THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company, Complainant,	)	
v.	)	Docket No. EL00-95-045
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 Independent System Operator and the California Power Exchange	)	Docket No. EL00-98-042

SUMMARY OF THE PREPARED REBUTTAL TESTIMONY OF SPENCE GERBER, MICHAEL EPSTEIN, AND MICHAEL MCQUAY ON BEHALF OF THE THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

In their Rebuttal Testimony, Spence Gerber, Michael Epstein, and Michael McQuay respond to statements and arguments made by witnesses who have filed responsive testimony concerning issues set for hearing in Phase 2 of this proceeding.

In the first section of the testimony, Mr. Gerber addresses a number of issues raised by witnesses for various parties with respect to the ISO's settlement re-run and calculation of refunds. First, Mr. Gerber addresses comments made by witnesses as to the data that the ISO has submitted for entry into the record or provided to parties during discovery. In response to the testimony of Mr. Tranen for the California Generators, Mr. Gerber explains that while a more recent snapshot of production data

than the one the ISO used in its rerun should be used to more accurately determine refunds, that no truly final snapshot of this data can ever be taken. Exh. ISO-37 at 10:10-20. Next, in response to points raised by Dr. Cicchetti for the Competitive Supplier Group, Mr. Gerber acknowledges that the ISO did not perform another re-run to account for the changes to the MMCP required by the December 19 Order, pursuant to the Presiding Judge's decision, *id.* at 12:3-13, explains that the quantity of transactions does change in the ISO's settlements records from time to time, *id* at 12:20-13:8, and states that the proposal to calculate refunds using "original" settlement data is unworkable. *Id.* at 13:10-12.

With respect to points raised in the testimony of Dr. Tabors and Dr Cardell for Powerex, Mr. Gerber explains that the ISO provided the parties with initial production data, *id.* at 14:18-15:7, the reason that inconsistencies in sign conventions appear in the data, *id.* at 15:9-15, that there were errors in manual entries for Charge Type 481, *id.* at 15 18-16:2, and that the ISO has no obligation to create a "transaction database" for parties use in this proceeding. *Id.* at 16:4-17.

Mr. Gerber next addresses issues raised in responsive testimony concerning the ISO's re-run of its settlements system Mr. Gerber first acknowledges that there were several errors made with respect to the inclusion of 485 penalties in the re-run. Exh. ISO-37 at 20:8-18. Responding to Mr. Tranen, Mr. Gerber notes that the ISO did sometimes miscalculate the payment to a seller whose bid it had accepted above the historical MCP, but disagrees with the allegation that the ISO erroneously transferred some charged for unmitigated transactions from Charge Type 401 to Charge Type 481. *Id.* at 21:1-22:7.

Mr Gerber then addresses the contention of Dr. Stern for the California Parties that ISO erred in mitigating prices for ancillary services when the MMCP for energy was above the historical MCP for energy, noting that this is an accurate description of what the ISO did in the re-run process, but stating that whether or not this decision was appropriate is a legal question solely involving an interpretation of the Commission's orders. *Id.* at 22:9-23:3. Mr Gerber also explains his disagreement with the argument of Dr. Stern that the prices for replacement reserves and the energy called from those reserves should be added together and the MMCP applied to that sum. *Id.* at 23:4-24:3.

Mr. Gerber then responds to Dr. Tabor's recommendation that imports be mitigated over an hour rather than over ten-minute periods, stating that this result is inconsistent with both the ISO Tariff and Commission orders. Exh. ISO-37 at 24:8-22.

Next, Mr. Gerber addresses the contentions of Dr. Cicchetti that the ISO should not have applied the MMCPs to various charges during the settlement re-run. Mr. Gerber states his belief that it was appropriate to mitigate imbalance energy and ancillary services sales and their attendant charge types. Exh. ISO-37 at 25:6-15.

Addressing the arguments of several parties that neutrality charges should be capped at some amount during the refund period, Mr. Gerber explains that such a result would violate the ISO's obligation to remain revenue-neutral, explains that such treatment is inconsistent with the ISO's treatment of neutrality in production, and argues that it is inappropriate to address these issues in this forum, since they are currently the subject of another Commission proceeding. Exh. ISO-37 at 25:17-28:19.

