent the terms used in deriving the charge. This information allowed market participants to validate the changes made by the ISO during the rerun, in particular, the allocation of charges among market participants. The result was a highly transparent and efficient process.

Per the Commission's orders, the ISO exempted from mitigation in its settlements and billing rerun several types of transactions: (1) "non-spot" transactions, *i.e.*, transactions that were entered into more than 24 hours in advance of delivery or were for more than 24 hours in duration; (2) transactions entered into pursuant to the emergency orders issued by the Secretary of Energy under Section 202(c) of the Federal Power Act; (3) "energy exchange" transactions, in which suppliers delivered energy to the ISO during peak hours in exchange for the ISO returning a certain number of megawatts to the suppliers during off-peak periods; and (4) "bilateral" transactions entered into directly between suppliers and the State of California, through its California Energy Resource Scheduling ("CERS") division. Prior to commencing the settlement and billing rerun, the ISO provided the parties that had any of these types of transactions a list of their exempted transactions for review and comment. The ISO then published a compiled list of all exempt transactions for all parties to review.

During the rerun, the ISO processed disputes and inquiries from market participants relating to the settlements rerun data, and if necessary made corrections

and re-published the relevant data. In order to allow sufficient time for data review, the ISO provided participants with three business weeks from the time of publication to review and dispute any of the settlements rerun data. This was one week longer than the two-business-week (14-day) period that the parties had originally agreed to. In all, the ISO processed and resolved approximately 100 disputes and inquiries relating to the settlements and billing rerun. As discussed above, the Commission required parties with any outstanding disputes regarding the settlements and billing rerun to file those disputes with the Commission no later than December 1, 2005, and all such disputes were subsequently rejected. Because the settlements and billing rerun calculations were finalized, and the data provided to parties, well before this deadline, there is no reason for the Commission to entertain any challenges or disputes regarding these calculations in comments on this filing or otherwise.

The results of these calculations are set forth in Column 5a of the summary sheet of Attachment A. A breakdown of these calculations by month is shown in the sheet entitled "MMCP rerun."

**C. Effect of MMCPs on Generator Fines [Attachment A – Row 20  
"Cal ISO – Generator Fines"]**

The ISO applied MMCPs not only to market transactions, but also to certain financial penalties that were based on the market price of energy. The amounts of these penalties were reduced through the mitigation rerun described above. These adjustments had a second effect that is also shown on Attachment A: because these



finances had been payable to the ISO,<sup>27</sup> the reduction of the penalty amounts resulted in the ISO owing money back to the market, most of which it has repaid already.

By way of background, Amendment No. 33 to the ISO Tariff imposed financial penalties on generators that failed to comply with ISO dispatch instructions during actual or threatened system emergencies. The penalties were assessed Charge Type 485, and thus became known as “CT 485 Penalties.” These provisions were in place from December 8, 2000 to June 21, 2001.<sup>28</sup> The ISO invoiced a total of \$122.1 million in CT 485 Penalties, on which it received only \$60.6 million in payments. The unpaid remainder of \$61.5 million was due to the default of the PX. Although the PX was assessed only \$4.1 million in CT 485 Penalties, its non-payments nevertheless resulted in a much larger shortfall due to the pooled nature of ISO cash clearing.

The settlement charges associated with the fines have undergone several adjustments relating to the refund proceeding:

- 1) adjustments made during the preparatory rerun resulted in an increase in fines of \$20.5 million, yielding total fines of approximately \$142.6 million.
- 2) Because the amount of each fine depended in part on the price of energy during the interval in which the generator failed to respond, the fines were adjusted after application of the MMCP, pursuant to the

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<sup>27</sup> *California Independent System Operator Corp.*, 93 FERC ¶ 61,239 (2000).

<sup>28</sup> *See California Independent System Operator Corp.*, 97 FERC ¶ 61,293, at 62,367 (2001) (directing ISO to remove these penalties from the ISO Tariff, effective June 21, 2001).

Commission's orders in this proceeding.<sup>29</sup> The net effect of the MMCP adjustment was to reduce the fines by approximately \$113.1 million, to total net fines of \$29.5 million.

- 3) In accordance with the Commission's March 26, 2003 order in this proceeding, an adjustment was made to account for FERC's order that Section 202(c) transactions, ordered by the Department of Energy, will not be mitigated.<sup>30</sup> Compliance with this order required the ISO to increase fines in any intervals in which 202(c) sales were made at prices higher than the MMCP. This resulted in an increase in the fines of approximately \$1.4 million before interest (which results in an equal reduction in the amount of fines due back to the market).<sup>31</sup>

After these adjustments, the ISO applied the total net fines remaining (\$30.9 million) to reduce the ISO's Grid Management Charge in accordance with the CAISO's settlement and billing protocols in effect during the refund period.<sup>32</sup> The remainder, (\$29.7 million plus interest), was owed back to market creditors. The ISO returned substantially all of this amount, along with accumulated interest, to the market as follows. First, the ISO partially funded the settlement between the California Parties and Sempra Energy and its affiliates, which the Commission approved on December 22,

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<sup>29</sup> March 26 Order at P 88.

<sup>30</sup> *Id.*

<sup>31</sup> The ISO provided these calculations to affected parties on September 9, 2010, and received no comments or disputes.

<sup>32</sup> See SABP §§ 6.5.2 and 6.5.3, available at [http://www.caiso.com/Documents/TariffSheetNos\\_631-654\\_SettlementandBillingProtocol\\_SABP\\_Section\\_.pdf](http://www.caiso.com/Documents/TariffSheetNos_631-654_SettlementandBillingProtocol_SABP_Section_.pdf)

2010.<sup>33</sup> That settlement directed the ISO to distribute approximately \$43 million in excess generator fines and accumulated interest. The ISO made that distribution on December 30, 2010. The ISO then reduced the remaining payable obligation to the creditor pool against two obligations that the pool owed to the ISO for the refund period: \$348,270 in FERC fees and \$269,794 of GMC (both figures representing the amount owed to the ISO before interest). Finally, the ISO applied substantially all of the remaining payable (\$345,685) to partially fund the settlement between the California Parties and Avista Energy, which the Commission approved on May 28, 2014.<sup>34</sup> As of December 31, 2015, the remaining payable owed to ISO creditors totaled \$6,380.29. This amount is reflected on the “Debtors” column, row 20 of the summary sheet of Attachment A.

## **V. COMPONENTS OF THE FINANCIAL ADJUSTMENTS**

The Commission approved various offsets against refunds to reflect expenses incurred by suppliers or, in the case of non-jurisdictional suppliers, the Ninth Circuit’s decision in *Bonneville Power Administration v. FERC*<sup>35</sup> to the effect that the Commission could not order these suppliers to pay refunds. Each of these offsets reduced the total amount of refunds payable to purchasers, as determined by the MMCP rerun, and so the resulting “shortfall” in refunds had to be allocated to purchasers.

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<sup>33</sup> This funding arrangement was explained by the ISO in its comments on the Sempra settlement, which were filed in Docket Nos. EL00-95, *et al.* on November 2, 2010.

<sup>34</sup> *San Diego Gas & Electric Co., et al.*, 147 FERC ¶ 61,153 (2014). The ISO described this process in its 45th through 48th status reports filed in this proceeding and received no comments on these adjustments.

<sup>35</sup> 422 F.3d 908 (9th Cir. 2005).

