

**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 No. EL00-95-045</b>
	)	
<b>Sellers of Energy and Ancillary Service Into</b>	)	
<b>Markets Operated by the California</b>	)	
<b>Independent System Operator Corporation</b>	)	
<b>and the California Power Exchange,</b>	)	
	)	
<b>Respondents.</b>	)	
	)	
	)	
<b>Investigation of Practices of the California</b>	)	<b>Docket No. EL00-98-042</b>
<b>Independent System Operator and the</b>	)	
<b>California Power Exchange</b>	)	

**MOTION FOR CLARIFICATION AND REQUEST FOR REHEARING OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Section 313(a) of the Federal Power Act, 16 U.S.C. § 251 (a) (2001), and Rules 212 and 713 of the Commission’s Rules of Practice and Procedure 18 C.F.R. §§ 385.212 and 385.713, the California Independent System Operator Corporation<sup>1</sup> (“ISO”) hereby submits this Motion for Clarification and Request for Rehearing of the Commission’s order issued on May 12, 2004, 107 FERC ¶ 61,159 (2004) (“May 12 Order”) in the above captioned docket.

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<sup>1</sup> Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

## **I. REQUESTS FOR CLARIFICATION AND SPECIFICATION OF ERROR**

The ISO respectfully requests that the Commission clarify the following with respect to the May 12 Order:

- The ISO will be permitted to allocate to Market Participants on a *pro rata* basis any shortfall in interest collected from the PX as Scheduling Coordinator as a result of the Commission's decision in the May 12 Order that the PX is not required to charge interest at the FERC rate on its Settlement Trust Account.
- The interest due on any over-collections of CT 485 penalties will be limited to and satisfied from the amounts accrued in the ISO's escrow account containing these funds, in accordance with the Commission's treatment of interest due on the PX's Settlement Trust Account.
- The August 31, 2004, date established by the Commission for completion of the refund process and submission of the ISO's financial phase compliance filing is impractical; the Commission should afford the ISO sufficient time to complete these tasks. If the Commission declines to offer this requested clarification, the ISO requests rehearing on this point.
- If the ISO determines that there are no CERS transactions contained in the ISO's Imbalance Energy records other than "bilateral purchases by CERS from sellers made at the instruction of the CAISO in order to provide imbalance energy needed by the CAISO in real time to maintain grid reliability," there is no need for the surcharge prescribed by the Commission in the May 12 Order.

The ISO also respectfully submits that the May 12 Order erred in the following respects, and requests rehearing accordingly:

- Requiring the ISO to treat all energy provided by CERS as Imbalance Energy and mitigate those sales at the MMCP like any other imbalance sale violates due process, and is arbitrary, capricious, and not the product of reasoned decision-making

## II. REQUESTS FOR CLARIFICATION

### A. **The Commission Should Clarify that the ISO Will be Permitted to Allocate, Pro-Rata, to Market Participants, any Shortfall Resulting from Interest Collected from the PX**

In the May 12 Order, the Commission granted the California Parties' request for clarification with respect to the rate of interest earned on the California Power Exchange ("PX") Settlement Trust Account. The Commission ruled that the PX would be permitted to satisfy its interest obligation by paying out the interest already accrued in the Settlement Trust Account, rather than applying the Commission's interest rate set forth in Section 35.19a (the "FERC rate") and allocating that shortfall among its participants. May 12 Order at P 34.

Pursuant to the Commission's orders in this proceeding, the ISO will be calculating interest on both refunds and amounts unpaid for all participants in the ISO Markets during the Refund Period at the FERC rate. As the largest debtor and purchaser in the ISO Markets during the Refund Period, the PX will undoubtedly both owe and be owed substantial amounts of interest when the ISO completes its interest calculations. However, because the PX is earning interest on its Settlement Trust

Account at a rate less than the FERC rate, the amount of interest collected by the PX may, depending on the outcome of the ISO's calculations, be less than the amount that it will owe to the ISO under the FERC rate for amounts unpaid. The question mark here is whether the amount of interest that the ISO determines that the PX owes on amounts unpaid at the FERC rate is greater than the sum of the interest that the PX earns plus the amount of interest that will be owed to the PX by the ISO Market on refunds that are due to the PX.