Mr. Gerber then addresses arguments raised by several witnesses that the ISO erred in its settlements re-run with respect to certain of their transactions. Mr Gerber

explains that to the extent that RMR owners chose to bid into the ISO market and take that price, those transactions should be subject to mitigation. Exh. ISO-37 at 29:4-10 Mr. Gerber acknowledges that it erred in applying the MMCP to some Vernon items. *Id.* at 29:12-16. Mr. Gerber also admits that the ISO, in the process of attending to manual adjustments during the re-run, did not properly account for certain transactions by Dynegy, WAPA, and AES. *Id.* at 29:20-30:2.

Mr Gerber then addresses issues related to the ISO's energy exchange program. Mr Gerber acknowledges that there has been some inconsistency in the application of the ISO's energy exchange methodology to both production and refund calculations, and explains that, contrary to Dr. Berry's assertions, these transactions are mitigated by the ISO. Exh. ISO-37 at 31:4-32:2.

Next, Mr. Gerber responds to several parties on the issue of mis-logging of OOS transactions. Mr. Gerber first addresses the analysis performed by Mr. Tranen concerning this issue, noting that it is not clear that the statistics he presents would obtain from a strict adherence to the Commission's definition of mis-logging. Exh. ISO-37 at 33:21-35:8. Mr. Gerber also notes that Mr. Tranen's analysis is, at most, illustrative, and that if a finding of mis-logging is made, then the ISO would have to undertake its own analysis. *Id.* at 35:21-36:6 In response to Dr. Tabors' points on this issue, Mr. Gerber notes that Dr. Tabors appears to assume that the Presiding Judge has already made a finding of mis-logging. *Id.* at 36:8-12 Finally, Mr. Gerber notes that no parties have alleged a violation of the ISO Tariff. *Id.* at 36:16-37:6

As to the issue concerning the treatment of CERS, Mr. Gerber agrees with Mr. Ostrover's method for identifying refunds owed to CERS, but notes that he only

performed calculations as to certain charge types, which may not equate to the charge types recalculated in the ISO's re-run. Exh. ISO-37 at 38:3-18.

Finally, with respect to a proposed compliance phase in this proceeding, Mr. Gerber suggests that after MMCPs have been finally determined, the ISO rerun one or two months of the settlement process, at which point parties would then review the results and comment. Once parties were satisfied, the ISO would proceed to re-run the remaining months without delay. Exh. ISO-37 at 40:3-18 As to whether refunds should flow prior to any compliance phase, Mr Gerber notes that this is mostly a non-issue as concerns the ISO Exh. ISO-37 at 41:1-8.

In Section II of this testimony, Mr. Gerber and Mr. McQuay address issues relating to transactions not subject to refund liability in this proceeding. First, Mr Gerber and Mr McQuay address the issue of sleeve transactions. Mr. Gerber explains what a sleeve transaction is, and why they are an issue in the current proceeding. Exh. ISO-37 at 44:4-45:4. Mr. Gerber also explains how the ISO proposes to identify sleeve transactions, but notes that this is an issue that ultimately must be decided by the Commission. *Id.* at 45:6-47:3. With respect to mitigation treatment of sleeve transactions, Mr. Gerber states that the supplier that sold to a sleeving party should be liable for refunds associated with these transactions, but even if that is not possible, sleeving parties should not be subject to refund liability for these transactions. *Id.* at 47:4-22. Mr. McQuay explains that during the ISO's settlement re-run process, he identified several transactions as sleeves, which the ISO did not mitigate, but that he has engaged in a further review of these transactions, the results of which are presented in this testimony. *Id.* at 48:2-49:15.

With respect to the positions of individual parties concerning sleeve transactions, Mr. Gerber agrees with Ms. Patterson that the Commission has not, to date, exempted sleeve transactions from mitigation Exh. ISO-37 at 50:9-21. Mr. Gerber also addresses Dr. Berry's testimony concerning "Emergency Financial Transactions," and states that these transactions are just a more limited form of sleeve transactions. *Id.* at 52:19-53:5. Mr. Gerber agrees that the "real seller" with respect to these "Emergency Financial Transactions" should be liable for refunds associated with those transactions, but notes the difficulty in implementing this proposal. *Id.* at 53:7-13.

