

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

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|---|---|-------------------------------|
| 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 |) | Docket No. EL00-98-042 |
| California Power Exchange |) | |

**SUPPLEMENT TO THE MOTION OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO
STRIKE TESTIMONY SUBMITTED ON ISSUES 2 AND 3**

**To: The Honorable Bruce L. Birchman
Presiding Administrative Law Judge**

Pursuant to the Presiding Judge's "Order Concerning Oral Argument," issued on August 12, 2002, the California Independent System Operator Corporation ("ISO") hereby submits a supplement to its Motion to Strike Testimony Submitted on Issues 2 and 3 ("Motion to Strike"), as filed on August 12, 2002.

I. INTRODUCTION

Pursuant to the procedural schedule adopted by the Presiding Judge in this proceeding, the ISO filed with the Commission its Motion to Strike on August 12, 2002 by 10:00 a.m. Later that day, the Presiding Judge issued an order in which he directed the ISO and other parties that had also filed motions to strike to, by August 13, 2002, at 3:00 p.m., “file a pleading which contains a brief one to two sentence description of each passage sought to be stricken and each affected passage that is referenced in the motion.” Pursuant to this order, the ISO sets forth below the summaries requested by the Presiding Judge. The ISO notes that it has, in some instances, broken some of the longer citations contained in its Motion to Strike into several smaller “component” citations for the sake of clarity and ease of readership.

A. Testimony Addressing the Correct Method for Calculating MMCPs is Not Appropriately Before the Presiding Judge in this Phase of the Proceeding (See Stipulated Issue I.A.3).

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| Sellers | SEL-19 at 8:26 (“Table 1”) – 9:2 (including Table 1). | Dr. Cicchetti provides an assessment as to whether the ISO’s October, 2001 MMCPs comply with the Commission’s orders. |
| | SEL-19 at 9:6 (“These MMCPs”) – 11:14. | Dr. Cicchetti argues as to what the minimum requirements of the MMCPs that the ISO uses should be, pursuant to the Commission’s orders. |
| | SEL-19 at 52:3 (“There are”) – 53:9. | Dr. Cicchetti explains the differences between the MMCPs that he calculated and those calculated by the ISO and suggests that the ISO’s calculation process was not consistent with the Commission’s orders. |
| | SEL-19 at 54:12-62:10. | Dr. Cicchetti testifies as to the characteristics of the MMCPs that the ISO and PX should use. Dr Cicchetti also discusses the effects of replacing the ISO’s MMCPs with those that he calculated for four market participants: Avista Energy, IDACORP, Puget Sound and Portland General. |
| | SEL-31 and SEL-33 | Data used in Dr. Cicchetti’s analysis of the effects of replacing the ISO’s MMCPs with those that he calculated. |
| | SEL-32 and SEL-34 | Exhibits showing the changes that Dr. Cicchetti believes must be made to the ISO’s MMCPs. |
| | SEL-35 – SEL-38 | Exhibits showing the results of Dr. Cicchetti’s analysis of the effects of replacing the ISO’s MMCPs with those he calculated as to four market participants. |
| ISO | ISO-37 at 12:15-18. | Mr. Gerber explains that it is not appropriate to re-argue the issue of |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| | | the correct calculation of MMCPs in this phase of the proceeding. |

B. The Issues of Whether the ISO Should Mitigate Transactions (1) Where a Party was Obtaining Supplies on Behalf of the ISO or (2) Where a Party Forewent Other Opportunities in Order to Sell to the ISO are Not Before the Presiding Judge in This Proceeding (See Stipulated Issues I.A.2.f and I.A.2.h).

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| TransAlta | TRA-1 at 2:15 (“Second”) – 3:1 (“ISO”). | Mr. Bourne states that he will establish how TransAlta forewent opportunities to sell its power by responding to specific requests by the ISO and that TransAlta incurred costs it would not have otherwise incurred in securing incremental power supplies on behalf of the ISO. |
| | TRA-1 at 3:18-5:13. | Mr. Bourne explains that Exhibits TRA-2 , TRA-3 and TRA-4 set forth the facts surrounding various TransAlta transactions. Specifically, according to Mr. Bourne, TRA-3 and TRA-4 identify hours where TransAlta, by selling to the ISO, forewent opportunities to sell power into the Northwest market. |
| | TRA-1 at 7:12-8:10. | Mr. Bourne argues that during certain hours in the refund period, TransAlta, at the request of the ISO, decided to sell energy to the ISO rather than sell into the Northwest market, and that TransAlta should not be penalized for selling to the ISO when the ISO requested its power. |