**A. Emissions Offsets [Attachment A – Column 5c and “Emissions” Sheet]**

The Commission determined that suppliers were entitled to offsets to their refund liabilities to reflect the cost of procuring certain emissions permits. The amount of these emission offsets was established by the Commission. In the Commission’s Order of March 26, 2003, the Commission found that Duke, Dynegy and Williams had supported their requests for emissions allowances.<sup>36</sup> Other parties, including Reliant, City of Pasadena and LADWP, were ordered to recalculate their requested emissions allowances.<sup>37</sup> The Commission accepted the recalculated emissions claims of the remaining parties, subject to revision, in its Order of September 20, 2005.<sup>38</sup> The claims were submitted to the ISO on November 10, 2005.

The ISO allocated the approved claims to all “control area gross load” during the refund period. The Commission approved this allocation methodology in its Order of October 16, 2003.<sup>39</sup> On April 25, 2006, the ISO distributed data reflecting the allocation percentages for each party. After several weeks, the ISO received no comments or objections. Accordingly, following a market notice on September 26, 2006, the ISO uploaded the final offset numbers into its system. The only subsequent adjustment involved reversing emission offsets granted to non-jurisdictional entities based on the

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<sup>36</sup> March 26 Order at P 99.

<sup>37</sup> *Id.* at PP 101-02, 110.

<sup>38</sup> *San Diego Gas & Electric Co., et al.*, 112 FERC ¶ 61,323 (2005).

<sup>39</sup> October 16 Order, 105 FERC ¶ 61,066 at P 158.

Commission's orders on remand of the Ninth Circuit's decision in Bonneville Power Administration, as described in Section V.D below.<sup>40</sup>

**B. Fuel Cost Allowances [Attachment A – Column 5d and “FCA” Sheet]**

The Commission ruled that generators were entitled to offsets to their refund liabilities to reflect the cost of procuring fuel. Following audits by Ernst & Young, and the Commission's Order of August 23, 2006, fuel cost allowance claims were approved for ten generators. While the approved offsets were generally allocated between the ISO and PX markets, in some cases the ISO and PX refined the allocation to reflect the correct market in which those sales were made.<sup>41</sup> Each component of every approved claim was processed by the ISO or the PX, but not both. The final approved allocation amounts for the two markets is detailed on the spreadsheet attached as Attachment B (“Approved FCA Claims: ISO and PX Breakouts”).

For those offsets allocated to its own market, the ISO allocated the approved amounts consistent with the methodology approved by the Commission in its orders in this proceeding, which directed the ISO to base its allocation on gross mitigated purchases.<sup>42</sup> Per the Commission's directives,<sup>43</sup> the ISO excluded from this allocation those fuel costs that would result in a seller receiving compensation greater than the market clearing price.<sup>43</sup> The ISO distributed the allocation data to the parties in the form

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<sup>40</sup> The final emissions offset credits, after all adjustments, are set forth in the Attachment A sheet entitled “Emissions” under the heading “Emission Credits.”

<sup>41</sup> See *E.g.*, ISO's 34<sup>th</sup> Status Report, filed April 12, 2007, pp. 5-6.

<sup>42</sup> See *San Diego Gas & Electric Co., et al.*, 109 FERC ¶ 61,297 (2004) at P 30.

<sup>43</sup> *San Diego Gas & Electric Co., et al.*, 127 FERC ¶ 61,183 (2009) at P 14 (citing 107 FERC ¶ 61,166 at P 58-59).

of percentages of the total fuel claims that would be allocated to each participant for each hour for their review and comment. After the claim amounts were finalized and allocated to the markets, the ISO circulated final allocation numbers (in dollars, as opposed to just percentages) for review and comment.

After several rounds of review, the ISO believed it had finalized the allocation numbers in August of 2007. However, the ISO later discovered an error relating to the trade month of February 2001. Corrected data was distributed on March 29, 2007. No comments were received. On its own initiative, the ISO later identified a minor error in the data and issued the corrected data to parties for review on March 22, 2007. The only comment received was from PG&E indicating that they had identified no new issues with respect to the data. Again, on September 6, 2007, the ISO announced that it planned to make a small adjustment to the fuel cost allocation data to reflect an issue raised by BPA relating to energy exchange transactions. The monetary impact of this adjustment was only \$38,856.35. The ISO indicated it would not circulate the fuel cost data again, as it believed that the most efficient course of action was to complete its fuel cost offset calculations as soon as possible and share them with the PX. The ISO sent its completed revisions to the PX and the PX incorporated the changes in their own data. No comments or protests regarding this correction were received.<sup>44</sup> The only subsequent adjustments involved reversing fuel cost offsets granted to non-jurisdictional

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<sup>44</sup> This review process and additional details of the corrections made by the ISO are set forth in the status reports filed by the ISO in this proceeding.

entities based on the Commission's orders on remand of the Ninth Circuit's decision in *Bonneville Power Administration*, as described in Section V.D below.<sup>45</sup>

**C. Cost Offset Filings [Attachment A – Column 5e and “Cost Offset” Sheet]**

The Commission determined that power marketers were entitled to offsets to their refund liabilities based on their overall entity costs. These cost offset claims were approved by the Commission in a series of orders beginning January 26, 2006. The ISO prepared a chart of approved cost offset filings, showing the amount of each claim and the order in which it was approved. The ISO posted the chart to listserv for review on August 9, 2010. Three comments were received, which were summarized and addressed in the ISO's status report dated October 24, 2011.

On the allocation side, the Commission's order of May 12, 2006 directed that cost offset filings must be allocated to “net refund recipients.”<sup>46</sup> As announced in its status reports, the ISO interpreted the term “net refunds” as used by the Commission in this order to mean refunds from the MMCP rerun, without considering offsets or other adjustments. The California Parties have taken issue with this interpretation in their December 17, 2007 Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-95-000, *et al.*<sup>47</sup> The Commission has not ruled on that motion.

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<sup>45</sup> The final fuel cost offset credits, after all adjustments, are set forth in the Attachment A sheet entitled “FCA” under the heading “Credits.”

<sup>46</sup> See *San Diego Gas & Electric Co., et al.*, 115 FERC ¶ 61, 171 (2006) at P 25.

<sup>47</sup> See also Response of the California Independent System Operator Corporation to California Parties' Motion for Clarification on Specified Refund Rerun Calculations and Allocations, Docket Nos. EL00-95-164, *et al.* (January 2, 2008).

The ISO's methodology for processing and allocating cost offset claims, as detailed in its status report of October 24, 2011, and reflected in Column 5e of Attachment A, is as follows:

- 1) Begin with all approved cost offset claims. If applicable, add to the amount of the entity's cost offset any FCA allocation that the party received, in accordance with paragraph 36 of the Commission's May 12, 2006 order.
- 2) Re-allocate the amounts added in step 1 (the FCA allocations) to "net refund recipients" – i.e., the results of the MMCP rerun without considering offsets – based on the combined balances between the ISO and PX markets. Note that this allocation methodology is the subject of the dispute by the California Parties discussed earlier in this section.
- 3) Check to ensure that each entity's total claim, including the FCA allocation, does not exceed its refund liability and, if it does, reduce the claim to its amount of refund liability.<sup>48</sup>
- 4) Determine the credit based on the claims for the combined ISO and PX markets. Allocate credits based on the respective refund liability in the ISO and PX markets. Then allocate the amounts in each market to individual months based on the credit balance in the month to the total for the year after eliminating months with debit balances.
- 5) Determine the allocation to "net refund recipients" based on the combined ISO and PX markets.<sup>49</sup> Allocate the cost based on each respective refund recipient's balances in the ISO and PX markets. Then allocate the amounts in each market to individual months based on the debit balances in the month to the total for the year after eliminating months with credit balances.

