

103 FERC ¶ 61, 220
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

California Power Exchange Corporation

Docket Nos. ER02-2234-008
ER02-2234-009
ER03-139-004
ER03-139-005

ORDER ACCEPTING COMPLIANCE FILINGS AND
DENYING REQUEST FOR REHEARING

(Issued May 22, 2003)

1. On March 10, 2003 and March 12, 2003,¹ the California Power Exchange Corporation (CalPX) submitted compliance filings in response to the Commission's order issued on February 25, 2003.² In that order, the Commission directed the CalPX to revise its compliance filing to allocate any expenses incurred by the Official Committee of Participant Creditors (Participants Committee) to the Committee's members.
2. On March 27, 2003, the Participants Committee filed a request for clarification or, in the alternative, rehearing of the February 25 Order.
3. In this order we accept the proposed compliance filings and deny the Participants Committee's request for rehearing, finding that any market participant represented by the Participants Committee is responsible for bearing its share of any expenses incurred for its benefit. This order benefits the public by ensuring that the CalPX will implement the proposed rate schedule as intended by this Commission.

¹See Docket Nos. ER02-2234-008 and ER03-139-004, respectively.

²California Power Exchange Corp., 102 FERC ¶ 61,208 (2003) (February 25 Order).

I. Background

4. On July 3, 2002, as amended on July 10, 2002, the CalPX proposed a "wind-up" rate which was intended to provide it with a means of funding its ongoing activities while it winds-up its affairs. On August 8, 2002, the Commission found that the proposed rate schedule, subject to modification, was an appropriate mechanism to allow the CalPX to fund its continuing operations.³ The Commission accepted the CalPX's proposed six-month budget of approximately \$6.3 million, with a matching reserve from the Settlement Clearing Account, for the initial six-month period, and required the CalPX to renew its request for subsequent six-month periods.

5. The August 8 Order also found that the CalPX's proposed allocation methodology grouped market participants in an apparently arbitrary and unsupported manner. The Commission stated that a simpler method would be to allocate costs to customers based on the ratio of each customer's account balance to the total of all customer account balances on an absolute value basis. On September 9, 2002, as amended, the CalPX filed a revised rate schedule in compliance with the Commission's August 8 Order.

6. On December 20, 2002, the Commission found that the CalPX failed to fully comply with the directives of the August 8 Order and directed the CalPX to comply.⁴ Additionally, the Commission found that in the context of this rate schedule, the expenses incurred by Participants Committee were for the benefit of its members, and as such, these costs should be allocated entirely to members of the Participants Committee. CalPX was therefore directed to modify its allocation of the Participants Committee expenses for the first six-month period (July 10, 2002 through December 31, 2002). Similarly, on December 31, 2002, the Commission directed that expenses for the second six-month period (January 1, 2003 through June 30, 2003) be modified to conform with the December 20 Order. California Power Exchange Corp., 101 FERC ¶ 61,403 (2002).

7. In the February 25 Order, the Commission continued to find improperly allocated expenses and directed the CalPX to revise its wind-up rate schedule to reflect that expenses of the Participants Committee will be allocated to all the market participants it represents, not just the nine official members of the Participants Committee, except for expenses of litigating the claims involving the commandeering of block forward contracts or litigating surety bond claims. The order also directed the CalPX to allocate

³California Power Exchange Corp., 100 FERC ¶ 61,178 (2002) (August 8 Order).

⁴California Power Exchange Corp., 101 FERC ¶ 61,330 (2002) (December 20 Order).

the amount of \$114,194 for “PG&E Bankruptcy Claims” and \$750,000 for “Participant Committee Claims Litigation” to the market participants represented by the Participants Committee.

II. Notice of Filings and Responsive Pleadings

8. Notices of CalPX's filings to comply with the February 25 Order were published in the Federal Register, 68 Fed. Reg. 3698, and 14230 (2003), with motions to intervene and protests due on or before March 31, 2003 and April 2, 2003, respectively.

9. Participants Committee filed a timely motion for clarification or in the alternative, request for rehearing of the February 25 Order. In response, Southern California Edison (SoCal) filed an answer requesting that the Commission reject Participants Committee's request.

III. Request for Rehearing

10. Participants Committee states that neither the \$750,000 expense for “Participants Committee Claims Litigation” or the \$114,194 expense for “PG&E Bankruptcy Claims” should be allocated solely to the market participants represented by the Participants Committee.