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| | TRA-1 at 8:11-11:2. | Mr. Bourne maintains that during the refund period TransAlta secured incremental energy for the ISO and in doing so, incurred costs that it otherwise would not have incurred. Mr. Bourne states that the Commission should ensure that the rates for these transactions produce revenues that are sufficient to cover the costs that TransAlta incurred to serve the ISO and ensure that the ISO is responsible for these costs. |
| | TRA-6 at 5:16-9:5 | Mr. Bourne argues that the same principle under which the ISO exempted sleeve transactions from mitigation requires that the ISO exempt from mitigation transactions in which sellers (1) obtained incremental power supplies on behalf of the ISO and (2) forewent opportunities in order to make sales to the ISO. |
| | TRA-11 | Data demonstrating that that TransAlta had opportunities to sell energy elsewhere, rather than to the ISO. |
| ISO | ISO-37 at 93:9-95:9. | Mr. Gerber explains that TransAlta's testimony as to foregone opportunities and securing incremental supply on behalf of the ISO is completely inappropriate at this stage of the proceeding, as it conflicts with the Commission's decision that it would not allow additional cost items to be included in the refund formula, and the Commission has not directed the ISO to consider such factors in calculating MMCPs for applying those MMCPs to its settlements re-run |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| | ISO-45 at 8:1-19. ¹ | Mr. Gerber states that the same principle under which the ISO believe sleeve transactions should be mitigated does not suggest that transactions in which parties forewent other opportunities to sell to the ISO, or obtained incremental supplies on behalf of the ISO, should be exempt from mitigation. |
| CAL Parties | CAL-54 at 29:9-30:5. | Dr. Berry states that TransAlta’s arguments concerning foregone opportunities and securing incremental supply are without merit, as the Commission does not consider opportunity costs or production costs in determining which transactions are subject to mitigation. |

C. The Issue of Whether Certain Short-Term (Spot) “Bilateral” Sales to the ISO are Exempt from Mitigation is Not Properly Before the Presiding Judge (See Stipulated Issue I.A.2.a)

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| BPA | BPA-57 at 3:18-4:16 | Mr. Wolfe argues that the Commission drew a distinction between “bilateral” transactions, which are not subject to refund, and OOM transactions, which are. According to Mr. Wolfe, the set of OOM transactions subject to refund are only those transactions undertaken after the ISO’s formal markets failed to produce sufficient power to meet demand. |

¹ The ISO omitted this citation in its motion to strike. This consists of additional surrebuttal testimony that would be affected if its motion to strike on this issue were granted.