The ISO circulated the proposed allocation of cost-based offsets to the parties for review and comment several times, and announced in January 2008 that it had resolved all comments and disputes. In October 2011, however, it was necessary to circulate a further revision both to reflect adjustments to claim amounts in intervening Commission orders and to refine the allocation of claims between the ISO and PX markets. The

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<sup>48</sup> See *supra* discussion in Section V.B.

<sup>49</sup> *San Diego Gas & Electric Co., et al.*, 115 FERC ¶ 61,171 (2006) at PP 25, 45.



latter adjustment did not affect either the amount of the approved cost filings or the allocation of those filings to other parties, only how they were allocated between the ISO and PX markets. These adjustments were circulated without dispute or comment.

**D. BPA v. FERC Adjustments [Attachment A – Column 5b and “BPA Adjustment” Sheet]**

The Ninth Circuit’s decision in *Bonneville Power Administration v. FERC* held that the Commission could not order non-jurisdictional suppliers to pay refunds. The Commission implemented this decision in its orders of October 19, 2007<sup>50</sup> and November 20, 2008,<sup>51</sup> which require the ISO to credit back to non-jurisdictional sellers the net refunds that they would have otherwise owed, and then to allocate the resulting shortfall to net refund recipients.

The ISO presented its initial methodology for implementing the Commission’s orders on remand in its status reports of May 8, 2009 and March 10, 2010. On September 8, 2010, the ISO provided to parties the results of its initial calculation through the email 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 those comments and the ISO’s own further analysis, the ISO concluded that the methodology it had proposed required significant modification. The most important change concerned the method of allocating the offsets to net refund recipients. The ISO had initially

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<sup>50</sup> *San Diego Gas & Electric Co., et al.*, 121 FERC ¶ 61,067 (2007).

<sup>51</sup> *San Diego Gas & Electric Co., et al.*, 125 FERC ¶ 61,214 (2008) (“November 20 Order”).

allocated refund shortfalls resulting from the *BPA* decision using the hourly netting methodology that the Commission had adopted to calculate the underlying refund shortfalls.<sup>52</sup> Based on feedback from parties, however, the ISO concluded that this was not the most logical reading of what the Commission intended, and instead used net refunds over the Refund Period as the basis for allocation.<sup>53</sup>

The ISO explained its final methodology for calculating and allocating the *BPA* adjustments in a status report filed October 21, 2011. The ISO began by reversing the emission offsets and FCA offsets granted to non-jurisdictional entities, as required by the Commission's order of November 20, 2008.<sup>54</sup> The ISO then calculated and allocated the *BPA* adjustment as detailed below<sup>55</sup>:

- 1) Credit back the refunds owed by non-jurisdictional entities for transactions in the ISO market in accordance with the hourly netting methodology explained in the Commission's Order of November 20, 2008, excluding certain entities in accordance with the terms of Commission-approved global settlements.<sup>56</sup> (The ISO's calculations reflect all settlements with non-jurisdictional parties through the settlement with CDWR, which the Commission approved on November 11, 2014.) In addition, grant a credit to the PX for certain non-jurisdictional entities that sold in its markets, as directed in the Commission's order of November 20, 2008.<sup>57</sup>

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<sup>52</sup> See November 20 Order at PP 16-19.

<sup>53</sup> See ISO's 46<sup>th</sup> Status Report, filed October 21, 2011, pp. 10-11.

<sup>54</sup> November 20 Order at P 22 (noting that "only sellers with refund liability could receive emission offsets and fuel cost allowances that were to be justified in their cost filings"); *see also See San Diego Gas & Electric Co., et al.*, 138 FERC ¶ 61,091 (2012) at P 27.

<sup>55</sup> *Id.* at pp. 12-13.

<sup>56</sup> These settlements state that the ISO and PX will continue to treat the settling governmental entity as owing refunds for purposes of this compliance filing.

<sup>57</sup> November 20 Order at PP 35-38.

- 2) Allocate the total credit obtained from step 1 to net refund recipients over the entire period. For purposes of this calculation, net refund recipient positions are based on: a) the MMCP rerun; b) all offsets – FCA, Emissions and Cost Offsets, and c) the results of step 1 (i.e. the refund credit back to the affected parties, including the PX). Only parties that are net refund recipients under this formula receive an allocation. The allocation was made *pro rata* to the net refund recipients.
- 3) Divide the allocation between the periods before and after January 17, 2001, based on net refunds for each period, in order to ensure that CERS is appropriately allocated the shortfall for the period during which it acted as the scheduling coordinator for PG&E and SCE.
- 4) For purposes of calculating interest, allocate the resulting amounts to months within those periods based on the ratio of the balance in each month to the total for the period, after eliminating debit balances.
- 5) Allocate the credits to periods before or after January 17, 2001 using the method in step 3.
- 6) Allocate the credits to months within the two periods using the method in step 4.

Step 2, which is one of the issues contested by the California Parties, as explained further below, deserves some elaboration. Among the offset calculations described in this subsection (e.g. fuel costs, costs filings, emissions, etc.), the order in which the calculations are performed matters. One reason is that the *BPA* adjustment reverses any “net refunds” owed by a non-jurisdictional supplier, and this credit will differ depending whether these net refunds are calculated as those refunds due from application of the MMCP alone, or the net refunds from application of the MMCP and all other offsets (emissions, fuel cost and cost-based offsets). Another reason is that the *BPA* adjustment to refunds affects the allocation of cost offsets, which are also allocated to net refund recipients. See the discussion of the open issue concerning allocation of cost offsets, explained in Section V.C, above.

The ISO decided on the order in which to perform the offsets based on a careful study of the Commission's orders, concluding that emissions, FCA and cost-based offsets must be performed first, and then the results of these offset calculations must be used to perform the BPA adjustments. The factors that led the ISO to this conclusion are reflected in the pleadings noted below.

The ISO circulated the resulting calculations for comment and review on October 24, 2011, receiving comments only from the California Parties. In response to those comments, the ISO made three revisions to its calculations and re-circulated them. As explained in the ISO's 47<sup>th</sup> Status Report, filed February 14, 2014, the ISO:

- Corrected how, for purposes of calculating these BPA adjustments, it re-classified the purchases of PG&E and Southern California Edison starting January 17, 2001 to be transactions of CERS. The ISO revised this adjustment to perform it on an interval basis, rather than over the entire refund period;
- Adjusted the calculations to reflect the settlement reached with the Arizona Electric Power Cooperative, which is non-jurisdictional; and
- Corrected how it allocated the offsets to non-jurisdictional sellers that had not yet reached settlements of their liability; the earlier calculations had incorrectly assumed that those suppliers should receive allocations because they owed refunds, which was contrary to the *Bonneville* decision.

The only comments on these corrected calculations were submitted by the California Parties, on July 24, 2015. On the same day, the California Parties filed a motion asking the Commission to direct three changes to the ISO's calculations:

- Calculate *BPA* adjustments based on net refunds in the ISO and PX markets combined, rather than the ISO and PX determining the offset for transactions within their own markets (this would change step 1, above);
- Allocate the *BPA* offsets to net refund recipients within the same hour, as opposed to net refund recipients across the entire refund period (this would change step 2, above); and

- Change the order of the steps, so that the *BPA* offset is allocated first, before cost offsets (this would also change step 2, above).

On August 10, 2015, the ISO filed an answer explaining in detail why its calculations are consistent with the Commission's orders. The California Parties filed a further answer on August 19, 2015, which the ISO answered in turn on September 1, 2015. Other than the California Parties' pending motion, there are no other disputes of the ISO's calculations.

