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April 10, 2003

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

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

Dear Secretary Salas:

Enclosed please find the California Independent System Operator Corporation's Comments on the California Parties' Motion for Expedited Clarification Relating to Additional Fuel Cost Allowance, for filing in the above docket and in Docket No. EL00-98-042.

Respectfully submitted,

/s/ J. Phillip Jordan

J. Phillip Jordan
Counsel for the California Independent
System Operator Corporation

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

San Diego Gas & Electric Company,)	
Complainant)	Docket No. EL00-95-045
)	
v.)	
)	
)	
Sellers of Energy and Ancillary Service Into)	
Markets Operated by the California)	
Independent System Operator Corporation)	
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.)	

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S COMMENTS
ON THE CALIFORNIA PARTIES' MOTION
FOR EXPEDITED CLARIFICATION RELATING TO
ADDITIONAL FUEL COST ALLOWANCE**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. ¶ 385.213 (2002), and the Commission's order of April 3, 2003 in these dockets, the California Independent System Operator Corporation ("ISO") submits its comments on the "California Parties' Motion for Expedited Clarification Relating to Additional Fuel Cost Allowance," filed on April 2, 2003 ("Motion for Clarification").

The ISO shares the California Parties' view that expedited clarification on the issues they raise will shorten any litigation that might follow sellers' submissions of fuel cost information, thereby enabling the Commission more quickly to resolve the

fundamental issue in the Refund Proceeding, *i.e.*, who owes what to whom. The ISO urges the Commission to address definitively each of the issues raised in the Motion for Clarification. If the Commission feels, after receiving these and other comments, that it needs additional information before it can reach a definitive conclusion on a given point, the ISO urges the Commission to seek whatever it needs *well before* the time sellers are required to submit their evidence of additional gas costs: Commission resolution now of as many potentially disputed issues as possible is preferable to having sellers make a hodge-podge of (understandably) self-serving submissions using differing data or following differing and irreconcilable methodologies, all of which would be sorted out by the Commission at a later date. Stated differently, it is imperative that the Commission establish clear guidelines up front.

The ISO is especially sensitive to the potential for confusing and contradictory filings by sellers, as well as the need for the Commission to constrain sellers' ability to "cherry-pick" among available data and methodologies to inflate their alleged gas costs. As the Commission is aware, sellers refused to comply with the ISO's requests for cost support for their bids above the ISO-imposed breakpoint in December 2000.¹ When the Commission has provided an opportunity for sellers to cost-justify their bids above Commission-imposed mitigation levels, sellers have either declined to do so, or often failed adequately to justify their bids.² The ISO infers from this history that sellers are loathe to reveal their true costs of production, *including* their gas costs. From this, the

¹ See, *e.g.*, "Motion for Issuance of Refund Notice to Sellers, Request for Data, Request for Hearing, and Request for Expedited Action of the California Independent System Operator Corporation and the California Electricity Oversight Board," in Docket No. EL00-95-000 *et al.*, filed March 1, 2001, at pages 10-12 (recounting history of refusal).

² See, *e.g.*, "Order Rejecting Cost Justifications for Rates in Excess of the Proxy Clearing Price and Ordering Refunds," Docket No. EL00-95-012 (September 7, 2001), 96 FERC ¶ 61, 254.

ISO deduces that any evidence sellers chose now to submit to support additional gas costs must be scrutinized with exceeding care. If that scrutiny has to include parsing a multitude of methodologies and data sets used by various sellers, it could take an unnecessarily long time. The Commission can avoid this delay, as well as channel the parties' time and effort most productively, by laying down very clear guidelines up front in the areas addressed in the Motion for Clarification.

The ISO has only a few thoughts to add on the merits of the positions set forth in the Motion for Clarification. It seems only common sense to require, as the Motion for Clarification urges,

- that the effect of financial and contractual commitments as well as physical contracts be considered,
- that a weighted average cost of gas for a given delivery date be determined,
- that only arm's-length transactions be considered,
- that the additional allowance be based on megawatts generated and sold, and
- that non-mitigated sales should be ignored.

See Motion for Clarification at 6-9, 11. In particular, the Commission should not consider gas costs resulting from affiliate transactions and "wash" trades because it would be extremely complicated and difficult to verify the actual – and appropriate -- gas purchase costs under such transactions. Further, the Commission must recognize that it may be difficult to establish a direct temporal link between specific gas purchases within a generator's portfolio and specific electricity sales.

While sellers can be expected to oppose netting out the hours in which a seller beat the gas proxy price, see Motion for Clarification at 10-11, the ISO believes that approach is consistent with the Commission's previous ruling that a seller could receive a cost-based rate for the refund period only by showing that its costs for all sales, throughout the period, exceeded the mitigated prices; the Commission there did not allow a seller to "cherry-pick" just the specific hours in which its costs exceeded the mitigated price, and it should not allow cherry-picking here.

Finally, the ISO agrees that the Commission should take this opportunity to clarify both the required content of the sellers' submissions, and the procedures to be used to clarify and test those submissions. The ISO urges the Commission to require the type of detailed submissions suggested in the Motion for Clarification, and adds that the Commission should also lay down guidelines to ensure as much transparency as possible in those submissions (perhaps by designing templates along the lines of the ones used for filings in the 100-day discovery proceeding). Given the amounts likely at stake, a technical conference after the submissions does not seem likely to be adequate. Some type of formal, expedited discovery and, potentially, cross-examination, almost certainly will be required, perhaps with FERC staff expert in gas issues taking a lead role.

Respectfully submitted,

/s/ J. Phillip Jordan

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April 10, 2003

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 Administrative Law Judge in this proceeding.

Dated at Washington, D.C., this 10th day of April, 2003.

/s/ J. Phillip Jordan

J. Phillip Jordan