In order to resolve this issue, the ISO proposes the following process, which is both fair and equitable to all Market Participants, and consistent with the Commission's earlier rulings on interest in this proceeding. First, the ISO will proceed with its interest calculations, consistent with the methodology approved by the Commission in the October 16 Order. As a result of that process, the PX will owe a certain amount of interest to the ISO Markets, reflecting the application of the FERC rate to all amounts unpaid by the PX during the Refund Period. In addition, a certain amount of interest will be owed to the PX by the ISO Markets, reflecting the application of the FERC rate to all refunds owed to the PX as a purchaser in the ISO Markets during the Refund Period. As with all other Market Participants, the ISO will net these two amounts to arrive at a final amount of interest either owed to the ISO Markets by the PX, or owed to the PX by the ISO Markets. Because the PX is the largest outstanding debtor in the ISO Markets during the Refund Period, the ISO anticipates that the PX will be in the net position of owing some amount of interest to the ISO Markets.

The foregoing steps are part of the ISO's process for calculating interest for the Refund Period that the Commission has already approved. Additionally, in order to take

account of a possible interest shortfall from the PX, the ISO proposes that it will, prior to completing its interest allocations and providing its financial phase compliance filing, provide the PX with the final amount of interest that the ISO will have calculated as owing from the PX to the ISO Markets, and owing from the ISO Markets to the PX. If the amount calculated as owing from the PX is greater than the amount calculated as owing to the PX, the ISO further proposes that the PX then calculate the amount of interest that it can pay to the ISO Markets, based on the interest it has earned on its Settlement Trust Account, plus the interest due on amounts not yet paid to it for services performed on behalf of those it represented as a Scheduling Coordinator in the ISO Markets.<sup>2</sup> If the amount of interest that the PX can pay to the ISO Markets is less than the amount that the PX owes to the ISO Markets, the ISO will assign this shortfall *pro rata* to all Market Participants during the final invoicing process (excepting, of course, the PX) based on each Market Participant's net interest position. This *pro rata* allocation is consistent with the Commission's direction in the October 16 Order that the ISO allocate any interest shortfalls equally between buyers and sellers. See October 16 Order at P 105.

The ISO submits that its proposed process is an expeditious and fair method for dealing with a possible interest shortfall as a result of the PX Settlement Trust Account earning interest at a rate less than the FERC rate.<sup>3</sup> Therefore, the ISO respectfully

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<sup>2</sup> For instance, it is the ISO's understanding that PG&E still owes the PX approximately \$1.4 billion for the Refund Period.

<sup>3</sup> This process involves an additional step not previously contemplated as part of the overall refund schedules submitted by the ISO in its status reports. The ISO estimates that this process will take approximately three business days to complete, assuming timely response by the PX. The ISO hopes that this process can be done concurrently with other tasks in the financial adjustment phase, but if this is not possible, implementing this process will lead to a slight delay in the overall schedule for completion of the refund process.

requests that the Commission clarify that the ISO's proposed method of accounting for this possible shortfall is appropriate.

**B. The Commission Should Clarify that the Interest on Any Over-Collections of CT 485 Penalties Will be Satisfied from the Amounts Accrued in the ISO's Escrow Account Containing These Funds, in Accordance with the Commission's Treatment of Interest Earned on the PX's Settlement Trust Account**

During the Refund Period, the ISO charged approximately \$122 million in CT 485 penalties to Generators that failed to timely respond to ISO dispatch instructions. As of this date, the ISO has collected approximately \$60 million out of the approximately \$122 million in CT 485 penalties charged. Of the \$60 million, the ISO has applied approximately \$20 million to reduce the amount of the ISO's revenue requirement recovered through its Grid Management Charge.<sup>4</sup> The ISO has deposited into an escrow account the remaining \$40 million. That account is earning interest at the rate of approximately 1.00% per annum, a rate that is less than the FERC rate specified in Section 35.19a of the Commission's regulations.

After it applies the MMCP to CT 485 penalties, as ordered by the Commission, the ISO expects that the amount of CT 485 penalties owed by Generators during the Refund Period will be significantly less than the \$122 million that the ISO originally invoiced. In fact, depending on the results of the ISO's calculations, the final amount of CT 485 penalties that Generators owe for the Refund Period may be less than the \$60 million already collected by the ISO. If this turns out to be the case, the ISO will be required to refund those excess amounts to Generators, with interest (the excess

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<sup>4</sup> The ISO applied these amounts to the Grid Management Charge pursuant to the provisions of the ISO Tariff and the Settlement in the 2002 Grid Management Charge proceeding. See ISO Tariff, SABP § 6.5.2(b); 101 FERC ¶ 61,371 (2002).

amount equaling the difference between the \$60 million in CT 485 penalties already collected and the amount ultimately owed by Generators after application of the MMCP).<sup>5</sup> However, as noted above, the interest that is currently being earned on those amounts is less than the FERC rate. The ISO therefore requests, for the same reasons as articulated by the Commission in the May 12 Order with respect to the PX's Settlement Trust Account, that the Commission clarify that the ISO will be permitted to pay interest on any excess CT 485 penalty amounts that it collected at the rate those amounts are currently earning in escrow, *i.e.*, approximately 1.00% per annum, rather than at the FERC rate.