## **VI. CALCULATION OF INTEREST AND ALLOCATION OF INTEREST SHORTFALLS**

In the July 25 Order, the Commission required that interest be calculated on both refunds and receivables past due, pursuant to the Commission's methodology for the calculation of interest set forth in 18 C.F.R Section 35.19a.<sup>58</sup> During the hearing process, the ISO began developing a five-step process for calculating interest which the Commission approved in its orders in this proceeding.<sup>59</sup> Data showing interest balances for each party is included in the summary spreadsheet in Attachment A under the "Components of Interest" columns, and in the associated detail spreadsheets. All of the figures set forth in these entries represent interest calculated through December 31, 2014 ("interest cut-off date"). The ISO provided updated interest calculations for party review and comment on August 21, 2015. The ISO received comments only from the California Parties. Their letter, dated October 15, 2015, takes the position that interest issues should not be resolved while disputes about the principal amounts remain

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<sup>58</sup> July 25 Order at 61,519.

<sup>59</sup> See, e.g., October 16 Order at PP 103-109; *San Diego Gas & Electric Co., et al.*, 107 FERC ¶ 61,165 (2004) ("May 12 Order") at P 31.

pending (specifically, the disagreements about how to allocate cost based offsets and *BPA* adjustment, as explained above in Sections V.C and V.D) but did not raise any disputes about the correctness of the interest calculations given the allocation methods that the ISO has decided to use.

The components of the interest calculations are explained below. With respect to these calculations, the ISO is not requesting that the Commission approve the precise numbers reflected in Attachment A, because interest will continue to accrue. However, the ISO is including the most up-to-date interest calculations with this filing in order for the Commission to understand and be able to verify the ISO's application of the approved interest calculations methodology.

**A. Reversal of Original Interest Charges [Attachment A – Column 7a and “Interest Reversal” Sheet]**

The first step in calculating interest for participants during the Refund Period involved reversing all of the interest originally charged to defaulting debtors. After each monthly clearing during the Refund Period, the ISO calculated interest on each unpaid invoice from a debtor, from the payment date for the final settlement of the previous month to either the date of payment or the payment date of the preliminary settlement for the current month. However, this interest was assessed at the rate specified in the ISO's tariff at the time, and not the Commission's rate as set forth in 18 C.F.R. Section 35.19a. Therefore, in order to accomplish the result directed by the Commission, the ISO began by reversing interest it charged initially, as well as the payments of default interest that were made to ISO creditors relating to amounts that were not timely paid to them during the Refund Period. The ISO distributed these interest reversal calculations for party review and comment in January of 2006, and again on August 21, 2015.

The total interest reversals for each participant are set forth in Column 7a of the summary spreadsheet in Attachment A. Monthly details regarding these reversals for each party are set forth in the Attachment A spreadsheets entitled “Interest Reversal.”

**B. Interest on Unpaid Invoices during the Refund Period  
[Attachment A – Column 7b and “Interest on Invoices” Sheet]**

The second step in determining interest for the Refund Period consisted of calculating interest on all unpaid invoices. The ISO performed this calculation using data on invoicing activity from October 2000 through the interest cut-off date. Interest was calculated at the Commission’s rate on the amount outstanding from the original payment date through the most recently invoiced activity, and compounded quarterly.<sup>60</sup>

The ISO originally distributed these calculations to parties for review and comment in May of 2006. Subsequently, in August 2015, the ISO provided parties with revised and updated unpaid invoice interest calculations. The total impacts of the calculation of interest on unpaid invoices for each participant are set forth in Column 7b of the summary spreadsheet in Attachment A. Monthly details regarding interest on unpaid invoices for each party are contained in the Attachment A spreadsheets entitled “Interest on Invoices.”

**C. Interest on Refunds [Attachment A – Column 7f and “Interest on MMCP” Sheet]**

As noted above, along with interest on unpaid invoices, the Commission required the ISO to calculate interest on refunds owed. The calculation of interest on refunds is comprised of adjustments to account for the impact of mitigated market prices, fuel cost allowance offsets, emission offsets, cost-based offsets, and *BPA* adjustments, and was

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<sup>60</sup> October 16 Order at P 105.

performed consistent with the methodology proposed by the ISO and approved by the Commission.<sup>61</sup> The ISO provided parties with the initial calculation of interest on refunds in March of 2008. Subsequently, in August 2015, the ISO circulated revised and updated calculations of interest on refunds to correct several identified errors in the original calculations as well as to account for subsequent revisions to certain refund offset determinations, such as the cost-based offsets and the *BPA* adjustments. The total financial impact of the calculation of interest on refunds, including refund offsets, is set forth, for each participant, in Column 7f of the summary spreadsheet in Attachment A. Monthly detail relating to each party for each component of the refund calculation is set forth in the spreadsheets entitled “Interest on MMCP,” “Interest on Emissions,” “Interest on BPA Adjustments,” “Interest on FCA,” and “Interest on Cost Recovery” in Attachment A.

**D. Preparatory Rerun Interest [Attachment A – Column 7c and “Interest on Prep” Sheet]**

In a filing made with the Commission in this proceeding on May 1, 2007, the ISO proposed to assess interest on adjustments made as part of the preparatory rerun relating to transactions with trading dates during the Refund Period. The Commission approved the ISO’s request in an order issued on May 27, 2009.<sup>62</sup> The interest adjustments relating to the preparatory rerun were filed as part of the ISO’s preparatory rerun compliance filing. The only change made to those figures in this filing is to update them to reflect interest assessment through December 31, 2015. This change was

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<sup>61</sup> See October 16 Order at PP 103-109; May 12 Order at P 31.

<sup>62</sup> 127 FERC ¶ 61,183.



reflected in the spreadsheets that the ISO circulated to parties for review and comment in August 2015. The total impact to each participant of the preparatory rerun interest calculations is set forth in Column 7c of the Attachment A summary spreadsheet.

**E. Interest on ADRs [Attachment A – Columns 7d and 7e and “Interest on COTP 1” and “Interest on COTP 2” Sheets]**

As the CAISO has explained in several of its status reports, a number of claims that relate to the Refund Period were pursued by various market participants through the ISO’s Alternative Dispute Resolution (“ADR”) procedures. In those reports, the ISO indicated that charges resulting from certain of these disputes may be assessed to the scheduling coordinators during the period affected by this proceeding – both the refund rerun and the preparatory rerun. The settlements involving two of these matters (known as COTP 1 and COTP 2) provide that interest will be calculated and paid at the Commission rate, consistent with the arbitration awards and the ISO tariff in effect at the time. Because these settlements involve transactions during the Refund Period, the preparatory rerun period, or both,<sup>63</sup> the ISO has included related adjustments in its interest calculations included with this filing, as well as its calculations of parties’ baseline pre-mitigation positions. The total impact to each participant of these calculations is set forth in Columns 7d and 7e of the Attachment A summary spreadsheet.

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<sup>63</sup> Both matters were included in the ISO’s compliance filing for the preparatory reruns, submitted April 19, 2010, and accepted by the Commission in 136 FERC ¶ 61,036 (2011). The COTP 1 matter was referred to as the “Pacific Gas & Electric Company 10/5/00 Matter,” and COTP 2 was referred to as the “Pacific Gas & Electric Company 6/10/04 Matter.”