Mr. Gerber also addresses the testimony of several parties that allege that they engaged in sleeve transactions during the refund period With respect to El Paso Merchant Energy and TransAlta, Mr. Gerber explains why these transactions are not sleeves. Exh. ISO-37 at 54:5-18, 62:9-63:4. With respect to transactions that LADWP and SMUD claim as sleeves, Mr. McQuay provides factual background concerning these transactions. *Id.* at 55:13-56:19, 59:18-61.4. Mr. Gerber then explains that one LADWP transaction does appear to be a sleeve, but that the other transactions claimed by LADWP, while presenting a close case, do not. *Id.* at 57:1-58:13. With respect to the SMUD transactions, Mr. Gerber also acknowledges that they present a close case, but on balance, do not appear to have been sleeves. *Id.* at 61:11-21. Finally, Mr. McQuay addresses the few transactions that the ISO has preliminary identified as sleeves, but as to which no parties filed testimony. He explains that upon further review, these transactions do not appear to actually have been sleeve transactions. *Id.* at 63.10-64:16

Mr. Gerber and Mr. McQuay then address the issue of non-spot transactions Mr. Gerber explains that non-spot transactions are excluded from refund liability by virtue of the Commission's limiting this proceeding to consideration of spot market transactions. Exh. ISO-37 at 65:3-21. Mr. McQuay then discusses the claims of individual parties alleging non-spot transactions. Mr. McQuay concludes that non-spot transactions were entered into with the ISO by AES, Puget Sound, LADWP, Powerex, Sempra, and TransAlta *Id.* at 66:12-67:14, 70:1-13, 75:5-21, 76:10-22, 77:13-78:2, 79:1-10. However, Mr. McQuay states that the transactions that El Paso alleges were non-spot were actually spot market transactions. *Id.* at 74.1-13. Also, with respect to Bonneville, Mr. McQuay explains that the ISO did acknowledge, based on the recollection of ISO management, that certain Bonneville transactions were non-spot, but states that he has been unable to find evidence confirming this conclusion. *Id.* at 68.9-13. Finally, Mr. Gerber addresses the issue of the 11-day Dynegy contract, concluding that although the issue of which transactions are subject to that contract is in negotiation between the ISO and Dynegy, that any such transactions would be considered non-spot. *Id.* at 71:18-72.20. Mr. McQuay also responds to Dr Berry's contentions that some transactions were accidentally labeled by the ISO as non-spot transactions, and that insufficient prove had been offered to establish that certain transactions were non-spot transactions. *Id.* at 81:5-82:17.

Mr. Gerber then addresses the arguments raised by various parties that certain of their spot market transactions are exempt from mitigation because they are "bilateral" transactions distinct from the OOM transactions that the Commission made subject to refund liability. Mr. Gerber explains that the Commission's use of the term "bilateral"

was restricted to transactions between end-use purchasers and suppliers, and that the term has little relevance to the ISO, since the ISO does not purchase for its own needs, but for the needs of the entire market. *Id.* at 86:19-87:15. Mr. Gerber also explains that the fact that transactions were conducted outside of the ISO's "centralized market" does not remove them from refund liability because the Commission explicitly stated that, for purposes of refund liability, spot market OOM purchases were no different than transactions entered into through the ISO's formal markets. *Id.* at 88:1-17. Mr. Gerber also rebuts Bonneville's argument that only OOM entered into by the ISO after the close of its formal markets was exempted from mitigation, explaining that purchases prior to the close of the ISO's markets were made for reliability purposes. *Id.* at 88:21-89:20. Next, Mr. Gerber responds to Mr. Scheuerman, testifying on behalf of Turlock and Burbank, who contends that transactions made by those entities were not OOM. Mr. Gerber explains that the definition of OOM is not confined to transactions made with generators that have signed a PGA. *Id.* at 90:20-92:4. Mr. Gerber also states that the Commission did not exempt from mitigation OOM sales made by governmental entities. *Id.* at 92:10-93:7

Mr Gerber then addresses two arguments made by TransAlta. (1) that the Commission should take into account TransAlta's "foregone opportunities" in determining refunds and (2) that the Commission should ensure that rates for transactions as to which the ISO requested than TransAlta procure energy are sufficient to cover TransAlta's costs. Mr. Gerber explains that both of these arguments are inappropriate in this proceeding, as neither are factors that the Commission has stated should be accounted for in determining refunds. Exh. ISO-37 at 94:3-17, 95:7-9.

