

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

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

**REQUEST FOR LEAVE TO ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO CALIFORNIA PARTIES'
RESPONSE REGARDING MOTION FOR CLARIFICATION ON
ISO/PX RERUN ISSUES**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,¹ the California Independent System Operator Corporation ("CAISO") submits this answer to the California Parties' August 19, 2015 Request for Leave to Answer and Answer to ISO and PX Responses to California Parties' Motion for Clarification of ISO/PX Rerun Issues. The CAISO requests leave to submit this answer as it will assist the Commission in better understanding and addressing the issues raised in the California Parties' motion.

¹ 18 C.F.R. § 385.213 (2015).

In their motion, the California Parties argued that the CAISO and the California Power Exchange (“PX”) have diverged from the Commission’s directives with regard to how to determine and allocate the refund shortfalls resulting from the Ninth Circuit’s decision in *Bonneville Power Admin. v. FERC*.² The CAISO filed an answer explaining how it developed its methodology for calculating and allocation the *BPA* refund shortfalls, as well as other refund offsets, based on a careful analysis of the Commission orders. In an attempt to rehabilitate their original motion, the California Parties now raise new arguments. But these new arguments do not faithfully portray the Commission orders that they purport to rely on.

I. ANSWER

A. The California Parties Interpretation of the February 3, 2012 Order is Illogical and Inconsistent with Prior Commissions Orders

The California Parties hinge their argument that the CAISO and PX must calculate a single net *BPA* refund shortfall for each governmental entity on paragraph 23 of the February 3, 2012 Order.³ In its answer to the California Parties’ motion, the CAISO pointed out that this paragraph merely affirms the Commission’s finding on a different issue – the joint financial clearing of the CAISO and PX markets. In their August 19 pleading, the California Parties’ reply that this paragraph must be read as addressing how to calculate the *BPA* refund shortfall because it resides in a section of the February 3, 2012 order devoted to issues relating to netting in the context of the *BPA* shortfall.⁴

² *Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005) (“*BPA*”).

³ *San Diego Gas & Elec. Co.*, 138 FERC ¶ 61,092 (2012) (“February 3, 2012 Order”).

⁴ California Parties Answer at 4-5.

The relevant context, however, makes the significance of this paragraph clear. The Commission *denied* the California Parties' request for clarification. Accordingly, the only way in which this paragraph could reasonably be read as an endorsement of the California Parties' position regarding a joint CAISO/PX calculation of the *BPA* shortfall would be if the Commission had previously affirmed the California Parties' position, therefore obviating the need for further clarification. The opposite is true. As the CAISO explained in its answer to the California Parties' motion, the Commission's previous orders about the *BPA* shortfall can be read sensibly only with the understanding that the Commission envisioned that the CAISO and PX would conduct those calculations separately for their respective markets. Moreover, the passage in the July 15, 2011 order which the Commission declined to further clarify was limited to requiring that the principal amounts due to each governmental entity account for any net remaining balance between the CAISO and PX markets "so that the CAISO and CalPX markets can be financially cleared together."⁵ It did not address the *BPA* shortfall calculation at all. It stands to reason that if the Commission had intended to change course from these earlier orders and require the CAISO and PX to calculate the *BPA* shortfall jointly, it would have said so explicitly.

The California Parties' contention that separate CAISO and PX shortfall calculations are "unfair" is equally without merit.⁶ The sole purpose of the *BPA* shortfall calculation is to arrive at a reasonable determination of the net refunds that would have been owed to the CAISO and PX markets by governmental entities, absent the Ninth

⁵ *San Diego Gas & Elec. Co.*, 136 FERC ¶ 61,036 at P 30 (2011) ("July 15, 2011 Order").

⁶ California Parties Answer at 4.

Circuit's *BPA* decision. Those refund obligations are based on the reruns of the CAISO and PX settlement systems, which were conducted separately by the CAISO and PX for their respective markets.

B. The California Parties Continue To Base Their Arguments Regarding the BPA Shortfall Allocation and the Order of Offsets on Decontextualized and Non-Relevant Passages of Commission Orders

In its answer to the California Parties' motion, the CAISO explained that paragraph 46 of the June 18, 2009 order does not support the California Parties' claim that the CAISO and PX must allocate the *BPA* shortfall on an hourly basis because that paragraph addressed only the allocation of cost offsets. The California Parties attempt to rebut the CAISO's argument by pointing out that the Commission discussed the methodologies for allocating other refund offsets in the background section of the June 18, 2009 order.⁷ This background discussion does nothing, however, to alter the fact that paragraph 46 is focused solely on addressing a request for rehearing specific to the allocation of cost offsets. The relevant sentence quoted in its entirety (including the word "cost," which the California Parties conveniently omit from their pleadings) is plain enough: "We continue to find that the allocation methodology should be consistent with the manner in which the **cost offsets** are calculated."⁸ There is no sound basis for reading this language as a directive to the CAISO to allocate the ***BPA shortfall*** on an hourly basis. Nor is there any basis for assuming that the Commission's directive regarding the allocation methodology for one refund offset governs the allocation of other offsets. As the California Parties themselves point out, the Commission has

⁷ *Id.* at 7-8.

⁸ *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,250 at P 46 (2009) ("June 18, 2009 Order").

acknowledged that the various allocation methodologies need not be identical.

The California Parties adopt the same tactic with respect to their argument that the *BPA* shortfall should be allocated based solely on the MMCP calculations, while the cost offset should be allocated to refund recipients in a manner that considers not only the MMCP, but also the allocation of the *BPA* shortfall and other refund offsets. First, the California Parties argue that the Commission's "real principle" for allocating cost offsets is revealed in its statement in Paragraph 25 of the May 12, 2006 order that cost offsets should be allocated "to net refund recipients in proportion to their net refunds."⁹ This statement, however, says nothing about what constitutes "net refunds." The subsequent paragraphs, however, demonstrate that the Commission envisioned an allocation of cost offsets to buyers based on refunds as determined solely by the MMCP rerun.¹⁰

In a similar vein, the California Parties argue that the Commission required the CAISO to allocate cost offsets based, in part, on the allocation of fuel cost offsets because the Commission recognized that "calculating refunds is a process with a number of different steps."¹¹ However, the paragraph from which the California Parties quote does not address the question of how to determine "net refund recipients" as between cost offset and *BPA* shortfall allocations, but rather concerns the need to ensure that sellers with cost offset filings are not allocated a portion of the fuel cost offset. The California Parties' suggestion that the Commission intended this statement

⁹ California Parties Answer at 9.

¹⁰ See, e.g., May 12, 2006 Order, 115 FERC ¶ 61,171 at P 28 ("We conclude that the most equitable approach is to allocate the cost offset to those buyers who are compensated *by the MMCP refund methodology* through receiving refunds.") (emphasis added).

¹¹ California Parties Answer at 10.

as a directive that the cost offset allocation must consider all other offsets, including *BPA* shortfalls, is spurious.

II. CONCLUSION

For the reasons set forth herein, the CAISO requests that the Commission consider this answer and deny the California Parties' motion.

Respectfully submitted,

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Dated: September 1, 2015

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 this proceeding.

Dated this 1st day of September, 2015 in Washington, DC.

/s/ Michael Kunselman

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