As with the PX Settlement Trust Account, the ISO has control of the \$60 million in CT 485 penalties already collected, and it would therefore be unfair to charge interest to Market Participants on these amounts that they have already paid to the ISO Markets. Likewise, it would be inappropriate to require the ISO itself to make up the difference between the escrow rate and the FERC rate, because, as a cash-neutral entity, the ISO would ultimately need to raise this additional amount by charging its Market Participants. Therefore, as with the PX Settlement Trust Account, the most equitable and easily administered approach would be to permit the ISO to pay interest on any amount to be refunded to Generators at the rate being earned in the escrow account. The ISO respectfully requests that the Commission clarify that this treatment is appropriate.

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<sup>5</sup> For example, upon application of the MMCP, if the ISO calculates that Generators owe \$50 million in CT 485 penalties for the Refund Period, the ISO will be required to refund \$10 million, representing the difference between the \$60 million collected and the \$50 million ultimately owed by Generators.

**C. The Commission Should Clarify the Timeframe for Completion of the Refund Process and Submission of the ISO's Compliance Filing**

In the May 12 Order, the Commission addressed the ISO's request for clarification of the October 16 Order's directive that the ISO submit its refund compliance filing within five months of that order. Specifically, the ISO explained that five months would not provide the ISO with sufficient time to complete both the preparatory and refund reruns, along with the attendant financial calculations, such as interest. The ISO therefore requested that the Commission clarify that it would permit the ISO the time it required to complete all of the steps of the refund process and submit its compliance filing. In the May 12 Order, the Commission granted the ISO's request for clarification. The Commission also noted that the ISO had been providing monthly reports on the status of rerun activities, and that the most recent of these reports was filed on of March 10, 2004. The Commission directed the ISO to continue filing these reports, and directed the ISO to submit its "financial phase compliance filing no later than August 31, 2004." May 12 Order at P 22.

Unfortunately, the Commission's August 31, 2004 date does not reflect the ISO's more recent estimates of the timeframe for completion of the refund process and filing of its financial phase compliance filing. In the March 10, 2004 status report, the ISO noted that the August 31, 2004 date for completion of the refund process would likely be pushed back four weeks due to the delay in preparatory rerun production. In the April 12, 2004 status report, the ISO estimated a completion date of November 2004, and in

the May 10, 2004 status report, the ISO estimated that it would complete all work on the refund process and provide its compliance filing by December 2004.<sup>6</sup>

The ISO is mindful of the Commission's desire to conclude the refund process as soon as possible, and, indeed, fully concurs with this goal. In order to facilitate the expeditious completion of the refund process, the ISO has devoted all available resources and materials to this project, and has even hired additional personnel to assist with certain portions of this project. Nevertheless, the ISO believes that it will need until at least December 2004, as reflected in its most recent status report, to complete the process approved by the Commission. As explained in its status reports, and in its Status Report on CERS Surcharge and Explanation of the ISO's Most Recent Estimate For Completion of the Refund Process, filed in this docket on May 19, 2004, this December date was the result of the four week delay noted by the Commission in the May 12 Order in order to address overpayments and correct records, as well as the pause in preparatory rerun production pending clarification of the treatment of CERS transactions, which the Commission provided in the May 12 Order. The ISO still maintains that this schedule is the shortest possible, given the need to ensure accuracy as well as to include the promised mechanisms designed to assist Market Participants in understanding the various stages of the process. Simply stated, given the above-