In the final part of this section, Mr. Gerber addresses issues relating to DOE transactions. Mr. Gerber states that while it is not appropriate to address the issue of which transactions are DOE sales in this phase of the proceeding, he agrees that any sales determined to be DOE transactions should be excluded from refund liability. Exh. ISO-37 at 95:19-96:2. Mr. Gerber also responds to Portland's contention that payments to Portland should be allocated first to any DOE sales that they made. *Id.* at 96:11-15.

In Section III of the testimony, Mr. Epstein discusses the pre-mitigation amounts that the ISO has calculated to be owed and owing to market participants and that market participants have calculated to be owed and owing, discusses the arguments that various parties in the proceeding make concerning specific pre-mitigation amounts asserted to be owed and owing, discusses the positions that various parties take concerning post-mitigation and interest amounts asserted to be owed and owing, and discusses issues concerning the calculation of interest on amounts owed and owing.

First, Mr. Epstein briefly describes the ISO's methodology for calculating pre-mitigation amounts owed and owing to market participants, and discusses exhibits provided by the ISO in this proceeding that identify pre-mitigation, refund, post-mitigation, and interest amounts calculated by various parties, as well as pre-mitigation and refund amounts calculated by the ISO based on a "snapshot" of information about amounts owed and owing at a particular point in time. Exh. ISO-37 at 102:1-106:11. Next, Mr. Epstein provides a brief overview of the ISO's Scheduling Coordinator invoice process and the certification process. *Id.* ISO-37 at 107:1-108:7. Mr. Epstein then expresses his concurrence with the parties that assert they are not owed or owing any pre-mitigation amounts and with the parties that assert pre-mitigation amounts that are

the same as those calculated by the ISO. *Id* ISO-37 at 108:9-109:21. Mr. Epstein then explains that, as to parties that have calculated specific pre-mitigation amounts owed and owing that differ from the ISO's, those parties arrive at their different amounts either by employing a calculation methodology that differs from the ISO's or pursuant to allegations of specific flaws in the execution of the ISO's settlement and billing process. As to the parties that employ a different calculation methodology, Mr. Epstein responds that no substantive response is merited because the Commission has concluded that it is the ISO's settlements and billing process that is to be used to determine amounts owed and owing. As to the parties that allege specific flaws in the execution of the ISO's settlement and billing process, Mr. Epstein notes that these allegations are addressed in the rebuttal testimony of Spence Gerber and in Mr Epstein's own testimony. *Id.* ISO-37 at 110:1-113:5

Next, Mr Epstein addresses arguments made by certain parties that specific pre-mitigation amounts are or are not owed or owing. Exh. ISO-37 at 113:7-119:4

Mr. Gerber then briefly describes the ISO's methodology for calculating refund amounts. Exh. ISO-37 at 119:6-22. Mr. Gerber then responds to parties that have calculated refund amounts different from those calculated by the ISO, or assert that the ISO's methodology for calculating refunds is flawed, by explaining that the ISO's methodology for calculating refunds is the one the Commission required in this proceeding. *Id.* at 120:2-122:2. Then, Mr. Gerber addresses the arguments of certain parties concerning refund amounts owed and owing. *Id.* at 122:4-124:12.

Mr. Epstein next responds to the parties that have calculated post-mitigation amounts by explaining that he takes no position at this time as to what the post-mitigation amounts should be. Exh. ISO-37 at 124:14-125:10.

Mr. Epstein then responds to the parties that have calculated interest amounts by noting that it is not possible at this time to calculate interest amounts at this time, as explained in the next section of this testimony. Exh. ISO-37 at 125.13-126:14.

Finally, Mr. Epstein responds to parties that present arguments concerning the proper amounts upon which interest should be assessed and the interest rate that should be applied to those amounts. Mr. Epstein states that he has no preference as to the amounts upon which interest is applied or the interest rate, so long as the methodology for determining interest does not result in a violation of the ISO's position as a cash-neutral entity. Mr. Epstein goes on to explain that certain complicating factors cause receivables and payables to be out of balance with one another, and that any methodology for determining interest must allocate any interest imbalance among parties other than the cash-neutral ISO. Exh. ISO-37 at 126:16-135:10. Finally, Mr. Epstein responds to an argument concerning the ISO's application of interest to CERS *Id.* at 135:12-136:11.