11. With respect to the \$750,000 expense, the Participants Committee argues that “Participants Committee Claims Litigation” is a misleading term created by the CalPX. Participants Committee states that this category comprises expenses to be incurred by the CalPX for costs relating to the defense of its directors and officers from claims arising from the issues with the California markets. Participants Committee argues that such expenses would not be incurred for the benefit of the market participants that it represents, although it also believes that any recovery against the officers and directors to the CalPX would increase the funds available to satisfy the claims of creditors generally.

12. With respect to the \$114,194 expense, Participants Committee states that this amount includes not only the expenses of the Participants Committee, but also expenses of the CalPX and its counsel in connection with the CalPX's claims against PG&E. Participants Committee argues that the expenses of resolving these claims are incurred for the benefit of all creditors, not only the creditors that it represents. Moreover, like the commandeering and surety bond litigation, the Participants Committee states that the Bankruptcy Court authorized it to prosecute claims in PG&E's bankruptcy case. As such, Participants Committee states that it has acted as a representative of the bankruptcy estate and not for the sole benefit of its participant creditors. Therefore, the Participants

Committee believes that the bankruptcy claims expenses should be allocated among all market participants, including PG&E and SoCal.

13. In its answer, SoCal contends that the Participants Committee's arguments are moot and should be rejected. With regard to the \$750,000 expense, SoCal states that the CalPX has already explained that this amount was not incurred since no claims had been filed against the CalPX. Thus, SoCal states that the \$750,000 expense is moot because it was never incurred and because the CalPX has stated that the amount will be adjusted to reflect actual figures in future compliance filings. With regard to the \$114,194 expense, SoCal states that even if it is true that a portion of this amount reflects expenses that will be incurred directly by the CalPX, the Participants Committee fails to explain what portion of the expenses it should bear and what portion the CalPX should bear. SoCal states that in any event, this issue should be alleviated by the fact that the CalPX will adjust the costs to reflect actual amounts expended by the CalPX and by the Participants Committee in future invoices.

IV. Discussion

14. Rules 213(a)(2) and 713(d)(1) of the Commission's Rules of Practice and Procedure⁵ generally prohibit answers to request for rehearings unless otherwise ordered by the decisional authority. In this instance, we will accept SoCal's answer because it provides information that clarifies the issues in the Participants Committee's request and aids us in the decisional process.

15. With regard to the \$750,000 expense for "Participant Committee Claims Litigation," we agree with SoCal that this particular expense is no longer subject to debate and that Participants Committee's arguments are moot. In its March 12, 2003 compliance filing, the CalPX stated that the "originally estimated amount of \$750,000 . . . would not be incurred during this period as no claims had been filed against CalPX. Therefore, CalPX adjusted the estimated expenses for this line item downward by \$750,000."⁶ Accordingly, since this expense was never incurred and because the CalPX will adjust amounts to reflect actual amounts in future filings, we need not address Participants Committee's argument to reallocate this expense.

⁵18 C.F.R. § 385.213(a)(2) and § 385.713(d)(1) (2002).

⁶Transmittal letter at 3.

16. With regard to the \$114,194 expense associated with "PG&E Bankruptcy Claims," the Commission does not find that the Participants Committee's pursuit of these claims benefits all market participants. Unlike the commandeering and surety bond litigation, the bankruptcy claims litigation will not recognizably benefit all market participants. In fact, the Participants Committee has stated that the expense of resolving these claims are incurred for the sole benefit of creditors.⁷ Furthermore, while the Participants Committee states that this line item "includes not only the expenses of the Participants Committee, but also expenses of CalPX," the Participants Committee does not provide any detailed explanation as to what portion of this amount is attributable to the CalPX. However, notwithstanding the exact breakdown of how this expense will be shared, the Participants Committee's concern that it will unfairly be charged with the full expense is obviated by the fact that the CalPX will adjust the costs to reflect actual amounts in future compliance filings. We therefore find that the Participants Committee will ultimately only be responsible for the actual amounts that it expended in pursuing the PG&E bankruptcy claims. Accordingly, the Participants Committee's request that the Commission reallocate this expense is denied.

The Commission orders:

(A) CalPX's compliance filings of March 10, 2003 and March 12, 2003 are hereby accepted to be effective July 10, 2002 and January 1, 2003, respectively.

(B) Participants Committee's request for rehearing is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁷Request for Rehearing at 10.