## **F. Interest on Unpaid Invoices for July and August 2001**

Although June 20, 2001, is the end of the Commission-mandated Refund Period, the ISO included the invoices for July and August 2001 in the calculation of interest on unpaid invoices because they include unpaid amounts relating to Refund Period activity – specifically, uncollected balances due from the PX. In accordance with its tariff, the ISO cleared trade months as a pool, and therefore, all creditors shared equally in the nonpayment by the PX. Thus, all creditors for the trade months of July and August 2001, regardless whether they had transacted during the Refund Period, failed to receive a substantial portion of the interest that was due to them as a result of the unpaid invoices for these months. To ensure that all creditors for these months are paid in full, the ISO has included the invoices for July and August 2001 in its interest calculations as well. This is consistent with the Commission’s October 16, 2003 Order, in which the Commission approved the ISO’s proposal to base the calculation of interest on the original ISO invoice dates.<sup>64</sup>

July and August 2001 are the only months affected by this issue. For every trade month after August 2001, all creditors were paid on time. When a trade month cleared on time, even if its invoices included refund period activity (e.g., post-final adjustments or dispute resolutions), no interest was due to creditors, and therefore, no adjustments to such months were necessary as part of the refund rerun process.

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<sup>64</sup> October 16 Order at PP 93, 104, 108. The CAISO is also holding approximately \$150,000 relating to interest earned on invoices for market activity that took place shortly after the end of the Refund Period which were paid late. Consistent with its treatment of July and August invoices as part of the Refund Period, the CAISO proposes to use these funds to reduce the interest shortfall in its markets, as discussed in Section VI.G below.

## **G. Shortfall Adjustments**

The Commission has approved mechanisms for allocating interest shortfalls relating to transactions that took place in the ISO and PX markets during the refund period. The ISO will not allocate these interest shortfalls until later in the refund adjustment process, after reflecting the impact of Commission-approved settlements on market participant balances. Therefore, the exhibits included with this filing do not include interest shortfall amounts. However, in order to help the Commission and parties understand these issues, the ISO provides the following description of what it envisions will be the process for determining and allocating the ISO and PX interest shortfalls.<sup>65</sup>

First, with respect to ISO market transactions, the ISO explained earlier in this proceeding that mismatches can arise between accounts receivable from buyers and payable to sellers in certain months, and that this mismatch can result in a corresponding mismatch in the amounts of interest due from buyers and payable to sellers. Indeed, after the ISO performed the various component interest calculations described above, there was a difference between the aggregate of interest on amounts payable and interest on amounts receivable. With respect to these shortfalls, the Commission recognized that the ISO, as a revenue-neutral entity, would not be expected to absorb them, but rather, the ISO should allocate them pro rata, among both debtors and creditors.<sup>66</sup> In accordance with this directive, the ISO will allocate the

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<sup>65</sup> The ISO provides this description based, in part, on the Commission's request for ISO comments on interest shortfall issues in its November 4, 2015 order on rehearing of Opinion No. 536.

<sup>66</sup> October 16 Order at P 105.

shortfalls based on mismatches with respect to ISO market transactions equally among ISO creditors and ISO debtors, pro rata based on the absolute value of their interest balance, after accounting for Commission-approved settlements.

With respect to the PX, although the Commission has directed the PX pay out interest on amounts past due at the Commission's interest rate, the PX's main source of funds, the PX settlement trust account, earns interest at a rate lower than the Commission's rate. The Commission therefore instructed the PX to allocate this shortfall equally between buyers and sellers in its market.<sup>67</sup> This, however, creates an issue for the ISO because the PX is the largest debtor in the ISO markets. Therefore, some portion of the PX's interest shortfall will be allocated to the ISO. The ISO proposed to allocate this amount pro rata to its own participants. The Commission accepted this proposal in its November 23, 2004 order issued in this proceeding.<sup>68</sup> As with the ISO shortfall, the ISO plans to calculate the impact and allocate the PX shortfall to its own market after adjustments are made to reflect the impact of the settlements entered into in this proceeding.

The ISO plans to calculate and allocate the interest shortfalls separately for its own markets, based on the net interest position of each participant in its markets, rather than combining participant balances between the ISO and PX markets. The ISO believes that this approach is mandated by the Commission's orders in this proceeding. First, in its March 26, 2003 order, the Commission affirmed the presiding judge's finding that interest should be calculated separately for the ISO and PX markets and not

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<sup>67</sup> May 12 Order at P 34.

<sup>68</sup> November 23 Order, 109 FERC ¶ 61,218 at P 39.

recombined.<sup>69</sup> In its March 24, 2005 order, the Commission accepted the PX's proposal for calculating its interest shortfall, which involves the PX allocating its interest shortfall based on each participant's final balance, including the ISO's account with the PX. The Commission specifically agreed that the ISO's balance should be accounted for separately, noting that "the [ISO] is both a creditor and a debtor in the CalPX market, and therefore, should be treated similarly to the other creditors and debtors."<sup>70</sup> The Commission also found that this proposal was similar to the treatment that it had already separately approved with respect to interest shortfalls that occur in the ISO's markets, pursuant to which both creditors and debtors alike will share the burden.<sup>71</sup> Also, as noted above, the November 23, 2004 order endorsed the ISO's proposal for the PX to determine the amount of shortfall that would apply to its balance in the ISO market, and for the ISO to then separately allocate that amount to ISO market participants based on their net interest positions. Most recently, in its order on rehearing of Opinion No. 536, the Commission denied the California Parties' request to clarify that the PX shortfall will be allocated based on participants' aggregate net interest positions across both the ISO and PX markets.<sup>72</sup>

In its order on rehearing of Opinion No. 536, the Commission also denied the California Parties' request to clarify that refunds owed by sellers for tariff violations that occurred during the summer of 2000 will be included in the interest shortfall

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<sup>69</sup> March 26 Order, 102 FERC ¶ 61,317 at P 143.

<sup>70</sup> *San Diego Gas & Electric Co., et al.*, 110 FERC ¶ 61,336 (2005) at P 54.

<sup>71</sup> *Id.* at P 25.

<sup>72</sup> 153 FERC ¶ 61,144 (2015) at P 145.

calculations, but invited interested parties, including the ISO and PX, to comment on the applicability of the interest shortfall approach to the summer 2000 period.<sup>73</sup> The ISO agrees with the Commission’s conclusion that the interest shortfall procedures approved by the Commission for the MMCP refund proceeding do not appear to be applicable to the summer 2000 proceeding.<sup>74</sup> The interest shortfall procedures are necessary in the MMCP refund proceeding because structural differences between the operation of the ISO and PX markets and the Commission’s order that interest be paid on both refunds and amounts past due at the Commission rate will, as discussed above, create mismatches in the amounts of interest owed and owing between buyers and sellers. By contrast, refunds owed by sellers for tariff violations that occurred during the summer of 2000 present no such concerns. Unlike the MMCP refund period, there are no past due amounts from the summer 2000 period. The only interest would be interest owed by sellers that engaged in tariff violations based on the amount of their individual refund. Therefore, there would be no shortfall in interest owed for the summer 2000 period, and no need to adopt or apply procedures to account for interest shortfalls. As such, the CAISO sees no reason to include interest owed on refunds for the summer 2000 period in the MMCP refund proceeding interest shortfall calculations.

## **VII. COMPONENTS OF PARTICIPANTS’ BASELINE FINANCIAL POSITIONS**

In accordance with the Commission’s directive that the ISO indicate the amount currently owed each supplier, and in order to assist the Commission and parties in

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<sup>73</sup> *Id.*

<sup>74</sup> *See id.* (“We reiterate that here, unlike in the Refund Proceeding, we are not resetting the entire market for the Summer Period. Rather, the remedy ordered in this proceeding is seller-specific—and thus the approach developed in the Refund Proceeding to address the interest shortfall appears to be inapplicable in the instant proceeding.”).

understanding the impact of the refund rerun on participant balances generally, the ISO has included participants' "pre-mitigation" balances for the Refund Period in Attachment A. These balances reflect four components.