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| | BPA-57 at 5:9-11:5. | Mr. Wolfe argues that there are a series of spot transactions between BPA and the ISO that are not subject to refund because they do not fit with the scope of the Commission or ISO's definition of OOM. Mr. Wolfe states that the Commission's definition of OOM only contains those transactions that the ISO entered into after the close of its formal markets. Mr. Wolfe maintains that under the ISO Tariff, there are only two options for compensating sellers for OOM energy, and because certain BPA transactions were not compensated under these options, they were not OOM, and therefore not subject to refund liability. Mr. Wolfe also contends that with respect to a number of BPA transactions, they should not be mitigated because the ISO did not indicate to BPA when it made these purchases that it needed the energy to address reliability concerns. |
| | BPA-57 at 12:3-9. | Mr. Wolfe argues that there is a transaction that BPA entered into pursuant to the DOE Orders that should also be exempt because it does not fit the definition of OOM used by the Commission in this proceeding. |
| | BPA 65 - BPA 206 | Transcripts of conversations between BPA and ISO operators concerning spot transactions that Mr. Wolfe contends are not subject to mitigation. |
| | BPA 218 | Data on multi-hour "bilateral" sales by BPA to the ISO. |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| Burbank | BUR-4 at 10:10-19. | Mr. Scheuerman argues that Burbank made one bilateral sale to the ISO that is not subject to mitigation because it was not an OOM sale. Mr. Scheuerman states that Burbank cannot make OOM sales to the ISO because it has not signed a PGA. |
| Grant Co. PUD | GC-1 at 4:21-6:13. | Mr. Culberston describes Grant County's relationship with the ISO and states that Grant County's sales to the ISO were bilateral sales under the WSPF agreement at negotiated prices. Mr. Culbertson argues that Grant County's sales do not have the characteristics of the transactions that the Commission's December 19 Order subjected to refund because the December 19 Order described the transactions subject to refund as "sales of energy and Ancillary Services into markets operated by the CAISO and PX, not bilateral sales." 97 FERC at ¶ 62,197. |
| LADWP | DWP-21 at 3:15 ("(3)" through "LADWP; and"). | Mr. Ward states that Mr. Gerber erroneously identified "other short-term bilateral transactions between the ISO and LADWP" as sales subject to mitigation. |
| | DWP-21 at 5:1-16 | In response to a question that suggests that refund liability for governmental entities is limited to sales in the ISO and PX single-price markets, Mr. Ward explains that LADWP is a governmental entity as that term is used by the Commission. |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| | DWP-21 at 5:17-6:12 | Mr. Ward testifies that sales identified as LADWP as non-spot transactions are also exempt from mitigation because the ISO and LADWP negotiated them bilaterally. |
| | DWP-21 at 14:1-19:5 | Mr. Ward describes a number of sales between the ISO and LADWP that were “spot market” transactions, but which Mr. Ward claims are not subject to mitigation because the prices were not set by the ISO’s centralized auction markets, but through bilateral negotiations between LADWP and the ISO. |
| | DWP-21 at 20:16 (“(3)”) – 18 (“million; and”). | Mr. Ward states that the ISO has erroneously mitigated 53,479 MWh of energy associated with short-term bilateral transactions totaling about \$23.6 million. |
| | DWP-29 | Summary of short-term bilateral transactions on hourly basis that LADWP states were made with the ISO under the ICAOA |
| | DWP-30 | Summary of other short-term bilateral transactions that LADWP states were made with the ISO |
| | DWP-31 | Transcripts of conversations related to short-term bilateral sales |
| | DWP-32 | Spreadsheet containing LADWP bid data from “beep_stack.csv” file for purposes of showing that LADWP transactions were not ISO dispatches from the ISO’s single-price auction markets |
| | DWP-33 | Spreadsheet containing LADWP bid data from “awk_mw.csv” file for purposes of showing that LADWP transactions were not ISO dispatches from the ISO’s single-price auction markets |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| | DWP-38 at 2:8 (“(1)” – 10 (“the ISO”). | Mr. Ward notes that one of the purposes of his testimony is to respond to Dr. Berry concerning the issue of short-term bilateral transactions. |
| | DWP-38 at 2:16-4:22. | Mr. Ward expresses his disagreement with Dr. Berry’s conclusion that short-term bilateral transactions should be mitigated, stating that governmental entities such as LADWP are liable for refunds only for sales made into the ISO’s single-price auction market. |
| Redding | REU-1 at 4:9 (“Additionally”) – 11 (“period”). | Mr. Hurley notes that his testimony will address the “bilateral nature of the sales made by Redding to the California ISO during the refund period.” |
| | REU-1 at 4:20-12:14 | Mr. Hurley describes the sales made by Redding to the ISO during the refund period. Mr. Hurley states that these sales were made pursuant to ISO operating procedure E-516 and that Redding would be paid a cost-based price based on bilateral agreement with the ISO prior to the sale. |
| | REU-1 at 17:1-22. | Mr. Hurley argues that because the price paid to Redding by the ISO was determined on a bilateral basis, and because these sales were made under emergency procedures, that sales to the ISO by Redding should not be subject to a refund obligation. |
| | REU-2 | ISO Operating Procedure E-516, the procedure under which Mr. Hurley claims Redding made its sales to the ISO during the refund period. |