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<sup>6</sup> The ISO reaffirmed the December 2004 estimate in its most recent status report, filed on June 10, 2004. Status Report of the California Independent System Operator Corporation on the Preparatory Rerun and Other Rerun Activity, Docket Nos. EL00-95-081, *et al.* (filed June 10, 2004). The ISO also explained to the Commission that the ISO's most recent estimate for the timeframe for completion of the refund process would result in a compliance filing several months after August 31, 2001 in two filings made just subsequent to the issuance of the May 12 Order. Status Report of the California Independent System Operator Corporation on CERS Surcharge and Explanation of the ISO's Most Recent Estimate For Completion of the Refund Process, Docket Nos. EL00-95-081, *et al.* (filed May 19, 2004); Interim Status Report, Docket Nos. EL00-95-081, *et al.* (filed May 15, 2004).

mentioned delays and the ISO's current position with respect to settlement statement processing,<sup>7</sup> the August 31, 2004 deadline is a practical impossibility.<sup>8</sup>

The ISO is fully committed to meeting the December 2004 date for completion of this process and filing of its compliance filing. However, because the ISO has provided the shortest possible schedule for completion of the rerun process, the ISO urges that the Commission avoid substituting for the August 31, 2004 date a new "date certain" for filing of the ISO's financial phase compliance filing. The current schedule provided by the ISO, as with all of the schedules that the ISO has provided to date, assumes that no further delays will occur between now and the end of the refund process. Although the ISO has, and will continue to, make every effort to avoid additional delays and complete the refund process by December 2004, it is important that the Commission understand that additional delays are possible. Such delays could result from the need to conduct more extensive research in order to resolve disputes received from Market Participants on the ISO's rerun data, or to correct additional errors in the rerun process. Moreover, as the ISO has noted in its schedules provided with the monthly status reports, additional global settlements among parties for transactions during the Refund Period could extend the financial adjustment phase of the refund process beyond the current estimate.

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<sup>7</sup> As indicated in the June 10 Status Report, the ISO has completed preparatory rerun activity through statement date February 15, 2001.

<sup>8</sup> The impracticality of the August 31, 2004 date is highlighted by the Commission's Order Addressing Fuel Cost Allowance Issues, also issued on May 12, 2004, 107 FERC ¶ 61,160 (2004), in which it directed parties to provide fuel cost allowance calculations to the ISO "no later than August 30, 2004." These fuel cost allowances will be included as an offset to the final refund liability of sellers during the Refund Period, and therefore, will have to be included as part of the ISO's financial phase compliance filing. If the Commission were to hold the ISO to filing this compliance filing by August 31, 2004, and even assuming it were possible for the ISO to complete all other phases of the rerun process by August 30, the ISO would have one day to perform final refund calculations, incorporating the results of the fuel cost allowances, and produce a compliance filing displaying and explaining the results of these calculations. Clearly, such a task is impossible.

For these reasons, the ISO respectfully requests that the Commission clarify that the ISO will be permitted an amount of time sufficient for it to complete the refund process and provide its financial phase compliance filing, with the goal being the December 2004 estimate provided by the ISO in its most recent status report. As noted in its Interim Status Report filed in this docket on May 14, 2004, the ISO has commenced an expedited review of its rerun process and procedures, as well as the requirements for the various phases of the refund process set forth by the Commission, in order to identify any opportunities that might exist for expediting either the rerun or any other phase of the refund process. This review is continuing. If the ISO determines that it is able to shorten the timeframe for completion of the refund process and filing of its financial phase compliance filing, the ISO will notify the Commission immediately of its new estimated timeframe. Likewise, the ISO will immediately notify the Commission if it encounters any additional delays that result in an estimated completion date later than December 2004. For the time being, however, the ISO requests that the Commission grant clarification that the ISO will not be required to file its financial phase compliance filing on August 31, 2004, and instead, will be permitted sufficient additional time to complete the refund process and file its compliance filing. If the Commission declines to grant this clarification, then the ISO requests rehearing on this issue for the reasons articulated above.

**D. The Commission Should Clarify That There is No Need for a CERS Surcharge if All of the Energy Whose Prices Are To Be Mitigated by the ISO Was Provided in Real Time**

In the May 12 Order, the Commission acted on two issues with respect to the treatment of transactions entered into during the Refund Period by CERS in order to satisfy the net-short position of the California IOUs. First, the Commission clarified that the ISO has complied with the Commission's directive to "reflect CERS and not the IOUs as the responsible financial entity" for the net-short position of the IOUs. May 12 Order at P 60. The Commission also concluded that the ISO, by including CERS transactions in the ISO's Imbalance Energy Market, had "treated CERS energy as an unmitigated sale to the ISO" and was "seeking to pass on to non-IOU loads the cost of bilateral transactions or the unmitigated price of imbalance energy." *Id.* at P. 61. Concluding that neither of these results was reasonable, but seeking to avoid further delay, the Commission directed the ISO to proceed with the "third approach" suggested by the Generators' witness, Mr. Tranen, that is, to "treat all of the CERS energy as Imbalance Energy, but mitigate all of the sales at the MMCP like any other imbalance sale." *Id.* at P 62. This decision permitted the ISO to restart preparatory rerun production without further delay.