First, Column 1 shows all amounts still receivable or payable based on the original invoices issued by the ISO during the Refund Proceeding. In accordance with the settlements approved by the Commission in this proceeding,<sup>75</sup> these balances reflect the distribution by the PX of funds from its settlement trust account to fund the settlements. A detailed breakdown of how the PX funds were applied to amounts receivable/payable is shown in the Attachment A spreadsheet entitled "Global Settlement Data." A breakdown of the past due principal amount payments made by the PX to governmental entities pursuant to the Commission's June 25, 2011 order is shown in the Attachment A spreadsheet entitled "GE Payoff Detail." Second, Column 2 shows the disposition of monies that are currently held by the ISO, including interest that has accrued on these funds. The largest of the remaining principal amounts held by the ISO relates to APX, and is being held in accordance with the Commission-approved APX settlement.<sup>76</sup> Another category of funds involves amounts held in ISO-specific accounts (as opposed to accounts for ISO market participants). The origin and disposition of these accounts is discussed in Section VIII below.

Third, Column 3 shows the impact of the preparatory rerun which, as discussed above, the Commission approved in its order of July 25, 2011.

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<sup>75</sup> See, e.g., Offer of Settlement involving Williams Power Company, Docket Nos. EL00-95 et al. (filed April 27, 2004), Attachment A, Settlement Agreement and Release of Claims, at Section 5.1.1.

<sup>76</sup> See APX Joint Offer of Settlement, Docket Nos. EL00-95, et al., (filed January 5, 2007), Attachment B, Settlement and Release of Claims Agreement.

Finally, Columns 4a – 4d show the impact of three disputes resolved through the ISO's ADR procedures. The treatment of interest associated with these ADR resolutions is described in Section VI.E above.

### **VIII. ISO ACCOUNTS AFFECTED**

As shown in Attachment A, in addition to market participants' balances, a number of ISO-specific accounts are affected by or interrelated with the refund period adjustments, and need to be resolved together with the PX cash clearing. This section explains these various accounts, the source of any funds in these accounts, how these funds relate to the refund period adjustments, and how the ISO proposes to dispose of these funds.

#### **A. Interest on Late Payments during refund period [Attachment A – “Cash Held” Sheet]**

During the Refund Period, the ISO assessed interest to market participants that paid late on market invoices during the Refund Period, consistent with the tariff in effect at the time. These funds are shown on the “Cash Held” sheet in Attachment A in the row labeled “Refund period default interest account.”<sup>77</sup> This pool of interest has been the subject of a series of Commission orders, which ultimately ruled that these funds should be disposed of as directed in this docket. As of December 31, 2015 the ISO is holding a total of \$4,221,391.26 that it collected from participants that paid late on market invoices.<sup>78</sup> The ISO proposes that the Commission should direct it to use the

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<sup>77</sup> See *also* Attachment A, Summary Sheet, row 117, column 2.

<sup>78</sup> In a May 3, 2004 request for clarification in Docket No. ER02-651, the ISO indicated that it was holding \$5.2 million in interest relating to the Refund Period. In an order issued February 15, 2005, the Commission denied the ISO's request to disburse this interest from the refund period, because that would affect the ongoing calculations in this docket. *California Independent System Operator Corp.*, 110 FERC ¶ 61,158 (2005). Following the issuance of that order, however, the ISO recognized that a portion of the



funds to pay down market creditor balances from the Refund Period. The funds would essentially be added to the funds held by the PX when calculating how much is available to pay creditors, and then included in the final cash distribution.

This pool of interest accumulated initially because, while the ISO's tariff in effect during the Refund Period assessed interest against market debtors that paid late, it did not contain any provision for paying interest to creditors that received payment late. Instead, the tariff specified that, after covering any ISO expenses or losses and filling a surplus account (up to a limit established by the ISO Board), any interest proceeds would be used to offset the ISO's Grid Management Charge. On December 28, 2001, the ISO filed a tariff amendment (Amendment 41) in Docket No. ER02-651 that proposed to amend these and other rules governing interest on defaults. The Commission rejected this amendment<sup>79</sup> but after a number of subsequent pleadings and orders, directed the ISO not to distribute the interest from the Refund Period, and instead stated that the disposition of the interest should be handled in this docket.<sup>80</sup>

The accumulated funds should be used to pay creditors as described above. The funds are not owed to the participants that were originally assessed the interest charges, because the ISO has credited back their interest charges and adjusted their accounts accordingly. As described above in Section VI, the Commission determined

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\$5.2 million was for transactions that did not occur during the refund period – approximately \$1.5 million – because they were associated with the period June 21 through June 30, 2001. The ISO distributed this interest to creditors during the relevant periods in accordance with the tariff provisions that were approved in the Amendment 41 proceeding. As a result of these distributions, the funds held by the ISO were reduced to approximately \$3.7 million. With accumulated interest to date, this sum has grown to approximately \$4.2 million.

<sup>79</sup> See *California Independent System Operator Corp.*, 98 FERC ¶ 61,187 (2002).

<sup>80</sup> *California Independent System Operator Corp.*, 110 FERC ¶ 61,158 at PP 11, 12.

that interest should be charged and paid to participants on both refunds and amounts past due. As part of the process of calculating these amounts, the ISO reversed the amounts of interest it originally invoiced, and those adjustments are reflected in the entries in Attachment A. Because the adjusted interest rate imposed through the Commission's orders this docket, *i.e.*, the FERC rate, was generally lower than the rate specified in the ISO's tariff during the Refund Period, the reversal of the original interest charges and subsequent recalculation of interest led generally to credits due back to the market participants that had paid interest under the original ISO tariff (because the interest calculation assumes that all interest was paid). As a result, the funds that are still being held are appropriately allocated to ISO market creditors generally, rather than the specific creditors that were assessed the original charges.

**B. Interest Earned Awaiting Orders [Attachment A – “Cash Held” Sheet]**

The ISO is holding \$2,568,502.43 as of December 31, 2015, which represents interest earned on funds that the ISO held temporarily while awaiting direction on how to distribute them, as explained below. This amount is shown in the “Cash Held” sheet of Attachment A in the row labeled “Refund period interest on market reserve activity.”<sup>81</sup> The ISO has since distributed the funds that generated the interest in accordance with the relevant Commission orders, and the recipients of those funds are not due interest. However, the ISO still retains the interest earned while it held those funds, as well as interest that has continued to accrue thereon. The ISO proposes to distribute these funds, including all accumulated interest, to market creditors during the Refund Period.

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<sup>81</sup> See *also* Attachment A, row 119, column 2.

The interest arose from two separate activities, as described below. Because these funds were held in the same account, it would be difficult to determine the precise amount of interest attributable to each original source. Moreover, doing so would serve no practical purpose because the ISO is proposing to allocate all of these funds to the same pool of market creditors.

### **1) Default Collections Pending Ruling on Amendment 53**

In 2001 and 2002, the ISO collected nearly \$68 million that had been due on unpaid market invoices. To resolve potential uncertainty about how to distribute the funds, the ISO filed Amendment 53 on June 10, 2003 in Docket No. ER03-942. The Commission accepted in part and rejected in part that amendment in an order dated December 15, 2003.<sup>82</sup> In accordance with the December 15 order, the ISO distributed the principal amounts according to the tariff provisions in effect at that time. While awaiting the Commission's ruling, the funds earned interest. These funds are included in the overall "Refund period interest on market reserve activity" category.