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| | REU-3 REU-4 REU-5 | Correspondence between the ISO and Redding concerning the pricing arrangement for Redding's transactions |
| | REU-6 at 2:12-5:7. | Mr. Hurley responds to Mr. Gerber's position that Redding's emergency sales should be subject to mitigation. Mr. Hurley states that Mr. Gerber's position that these transactions were not truly "bilateral" should be rejected. |
| Sempra | SET-6 at 2:5 (" and (ii)") – 10. | Ms. Cantor notes that one of the purposes of her testimony is to rebut arguments raised by Dr. Berry concerning bilateral transactions of 24 hours or less in duration. |
| | SET-6 at 4:7-8:16. | Ms. Cantor argues that there is a distinction between actual OOM transactions under the ISO's Tariff, that are subject to mitigation, and bilateral sales to the ISO, which are not. Ms. Cantor states that Sempra entered into several short-term bilateral transactions with the ISO during the refund period which the ISO has mischaracterized as OOM transactions. |
| | SET-9 | ISO Operating Procedure M-403, which Ms. Cantor relies upon as support for her claim that certain Sempra transactions should not be treated as OOM by the ISO. |
| | SET-10 | Transactions that Sempra claims as bilateral transactions with the ISO |
| | SET-11 | Exhibit containing Sempra transactions from the ISO's OOM data files. |
| | SET-12 | Data responses containing definitions of energy types for ISO data files. |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| Turlock | TID-1 at 3:18-4:1 (“to the ISO”), 4:7 (“The ISO’s”) – 12 | Mr. Scheuerman notes that the purpose of his testimony includes demonstrating that Turlock made bilateral sales to the ISO which are not subject to refund liability and that the ISO’s data regarding Turlock’s sales mischaracterize those sales as OOM and erroneously attribute refunds to these sales. |
| | TID-1 at 7:1-11:20 | Mr. Scheuerman claims that all Turlock sales to the ISO during the refund period were bilateral in nature because they were made outside of the ISO’s centralized single-price markets. Mr. Scheuerman also states that Turlock’s sales were not OOM because it has not signed a PGA, but were made pursuant to ISO Operating Procedure S-318. |
| | TID-1 at 12:13-16:16. | Mr. Scheuerman argues that Turlock’s sales should not be subject to refund because they are bilateral sales that are exempt from mitigation, rather than OOM sales. Mr. Scheuerman also claims that if Turlock’s sales are considered OOM, then those sales are still exempt from mitigation because the Commission did not invoke jurisdiction over OOM sales made by governmental entities. |
| | TID-4 | Summary of Turlock’s daily sales and revenues |
| | TID-7 | ISO Operating Procedure S-318 |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| | TID-11 at 3:8-13:21 | Mr. Scheuerman expresses his disagreement with Mr. Gerber's testimony that Turlock's sales to the ISO were not bilateral in nature but were OOM, and Mr. Gerber's testimony that ISO Operating Procedure No. S-318 is not relevant to the determination of what sales to the ISO were bilateral in nature. Mr. Scheuerman also specifies his disagreement with Dr. Berry's contention that the question of whether or not Turlock has signed an SCA with the ISO is not material to the issue of whether Turlock transactions are exempt from mitigation. Finally, Mr. Scheuerman explains his disagreement with Ms. Patterson's assessment of the ISO's ability to access other markets during times of emergency. |
| | TID-12 | Discovery responses of the ISO concerning Operating Procedure S-318. |
| | TID-13 | Testimony of Brian Rahman in arbitration case <i>City of Anaheim, et al. v. California Independent System Operator</i> as to applicability of ISO operating procedures. |
| | TID-14 | Discovery responses of ISO concerning the contractual relationship between Turlock and the ISO. |
| TransAlta | TRA-6 at 5:10 ("In addition") – 15. | Mr. Bourne argues that certain transactions that he argues are "sleeve" transactions should also be excluded from mitigation because they were bilateral transactions between the ISO and TransAlta. |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| ISO | ISO-37 at 82:19-93:7. | Mr. Gerber explains that the arguments parties raise concerning the exclusion of so-called “bilateral” transactions with the ISO are without merit, because the Commission never created a distinction between ISO OOM and bilateral transactions. Mr. Gerber also explains that the fact that certain transactions were priced outside of the ISO’s single-price markets does not distinguish them from other OOM transactions which the Commission made subject to refund. Mr. Gerber also refutes arguments raised by various parties that their transactions are not considered OOM by the ISO or the Commission. |
| | ISO-45 at 6:1-7:18 | Mr. Gerber explains that Ms. Cantor is mistaken in her conclusion that certain Sempra transactions were not OOM and are exempt from refund liability as “bilateral” transactions. Mr. Gerber also rebuts Mr. Bourne’s testimony that certain TransAlta transactions are exempt from mitigation because they were not made into markets operated by the ISO or PX. |
| CAL Parties | CAL-54 at 20:3-31:6. | Dr. Berry responds to the various sellers that have raised arguments that certain spot transactions should be exempt from mitigation, and argues that sellers are mistaken that these transactions should be excluded from mitigation. |
| | CAL-83 at 17:12-18:8. | Dr. Berry explains her disagreement with Sempra’s argument that it had certain bilateral transactions with the ISO that are exempt from mitigation. |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| FERC Staff | S-106 at 8:5-17:18. | Ms. Patterson testifies that short-term bilateral transactions between the ISO and governmental entities are not excluded from mitigation. Ms. Patterson explains why she disagrees with the positions of the individual sellers that claim that certain of their spot transactions are exempt from mitigation. |

D. The Issue of Whether a Cap Should be Applied to the Neutrality Adjustment Charge is Not Properly Before the Presiding Judge in this Proceeding (See Stipulated Issue I.A.2.k.ii)