The Commission also ordered the ISO to develop a surcharge for imposition after the refund process is complete that charges the "appropriate customers for any amounts that were inappropriately accounted for in treating (and thus mitigating) all CERS energy as Imbalance Energy." *Id.* at P 63. Specifically, the Commission directed the ISO to "remove the mischaracterization as Imbalance Energy of both (1) bilateral purchases by CERS from sellers that CERS scheduled on a day-ahead basis through

the CAISO markets in order to meet the net-short load of the IOUs; and, (2) purchases by the CAISO from sellers in real time in order to serve the net short load of the IOUs.” May 12 Order at P 63. The ISO is currently in the process of completing a self-audit of its records of Imbalance Energy transactions made during the period at issue (*i.e.*, January through June of 2001) in order to identify what, if any, transactions in those records fall under the two categories that the Commission directed the ISO to include in the surcharge, and the ISO will communicate the results of this audit to the Commission as soon as that audit is completed.

The ISO wishes to confirm its understanding, however, that if there are no such transactions recorded as Imbalance Energy, then there is no need to develop a surcharge as directed by the Commission. That is, if none of the transactions that are reflected in the ISO’s records as Imbalance Energy transactions are “bilateral purchases by CERS . . . scheduled on a day-ahead basis” or “purchases by the CAISO from sellers in real time in order to serve the net short load of the IOUs,” then the ISO’s mitigation of all of those transactions completes its obligations with respect to CERS transactions as set forth in the May 12 Order, and the ISO will not need to develop and implement a surcharge methodology “so that only bilateral purchases by CERS from sellers made at the instruction of the CAISO in order to provide imbalance energy needed by the CAISO in real time to maintain grid reliability is recorded as Imbalance Energy.” *Id.* The ISO therefore respectfully requests that the Commission clarify that the ISO is correct in its understanding with respect to the need for the surcharge.

### III. REQUEST FOR REHEARING

#### A. **The Commission Should Grant Rehearing of its Finding that the Energy Provided by CERS in Order to Satisfy the Net-Short Requirements of the California IOUs Will be Mitigated**

The Commission's decision in the May 12 Order to require the ISO to mitigate CERS transactions represents an unwarranted departure from the course of this proceeding, and given the lack of evidence in the record on this issue, is arbitrary, capricious, and not the product of reasoned decision-making.

As the ISO explained in its December 15 answer to the Generators on this issue, the ISO filed testimony early in the hearing stage of this proceeding in which it explained that it did not intend to mitigate amounts paid to CERS as a Scheduling Coordinator providing Imbalance Energy.<sup>9</sup> Neither the Generators nor any other party filed testimony or evidence disputing this point. Despite the myriad of items raised, litigated, and resolved in the evidentiary phase of this proceeding, many of which had at stake sums far less than this issue, no mention was made of mitigating the Imbalance Energy provided by CERS. Therefore, beyond the ISO's initial testimony in which it stated that it did not plan to mitigate these transactions, no record whatsoever was developed on this issue.

This point should not be treated lightly. In its July 25, 2001 order, the Commission set this proceeding for hearing because "despite the voluminous record accumulated in this proceeding to date, material issues of fact remain that prevent the Commission from ordering refunds at this time." 96 FERC ¶ 61,120 (2001) at 61,520 ("July 25 Order"). The Commission indicated that the scope of the hearing would be

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<sup>9</sup> Exhibit ISO-24 at 29.