### **2) TO offsets**

From August 2002 through January 2004, the ISO held approximately \$17 million that had been due to PG&E as transmission owner revenue, while the ISO negotiated an agreement with PG&E to set off the funds to satisfy PG&E's obligations to the ISO market and the ISO and awaited bankruptcy court approval. The interest earned on this amount, plus further accumulated interest, is included in the account labeled "Refund period interest on market reserve activity."

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<sup>82</sup> *California Independent System Operator Corp.*, 105 FERC ¶ 61,284 (2003).

### 3) CERS – TO payments

In November 2001, the Commission directed the ISO to treat CERS as the scheduling coordinator for energy transactions in the ISO markets that were needed to serve the customers of PG&E and SCE and, as such, to invoice CERS directly for certain costs including transmission congestion costs. In response to a request from CERS, the ISO established certain holding accounts and deferred releasing the funds until the Commission resolved these issues. A small amount of interest relating to these funds is contained in the “Refund period interest on market reserve activity” account.

#### C. Summer Reliability Agreement Trust Fund [Attachment A – Rows 21-24]

Refund period debtors owe a total of \$1,485,465.95 to the SRA Trust Account and its creditors, including \$387,869.69 in principal<sup>83</sup> plus \$105,200.96 in interest<sup>84</sup> due the SRA Trust Account, for a total of \$493,070.65.<sup>85</sup> There is also \$644,691.12 in interest owed to the SRA owners.<sup>86</sup>

The ISO established the SRA Trust account as part of a program to enhance reliability by procuring additional peaking capability for the summers of 2001, 2002 and 2003. The ISO executed a “Summer Reliability Agreement” or “SRA” with the sponsors of three proposals, which entitled the ISO to dispatch capacity from their units for up to 500 hours during each summer period. The costs of these agreements were assessed

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<sup>83</sup> Attachment A, row 21, column 1.

<sup>84</sup> Attachment A, row 21, column 7=sum(7a-7j).

<sup>85</sup> Attachment A, row 21, column 8.

<sup>86</sup> Attachment A, rows 22-24, column 7=sum(7a-7j).

to load and exports. Under the SRAs, the ISO's obligation to pay the SRA owners was expressly conditioned on the ISO's recovery of the costs from scheduling coordinators through the market settlement process. To facilitate this recovery, the ISO established a trust account (the "SRA Trust Account") to receive payment through the market. SRA owners were then paid from the SRA Trust Account.

In July and August 2001, the PX defaulted on its ISO invoices, and the shortfall was allocated to all ISO creditors, including the SRA trust account and, indirectly, the SRA owners. See Section VI.G, above. The SRA owners filed a complaint against the ISO in November 2001. In 2009, the ISO entered a settlement with the owners in order to facilitate payment to them.<sup>87</sup> FERC approved the settlement, and it resulted in payment of most of the overdue principal owed to the SRA owners.<sup>88</sup> No interest was paid on those amounts, and it is still due to the SRA owners in accordance with the terms of the Commission-approved settlement. Through December 31, 2015, the interest due to the SRA owners totals \$644,691.12.

The unpaid invoices still due to the SRA Trust Account total \$387,869.69. Interest has accumulated on these unpaid invoices in the amount of \$105,200.96 through December 31, 2015. Upon receipt of these funds at the conclusion of this proceeding, these amounts (along with amounts already in the SRA account) will be paid to Market participants that paid SRA charges during the period covered by the SRA agreements.

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<sup>87</sup> These amounts are detailed in the initial offer of settlement filing with the settlement agreement, submitted March 4, 2009 in Docket No. EL02-18.

<sup>88</sup> See *NEO California Power LLC*, 127 FERC ¶ 61,146 (2009) at P 7.

**D. Amounts Payable to the Emissions and Startup Funds  
[Attachment A – Rows 18 and 25]**

The two accounts described as “Cal ISO – Startup Cost Trustee” and “Cal ISO – Emission Cost” are associated with the must-offer requirement that became effective June 21, 2001, the day after the end of the Refund Period. Under the must-offer program, certain generators were entitled to recover their costs of starting and procuring emission permits. The estimated costs were assessed to ISO scheduling coordinators and paid into trust accounts, with the excess funds to be refunded to the participants that had been charged.

In July and August 2001, the PX defaulted on its ISO invoices, which included amounts due to these trust accounts. The principal amounts of the invoices for Emissions and Startup were paid in full, eventually, by CERS. However, this payment by CERS did not include interest on the late-paid invoices.

As a result, through December 31, 2014, the startup account is due \$15,187.29 in interest,<sup>89</sup> and the emissions account is due \$81,748.78 in interest.<sup>90</sup> At the conclusion of this proceeding, the ISO will distribute the interest received by these accounts *pro rata* to the scheduling coordinators that were assessed relevant charges.

**E. Energy Exchange Trust Account [Attachment A – Row 19]**

The ISO used the account described as “Cal ISO – Energy Exchange” (BAID 2970) in the settlement process for energy exchange transactions, in which the ISO

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<sup>89</sup> Attachment A, row 25, column 8.

<sup>90</sup> Attachment A, row 18, column 8.

received energy during one time period from a supplier outside of the ISO balancing area and later returned a multiple of the same quantity of energy to that supplier.

Charges and credits were issued to this account during the receive period (when energy was imported to the ISO) and the return period (when energy was exported to “pay back” the supplier). The settlement process required the ISO to resolve the cost mismatch between the receive period and the return period that resulted from the quantities and market clearing prices differing between the receive and return periods.

As part of the preparatory rerun, the ISO allocated the costs of energy exchanges to scheduling coordinators during the receive periods based on their total negative uninstructed imbalance energy over those intervals. The Presiding Judge's December 12, 2003 Proposed Findings of Fact approved this methodology for allocating the costs of energy exchanges, and the Commission summarily adopted the Presiding Judge's conclusion in its March 26, 2003 order. The Commission subsequently approved the specific settlement adjustments made by the ISO in order to implement this approach when it approved the ISO's preparatory rerun compliance filing.<sup>91</sup>

Following the preparatory rerun, the ISO corrected the settlement of \$9 million in transactions denoted as “memoties.” The ISO concluded that these transactions should not have been included in the energy exchange account because they were not energy exchange transactions. Following these corrections, and the MMCP rerun, which resulted in the account owing refunds of \$12.3 million due to prices during some intervals exceeding the MMCP, the energy exchange transactions were reconciled. The

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<sup>91</sup> See July 15 Order at P 10 (noting that the preparatory rerun process included corrections for energy exchange transactions that were settled improperly).

cash still held by the ISO of \$46,390.52<sup>92</sup> was generated by a surplus in the post-refund period energy exchange account – *i.e.*, a surplus generated by exchanges with return periods after the end of the refund period. The ISO plans to use this de minimis surplus on energy exchange transactions from outside the refund period in the ISO’s market reserve account, which helps pay market creditors in the event of short-term cash flow issues from temporary defaults.

#### **IX. TREATMENT OF SUMMER 2000 AND NON-SPOT MITIGATION ORDERS**

In 2006, the Ninth Circuit issued a decision on appeal of certain Commission orders in this proceeding in which the court found: (1) the Commission had authority under Section 309 of the Federal Power Act to order relief for any tariff violations that occurred prior to the refund effective date of October 2, 2000 (the “summer 2000” period); and (2) both non-spot and energy exchange transactions should be subject to mitigation.<sup>93</sup> On remand, the Commission established a hearing process to inquire as to whether any of the sellers named as respondents in this proceeding engaged in behavior that constituted a violation of tariffs in effect during the summer 2000 period, and whether any such behavior affected the market clearing price. The Commission also directed the presiding judge to determine which forward market transactions were unjust and unreasonable and calculate refunds, and to propose a methodology and calculate refunds relating to energy exchange transactions.<sup>94</sup>

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<sup>92</sup> Attachment A, row 19, column 2.