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| Sellers | SEL-19 at 25:14-31:4 | Dr. Cicchetti argues that Neutrality Adjustment charge type, Charge Type 1010, should have been capped during the ISO's settlements re-run at a certain amount per megawatt-hour through February 26, 2001 and thereafter at a certain amount per megawatt-hour on an annual basis, and that amounts above the cap should not be mitigated. Dr. Cicchetti asserts that IDACORP and Puget Sound Energy were charged amounts in excess of the cap during the refund period. In support of these assertions, Dr. Cicchetti references Exhibits SEL-22 and SEL-23 . Exhibit SEL-22 contains a copy of a data request from IDACORP and the ISO's response concerning the Neutrality Adjustment charges applied to IDACORP. Exhibit SEL-23 contains calculations by Dr. Cicchetti of IDACORP's and Puget Sound Energy's asserted neutrality overcharges and overpayments during the refund period. |
| | SEL-48 at 2:2-9:16 | Dr. Cicchetti argues that the refund proceeding is the correct proceeding in which to consider the Neutrality Adjustment charge matter. Dr. Cicchetti also argues against the positions taken by Dr. Stern and Mr. Nichols in their rebuttal testimony that Neutrality Adjustment charges should not be mitigated. |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| Salt River Project | SRP-1 at 8:18 (“In addition”) – 9:2 | Mr. Nichols argues that the amounts shown in Exhibit No. ISO-24 do not reflect overcollections by the ISO of Neutrality Adjustment charges from SRP during the refund period that are the subject of a separate complaint proceeding initiated by Salt River Project against the ISO. |
| | SRP-5 at 3:14-9:7 | Mr. Nichols argues against Dr. Cicchetti’s assertion that Neutrality Adjustment charges should not be mitigated because the ISO misapplied its Tariff with respect to neutrality. |
| | SRP-8 at 3:16-11:16 | Mr. Nichols argues that the refund proceeding is not the appropriate forum to address the merits of Salt River Project’s separate Neutrality Adjustment charge complaint case in Docket No. EL01-84, and that the legal issue of whether the ISO violated the Neutrality Adjustment charge limit in its Tariff pending separately before the Commission in Docket Nos. EL00-111 and EL01-84. |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| ISO | ISO-37 at 25:15-28:20 | Mr. Gerber argues against the positions of Dr. Cicchetti and Mr. Nichols that Neutrality Adjustment charges should be capped at some amount during the refund period. Mr. Gerber argues that the cap issue is the subject of other, separate FERC proceedings in Docket Nos. EL00-111 and EL01-84, and the issue should be addressed in those proceedings. |
| | ISO-45 at 10:1-20:2 | Mr. Gerber argues that the Settlement Agreement that was filed in Docket Nos. EL00-111 and EL01-84 on July 31, 2002, if approved, will result in no refunds for Neutrality Adjustment charges above any cap. Mr. Gerber argues that the issue of a cap for Neutrality Adjustment charges is no different from any other type of specific dispute that might be pending between the ISO and a Market Participant, and such a dispute should not be considered in the present proceeding. Mr. Gerber references Exhibit ISO-46 , which contains the Settlement Agreement and an Explanatory Statement concerning the Settlement Agreement. |
| CAL Parties | CAL-53 at 14:16-15:5 | Dr. Stern argues against Dr. Cicchetti's position that the ISO should not have mitigated any charges appearing in the charge types for "neutrality adjustments". |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| | CAL-54 at 43:13-46:4 | Dr. Berry argues against Dr. Cicchetti's proposals concerning Neutrality Adjustment charges. Dr. Berry asserts that Neutrality Adjustment charges should be mitigated to reflect the reflect the reduction in prices resulting from the FERC refund methodology, and the issue of whether Neutrality Adjustment charges should be further reduced to reflect the Neutrality Adjustment charge cap in the ISO Tariff is pending before the Commission in another proceeding. |
| | CAL-83 at 36:16-37:21 | Dr. Berry asserts that a Settlement Agreement was filed in Docket No. EL00-111 and EL01-84, that comments are due in late August, and that PG&E will oppose the settlement and will argue that the settlement raises genuine issues of material fact that preclude the Commission from approving the settlement. |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| CA Generators | GEN-83 at 27:11-30:16 | <p>Mr. Tranen states that he agrees with Dr. Cicchetti that the ISO has exceeded its Tariff limitations on Neutrality Adjustment charges during the refund period in its pre-mitigation settlements, but that Neutrality Adjustment charges are entirely recomputed in any settlements re-run, and thus the issue at hand is whether and how Neutrality Adjustment charge should be calculated in the re-runs conducted in the refund proceeding. Mr. Tranen argues that the ISO apparently chose not to apply the limit on Neutrality Adjustment charges in order to balance its books, and this was and is the appropriate decision. Mr. Tranen references Exhibit GEN-85, which contains, <i>inter alia</i>, provisions in the ISO Tariff that concern application of the Neutrality Adjustment charge.</p> |
| | GEN-89 at 8:8-12:10 | <p>Mr. Tranen argues against the position of Mr. Gerber that the proper application of the Neutrality Adjustment charge cap is outside the scope of the refund proceeding. However, Mr. Tranen asserts that if there is any conflict between the Neutrality Adjustment charge cap contained in the ISO Tariff and the need for the ISO to maintain its revenue neutrality, the fundamental principle of ISO revenue neutrality should prevail and the cap should not be applied throughout the refund period.</p> |

