

the enclosed status report out of time.¹ The ISO submits that no party will be prejudiced by accepting this status report out of time because there have been no occurrences that alter the conclusion reached by the ISO and active parties² to this proceeding in previous status reports, and the Chief Judge in the December 12 Order, that the procedural schedule in these proceedings should continue to be suspended pending the outcome of the California refund proceeding in Docket Nos. EL00-95-045, *et al.*

I. BACKGROUND

On November 7, 2001, the Commission issued an order in this docket that required the ISO to invoice the CDWR for all transactions entered into on behalf of the net short positions of PG&E and SCE (collectively, the "IOUs") during the period January 17, 2001 through July 31, 2001, within 15 days of the date of that order. The ISO submitted its compliance filing on November 21, 2001. On March 27, 2002, the Commission issued an order requiring that the ISO "re-invoice those gross amounts owed by DWR for all ISO transactions DWR entered into on behalf of the non-creditworthy UDCs . . . and provide a transparent means by which this Commission and other parties can determine whether the invoiced amounts were properly calculated." In response, the ISO submitted its compliance filing along

¹ The December 12 Order directed the ISO to file updated status reports in this proceeding every 90 days, which made the first report due on March 16, 2009. The ISO will file its next report 90 days from March 16, *i.e.*, on June 15.

² Based on attendance at the February 12, 2008 pre-hearing conference, the "active parties" to this case are defined, for purposes of this motion, as the ISO, the California Department of Water Resources ("CDWR"), Pacific Gas and Electric Co. ("PG&E"), the Sacramento Municipal Utility District ("SMUD"), Modesto Irrigation District ("MID"), Cities of Santa Clara and Redding, California, and Powerex Corporation. All of these parties are also parties to the California refund proceeding.

with the gross invoices of PG&E and SCE, the net invoices of CDWR, and a worksheet and summary of these invoices.

On November 25, 2002, the Commission issued an order in which it determined that the ISO's compliance filing was deficient in explaining whether or not it had properly calculated the amounts invoiced to CDWR on behalf of the net short position of the IOUs. The Commission based this decision on a finding that the ISO had failed to provide "adequate supporting documentation that would allow for transparency" in determining whether the ISO had properly calculated the amounts invoiced to CDWR. Therefore, finding that there were material issues of fact as to whether the CAISO had properly calculated amounts invoiced to CDWR, the Commission set for hearing the following issues:

an accounting and explanation to determine how the CAISO calculated that DWR owed \$3.6 billion (as the creditworthy party for the IOUs) to the CAISO markets for the period January 17, 2001 through July 31, 2001; an accounting and explanation to determine how the CAISO calculated that DWR was owed \$2.7 billion during this time period; how much interest, if any, is included in these amounts due; a determination on whether DWR has fully paid all of the CAISO invoiced amounts; and any other issues that might affect the calculation of the amount that the CAISO should have invoiced DWR.

After several months of discussing a possible negotiated resolution to these proceedings, the ISO, on February 18, 2003, filed an unopposed motion to temporarily suspend the procedural schedule to allow the parties to focus on reaching a complete settlement and preparing an offer of settlement to file with the Commission. The Chief Administrative Law Judge granted the ISO's request and, on February 25, 2003, suspended the procedural schedule until "otherwise ordered."

During the intervening years, the ISO, in response to orders from the Chief Judge, filed several status reports indicating that although all parties felt that settlement was the preferred means of resolving the issues set for hearing by the Commission in this proceeding, negotiating such a settlement would be greatly facilitated by awaiting the conclusion of the compliance process in the California refund proceeding before attempting to conclude and file a settlement in this proceeding. Therefore, the ISO, on behalf of the active parties, requested that this proceeding remain suspended until such time as the Commission issued an order approving the ISO's compliance filing in the California refund proceeding. The most recent of these status reports was filed on November 24, 2008.

On December 12, 2008, the Chief Judge issued an order finding that it is in the public interest to continue the suspension of the procedural schedule in this case pending a final Commission determination in the California refund proceeding that establishes the final balances of the entities that participated in the markets operated by the ISO during the Refund Period. The Chief Judge directed the ISO to file further status reports every 90 days.

II. STATUS REPORT

There have been no occurrences since the filing of the ISO's last status report in these dockets on November 24, 2008 that alter the reasons for the Chief Judge's conclusion in the December 12 Order that the procedural schedule in this proceeding should be suspended pending a Commission order establishing the final balances of the entities that participated in the markets operated by the ISO

during the Refund Period. No such Commission order has been issued and the California refund proceeding is still ongoing. Although the parties and the Commission continue to work to resolve outstanding issues, and several settlements have been filed with, and approved by, the Commission since the filing of the last status report that resolve obligations between various parties relating to transactions that took place during the Refund Period, there are still calculations left to be performed before final balances can be determined, the outcome of which depends in part upon the resolution of certain issues that are currently pending before the Commission. A more detailed discussion of the current status of the refund proceeding can be found in the status reports that the ISO files with the Commission in the ER03-746 and EL00-95 dockets.

For this reason, the ISO respectfully requests that the Chief Judge continue to suspend the procedural schedule in this proceeding until the date on which the Commission issues an order in Docket Nos. EL00-95-045, *et al.* that establishes the final balances of those entities that participated in markets operated by the ISO during the Refund Period. At that time, the ISO is optimistic that the parties to this proceeding will be able to expeditiously reach a settlement that resolves all of the issues set for hearing.

III. CONCLUSION

The ISO respectfully requests that the Chief Judge grant the ISO's request to submit this status report out of time and accept the enclosed status report, and that the Chief Judge continue to suspend the procedural schedule in this proceeding.

Respectfully submitted,

/s/ Michael Kunselman

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Dated: April 1, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list for the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington D.C. this 1st day of April, 2009.

/s/ Michael Kunselman
Michael Kunselman