<sup>93</sup> *Pub. Utils. Comm’n of the State of Cal. v. FERC*, 462 F.3d 1027 (9th Cir. 2006).

<sup>94</sup> *San Diego Gas & Electric Co., et al.*, 129 FERC ¶ 61,147 (2009).



The presiding judge issued his initial decision in February 2013 and the Commission issued its order affirming the presiding judge's factual findings in November 2014. On November 5, 2015, the Commission issued its order on rehearing and clarification of the November 2014 order. The ISO does not believe that these orders require any amendment to the instant compliance filing.

First, with respect to tariff violations found to have occurred during the summer of 2000, the Commission made clear that the remedy for such violations would not be a market-wide rerun like the one it required for the Refund Period, but rather, disgorgements by individual respondents of payments that exceeded a marginal cost proxy price, which is based on the Commission-mandated MMCP for in-state generators and opportunity costs for importers.<sup>95</sup> Because these constitute two separate forms of relief, the ISO sees no reason to include amounts that sellers will be required to disgorge for summer 2000 period tariff violations in this refund rerun compliance filing. Doing so would likely significantly delay this filing, as the Commission has yet to approve sellers' filings in compliance with the November 2014 and November 2015 orders.

With respect to the mitigation of energy exchange transactions, the Commission concluded that it need not address this issue further because all of the entities that engaged in such transactions have either settled or are governmental entities exempt from mitigation.<sup>96</sup> As such, no further adjustments relating to energy exchange transactions are necessary.

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<sup>95</sup> See Opinion No. 536 at PP 209-210.

<sup>96</sup> *Id.* at P 24.

With respect to non-spot transactions, the Commission determined that one entity, Constellation,<sup>97</sup> owed an additional refund amount of \$2,845,024 plus interest for a non-spot transaction entered into with the ISO during December of 2000. The Commission directed the ISO and PX to allocate this refund *pro rata* to net buyers based on the results of the refund period reruns already conducted.<sup>98</sup> In its most recent status report, filed on August 25, 2015, the ISO indicated that it plans to reflect this allocation in a filing made after the instant compliance filing, based on the results contained in this filing. The ISO finalized the calculations in this filing while rehearing was pending on the Commission's November 2014 order, and the ISO does not believe it appropriate to further delay this filing in order to account for the refund associated with this single transaction. The ISO's approach to this issue will not prejudice or harm any participant because the Commission's requirement to allocate the refund for this transaction *pro rata* to net buyers can easily be performed on top of the calculations contained in this filing, without additional adjustments to other components.

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<sup>97</sup> Subsequent to this order, Constellation merged with Exelon Generation Company. Thus, discussions of this issue in subsequent Commission orders have referred to Exelon as Constellation's successor-in-interest.

<sup>98</sup> Opinion No. 536 at P 238.

## X. NEXT STEPS

The Commission has stated that it will determine the manner in which cash will flow as a result of the ISO and PX compliance filings after it rules on those filings.<sup>99</sup> Accordingly, the only ruling that the ISO is seeking on this filing is an order approving the ISO's refund calculations as set forth herein.

There are, however, a number of steps that will remain before a final determination of "who owes what to whom" can be reached, and the Commission can direct cash to flow, to the extent it has not already done so pursuant to settlements. The ISO believes that the Commission should solicit proposals and comments from parties regarding the best process for reaching a final cash clearing when it approves this filing along with the PX compliance filing. Nevertheless, the ISO believes that the Commission and parties would benefit from an explanation as to what the ISO currently believes, based on discussions with parties and the PX, is generally the appropriate path for reaching a final resolution of the refund process:

- 1) The parties prepare a set of accounting adjustments showing the changes that should be reflected on the books and records of the ISO and PX as a result of their settlement.
- 2) The accounting adjustments described in step 1, when combined with the ISO and PX compliance filing data, will show the parties' current balances in the ISO and PX markets in light of the settlements. Using these balances, the ISO and PX will calculate and allocate final interest shortfalls based on transactions in their respective markets, as discussed

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<sup>99</sup> See *supra* note 2.

in Section VI.G above. The ISO must allocate the shortfall for its market first, because a portion of that shortfall will be allocated to the PX in its role as a participant in the ISO market. The PX will, in turn, allocate that amount as part of its own shortfall to PX participants.

- 3) The ISO and PX combine their final balances, including the settlement adjustments and final interest shortfalls, in order to effectuate a joint cash clearing.
- 4) The PX calculates interest on the final balances through the planned distribution date.
- 5) The ISO and PX submit these proposed joint clearing results for Commission approval (and Bankruptcy Court approval, if necessary), and the Commission directs cash to flow on the basis of these filings and any other pleadings. As part of this order, the Commission adopts rules to allocate any payment defaults associated with the clearing – e.g., in the event that funds are due from parties that have ceased operating and will not pay.
- 6) On the distribution date, Payment notices are issued to parties, payment is collected and funds are collected and disbursed in accordance with the orders.

## XI. CONCLUSION

The ISO respectfully requests that the Commission accept this compliance filing, approve the results of the ISO's refund rerun and financial adjustments as detailed in this filing.

Respectfully submitted,

/s/ Michael Kunselman

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Dated: May 4, 2016

## **Attachment A**

**[Protected Information Removed – Privileged Treatment Requested  
Pursuant to 18 C.F.R. §388.112]**

## **Attachment B**

**Attachment B**  
**Approved FCA Claims with ISO and PX Breakouts**

<b>Entity</b>	<b>Approved Claim</b>	<b>ISO Subtotal</b>	<b>PX as SC</b>	<b>PX Subtotal</b>
Puget Sound Energy, Inc.	\$3,387,795	\$3,387,795		\$0
Duke Energy North America LLC	\$49,944,101	\$33,860,925		\$16,083,176
Sempra Energy Trading Corp.	\$8,734,256	\$5,584,702		\$3,149,554
LADWP	\$31,152,559	\$23,008,803		\$8,143,756
Nevada Power Company	\$5,965,920	\$860,684	\$2,496,505	\$2,608,731
Reliant Energy Services, Inc.	\$106,436,840	\$66,345,317		\$40,091,523
Midway Sunset Cogeneration Company	\$11,570,077	\$2,948,073		\$8,622,003
City of Anaheim, CA	\$619,360	\$297,780		\$321,580
Dynegy	\$76,960,087	\$68,632,697		\$8,327,390
Williams Power Company	\$95,458,969	\$86,641,322		\$8,817,647
Mirant Corporation	\$0			
City of Burbank, CA	\$0			
City of Redding, CA	\$0			
Subtotals		\$291,568,099	\$2,496,505	\$96,165,360
<b>Total</b>	<b>\$390,229,964</b>			<b>\$390,229,964</b>

**Notes:**

"Approved Claim" reflects amount approved by Ernst & Young

"ISO Subtotal" reflects amount of approved claim that is attributable to sales into ISO market.

"PX as SC" reflects the portion of the approved claim attributable to sales made into the ISO market using the PX as the SC.

"PX subtotal" reflects amount of approved claim that is attributable to sales into the PX markets.



## Certificate of Service

I hereby certify that I have this day served a copy of this document upon the email listserv established by the Commission for Docket No. EL00-95-000.

Dated this 4<sup>th</sup> day of May, 2016.

*/s/ Michael Kunselman*

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