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| FERC Staff | S-106 at 32:8-33:10 | Ms. Patterson argues against the position of Dr. Cicchetti that Neutrality Adjustment charges should not be mitigated as a result of a cap on those charges. However, Ms. Patterson also asserts that any re-run of the settlement/billing process should adhere to the provisions of the ISO Tariff, including the section of the Tariff applying a cap to Neutrality Adjustment charges. |
| | S-116 at 8:1-9:20 | Ms. Patterson argues that the ISO violated the filed rate doctrine when it did not file with the Commission to implement the rate increase approved by the ISO Governing Board for the period September 15, 2000 through January 15, 2001. Ms. Patterson asserts that, should the Commission approve the Settlement Agreement filed on July 31, 2002 in Docket Nos. EL00-111 and EL01-84, any subsequent settlement re-runs in the refund proceeding should reflect the provisions of the settlement. Ms. Patterson references Exhibit S-117 , which contains the Settlement Agreement and Explanatory Statement concerning the Settlement Agreement. |

E. The Issue of How Shortfalls in Cash Available for Distribution, if Any, Should be Treated is Beyond the Scope of Issues Set for Hearing Before the Presiding Judge (See Stipulated Issue III.G)

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| AEPCO | AEP-15 at 5:13-6:2. | Mr. Minson notes that issues such as non-payment by PG&E, emissions credits, and net portfolio losses are allocation issues, and suggests converting net accounts receivables into shares that would be used to provide a proportionate allocation of cash as it became available. |
| CA Generators | GEN-36 at 15:10-13. | Mr. Tranen states that all participants that are owed net money should have claims for payment equal to the claims of other participants that are owed money. |
| Sellers | SEL-19 at 44:5-22. | Dr. Cicchetti notes that the effect of his proposal concerning amounts “owed and owing” would require the PX to pay out all of the cash it has collected to settle post-mitigation claims for sales made through its markets, but notes that in light of the PX bankruptcy, that the Commission may lack authority to require a particular payment distribution mechanism or allocate any shortfall in cash to participants. Dr. Cicchetti maintains that the Commission should determine the amount of PX obligations in order to assist the |

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| | | bankruptcy court. |
| Modesto | MID-20 at 9:10-12 ² | Mr. Jackson states that to the extent that there are insufficient funds to offset amounts owing, those shortfalls should be allocated in a pro-rata fashion. |
| PPL | PPL-21 at 2:20-3:12. | Mr. Bradshaw testifies that buyers with unpaid invoices should have their liabilities allocated on a pro rata basis to each seller. |
| Sempra | SET-1 at 10:20-12:8. | Ms. Cantor states that that PG&E is responsible for the payment of 58 percent of the total amount currently owed to Sempra, and that liability for the payment of the remaining 42 percent falls principally on the PX, and that the cash received by the PX should be distributed <i>pro rata</i> according to the ratio of each seller's total amount due to the total amount owed to the ISO and PX markets. |
| Salt River Project | SRP-1 at 11:15-14:26. | Mr. Nichols testifies that buyers should be paid the full maximum demand refund and not allocated any portion of a revenue shortfall, as the Commission's orders are clear on this point. Mr. Nichols also states that the PX erred in allocating payment shortfalls to buyers based on the PX Tariff. |

² In the ISO's motion to strike, the ISO erroneously identified on behalf of Modesto a greater amount of testimony as relating to this issue. Therefore, for purposes of this supplement, the ISO has amended the citation to MID's testimony, and removed the reference to Exhibit No. MID-23.