limited to “collection of data needed to apply the refund methodology” as prescribed in the July 25 Order. *Id.* In that order, the Commission indicated that the transactions entered into between CERS and generators would not be subject to mitigation. *Id.* at 61,515. However, the Commission never addressed the question of whether the Imbalance Energy provided to the ISO by CERS should be subject to refund. As is clear from the various pleadings filed by the ISO, California Parties, and Generators, subsequent to the Commission’s directive in the October 16 Order that prompted this dispute, the appropriate treatment of CERS transactions entered into during the Refund Period is an issue of considerable complexity, meriting the development of a robust record. Indeed, as recognized in the May 12 Order, the Commission is itself still unclear as to the “transactional relationship between CERS and the CAISO during the refund period.” May 12 Order at P 60. Therefore, it is entirely inappropriate for the Commission, without the benefit of anything remotely resembling a complete record on this issue, to now order that the ISO “treat all CERS energy as Imbalance Energy, but mitigate all of the sales at the MMCP like any other imbalance sale.” *Id.* at P 62. Such an order violates the very basic tenets of due process, and the requirement that the Commission engage in reasoned decision-making and act in a manner that is not arbitrary and capricious. The Commission should grant rehearing of this decision.

The mitigation of all CERS transactions also results in the unjust shifting of a portion of the costs for Imbalance Energy incurred during this period from those that legitimately bore those costs (net negative deviators, including Generators) to CERS. This occurs in the following manner. Mitigating all CERS transactions results in the elimination of any portion of the cost of those transactions above the MMCP. It is this

portion above the MMCP that is recovered through Charge Type (“CT”) 481, which is allocated to net negative deviators in the ISO Markets during the Refund Period. A substantial number of the net negative deviators during the time period in which CERS was acquiring and providing energy to satisfy the net-short load of the IOUs were the Generators themselves, who sometimes failed to generate in real-time as committed, thus requiring CERS to contract for additional amounts of energy to make up the difference.

Generally speaking, it is appropriate that the mitigation of transactions results in the elimination of the portion of the costs of those transactions recovered through CT 481, because the Market Participants who paid for the cost of that transaction are not saddled with additional costs as a result, and in fact, receive the benefit of the refunds associated with those amounts. For instance, consider a transaction for the amount of \$300, with the original MCP during the interval that transaction took place being \$150. Under the ISO’s settlement system, the \$150 up to the MCP would have originally been allocated under CT 401 to metered demand during that interval, while the \$150 over the MCP would have been allocated through CT 481 to net negative deviators during that interval, under the rationale that the net negative deviators were the entities most responsible for the purchase of energy at prices above the MCP. Now, assume that the MMCP for this interval was calculated as \$100. The result would be that the \$300 transaction would be mitigated to \$100, all of which would be charged to metered demand through CT 401, effectively eliminating the entire portion of this transaction collected through CT 481. This result is appropriate, as the \$200 refund associated with this transaction is allocated to purchasers (*i.e.*, metered demand) during this interval.

These purchasers do not realize any additional costs as a result of the elimination of the CT 481 portion of this transaction.

The difference with CERS is that CERS will not realize the benefit of a large portion of the refunds that result from the mitigation of its transactions with the ISO, and in fact, as a result of the elimination of the CT 481 portion of these transactions, will realize greatly increased costs. This is the case because CERS sold energy to the ISO at the same price that it purchased that energy from the actual supplier, *i.e.* it sold to the ISO at cost. If the price of CERS's transactions with the ISO is mitigated, CERS will be faced with paying refunds for transactions on which it realized zero profit, resulting in a net loss for CERS. This result is manifestly inequitable. CERS' role during this time period was not to make money, but to act as a creditworthy entity and purchaser of last resort that could make purchases in the real-time market that were necessary in order to keep the lights on in California. There is no doubt that absent CERS's participation, the State of California would have been faced with a crisis far more dire than the one it did face. Moreover, mitigating the prices of CERS's transactions with the ISO, and thus eliminating the amounts assigned to CT 481, rewards the behavior of the Generators that did not provide the energy in real-time that they had committed to provide, and instead, sold significant quantities to CERS directly. For these reasons the ISO requests that the Commission grant rehearing of this issue and direct the ISO to leave CERS transactions unmitigated. Such a decision will not impact the ISO's schedule for completion of the refund process so long as it is received 30 days prior to the beginning of the refund rerun production, which the ISO currently estimates will begin in September of this year.

**B. If the Commission Fails to Provide the Clarification of the ISO's Schedule Requested in Part III.C., Above, the Commission Should Grant Rehearing on This Point**

Please see the discussion in Part III.C, above.

**IV. CONCLUSION**

Wherefore, for the reasons discussed above, the ISO respectfully requests that the Commission clarify and grant rehearing of the May 12 Order as requested above.

Respectfully submitted,

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Dated: June 14, 2004

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA, on this 14<sup>th</sup> day of June, 2004

/s/ Gene L. Waas

Gene L. Wass