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| CAL Parties | CAL-35 at 11:10-23 | Dr. Stern states that in calculating the amounts owed and owing, the only interest payment associated with the distribution of money being held in the PX's trust fund should be the pro rata distribution of the interest actually earned in the trust account as of the date of distribution. |
| | CAL-53 at 2:17-3:17 | Dr. Stern argues that Mr. Tranen's proposal on the allocation of cash is beyond the scope of issues set for this hearing. |

F. The Issue of When, and Under What Circumstances, and Subject to What Conditions Should Cash Flow Between Buyers and Sellers is Not Before the Presiding Judge in This Proceeding (Stipulated Issue III.H)

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| AEPCO | AEP-14 at 3:8-15. | Mr. Minson argues that to the extent that any seller, particularly non-jurisdictional ones, pays or provides any refunds, security arrangements, such as letters of credit, should be required to enable such sellers to obtain a refund of their refunds. |
| | AEP-14 at 6:7-8:10. | Mr. Minson testifies that the best approach for actual payment would be to hold off any refund payments until all liability issues are fully resolved by the courts and the Commission, but that if actual payments are required, buyers receiving refunds should be required to post some for of security |
| | AEP-14 at 10:9-17. | Mr. Minson states that his proposal for calculating the offset for posting security does not provide AEPCO with a double interest recovery, but simply affords AEPCO some compensation for the fact that it effectively prepaid its refund obligation by posting its letters of credit. |

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| | AEP-15 at 6:3-10. | Mr. Minson states that if an appeals court holds that non-jurisdictional entities such as AEPCO are not subject to refunds, then AEPCO should get back any money it paid in net refunds and also receive a payment on its accounts receivable that were used as offsets against its refund obligations, and notes that this was the reason that he advocated for the posting of security by those parties that would receive the benefits of refunds. |
| Sellers | SEL-19 at 5:1-3. | Dr. Cicchetti states that one of the steps that need to be taken in this proceeding is to establish a priority for cash disbursement in the event that there will be insufficient cash to pay market participants for the energy they sold. |
| | SEL-19 at 74:14-75:10. | Dr. Cicchetti states that a final bilateral true-up process is necessary, but that the Commission should establish timelines by which payments are to be made post-decision, with due regard for the complexity of the bookkeeping involved. Dr. Cicchetti also states that there is no reason to further defer the payment of amounts determined to be due under the MMCP methodology while the proceedings as to portfolio costs are pending. |
| | SEL-42 at 3:20-7:16. | Dr. Cicchetti testifies as to why there should be no delay in paying sellers those amounts that are not in dispute. Dr. Cicchetti states that the portion of cash that is undisputed after sufficient reserves are withheld be paid out immediately based on updated cash positions, with fine-tuning to come later. |

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| | SEL-42 at 7:17-8:18. | Dr. Cicchetti maintains that refunds and payments should not have to await determination of such issues as emissions offsets or other manual adjustments. |
| | SEL-42 at 8:19-20:16. | Dr. Cicchetti recommends that cash be distributed immediately, but that a “contingency reserve” be created from the dollars currently held by the PX, which would reduce the amount of payments in the near term to assure that if additional pending claims were resolved adverse to sellers, no return of amounts distributed would be required. Dr. Cicchetti quantifies the amount of this reserve and the reasons that he arrived at this amount. |
| | SEL-43 | Calculations relating to Dr. Cicchetti’s testimony concerning the creation of a “contingency reserve” account. |
| Modesto | MID-20 at 9:13-20. | Mr. Jackson urges the Presiding Judge to recommend that amounts owed to suppliers be disbursed as soon as the Commission adopts the Presiding Judge’s recommendations. |
| Powerex | PWX-53 at 3:23 (“This compliance”) – 4:3. | Dr. Tabors states that any compliance phase should not delay the distribution of the bulk of monies owed to participants. |
| | PWX-53 25:21-26:10. | Dr. Tabors testifies that funds should begin to flow from the PX and the ISO to the suppliers as soon as possible, as a major proportion of the funds that are owed to suppliers can be released with no danger that the compliance phase would result in an over distribution of these funds. |
| | PWX-74 at 7:22-8:7. | Dr. Tabors, in responding to testimony on behalf of AEPCO, states that cash should begin to flow as soon as possible because under no set of scenarios will most sellers be anything but owed money in this proceeding. |

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| | PWX-77 at 16:15-17:1. | Dr. Tabors states that the ISO has the potential of being paid by either the PX or PG&E for amounts owed for energy delivered during the refund period, and that it should pay funds as received under the provision of the ISO Tariff. |
| PPL | PPL-21 at 5:17-6:4. | Mr. Bradshaw testifies that PPL should not wait for a compliance phase to receive amounts owed to it. Rather, the bulk of the money owed can and should be payable as soon as possible, with the remainder subject to a true up at the compliance stage and payable at that time. |
| Salt River Project | SRP-1 at 20:16-21:5. | Mr. Nichols testifies that parties in this proceeding who paid unjust and unreasonable rates be given payment priority over those parties who are owed money. |
| | SRP-1 at 21:11-22:2. | Mr. Nichols states that he favors an immediate distribution of refunds based on an initial estimate of refund liabilities, followed by true-up compliance filings. |
| | SRP-5 at 14:15-19:3. | Mr. Nichols addresses various parties' arguments as to how dollars should flow, and argues that they are potentially troublesome in that they might require net refund recipients to make further payments before ever receiving refunds. |
| Vernon | VER-10 at 10:14-12:3. | Mr. Lanzalotta expresses his disagreement with Mr. Nichols's argument on behalf of SRP that available cash be applied first to refunds and distributed to buyers who paid amounts in excess of the just and reasonable rate. |

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| ISO | ISO-37 at 40:20-41:8. | Mr. Gerber notes that any disbursement of cash would need to be made outside the normal ISO disbursement process, and that proposals concerning the early distribution of cash have little relevance to the ISO, because the ISO has already distributed the cash that it has received. |
| CAL Parties | CAL-82 at 14:20-16:16. | Dr. Stern expresses his disagreement with Dr. Cicchetti's proposal to distribute the money held by the PX subject to the creation of a reserve account. |

G. Certain Testimony as to the “Actual Costs” of Parties as it Relates to Refund Liabilities is Not Properly Before the Presiding Judge in this Proceeding.

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
|----------------------------|--|--|
| Harbor Cogeneration | HAR-1 at 2, question beginning “What review have you made of the exhibit . . .” through page 4, question beginning “Did you make a complete review . . .” | Mr. Brian Ferguson presents and explains calculations that he has performed comparing the “actual costs” incurred by Harbor with respect to certain transactions with the refund liability calculated by the ISO for these transactions. Mr. Ferguson explains that in cases where Harbor’s “actual costs” exceeded the mitigated price, he replaced the ISO’s refund amount with an amount equal to those “actual costs.” |

H. Testimony Relating to a Pre-Existing Dispute Between the ISO and NCPA Concerning the Classification of Certain Transactions Should Not be Considered by the Presiding Judge in the Current Proceeding.

| Party | Portion of Testimony, Rebuttal or Surrebuttal Identified in ISO Motion to Strike | Summary |
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| NCPA | NCP-10 at 6:20-7:11. | Mr. Park states that the ISO re-classified certain transactions from RMR to OOM after they were settled, that NCPA had verified that these transactions were RMR, and that NCPA had invited the ISO to use alternative dispute procedures to resolve this dispute if it wished, but that the ISO had not done so. |
| | NCP-14 at 6:26-7:12. | Mr. Dockham testifies with respect the ISO's re-classification of certain transactions from RMR to OOM and states that NCPA saw no need to pursue this matter since it had already been paid for almost the entire amount of these sales, and that the ISO had not pursued it. |
| ISO-45 | ISO-45 at 24:18 ("However") – 27:7. | Mr. Gerber states that there is a dispute between NCPA and the ISO as to the classification of certain transactions, and that this issue should not be litigated in this proceeding. Mr. Gerber also explains that it is NCPA's responsibility to dispute the ISO's classification of these transactions, rather than vice versa. |

Respectfully submitted,

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General Counsel
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Dated: August 13, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the restricted service list compiled by the Presiding Judge in the above-captioned dockets.

Dated at Washington, DC, on this 13th day of August, 2002.

Michael Kunselman
(202) 424-7500

August 13, 2002

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: San Diego Gas & Electric Co., et al.
Docket Nos. EL00-95-045, et al.**

Dear Secretary Salas:

Enclosed is an original and fourteen copies of the Supplement to the Motion of the California Independent System Operator Corporation to Strike Testimony Submitted on Issues 2 and 3. Two copies have been provided to the Presiding Judge. Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,

Michael Kunselman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington D.C. 20007

Counsel for the California
Independent System Operator Corporation

Enclosures

cc: Service List
The Honorable Bruce Birchman

August 13, 2002

The Honorable Bruce Birchman
Presiding Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 11F-31
Washington, D.C. 20426

**Re: San Diego Gas & Electric Co., et al.
Docket Nos. EL00-95-045, et al.**

Dear Judge Birchman:

Enclosed are two copies of the Supplement to the Motion of the California Independent System Operator Corporation to Strike Testimony Submitted on Issues 2 and 3, filed today with the Commission in the above-captioned dockets.

Yours truly,

Michael Kunselman
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Enclosures