

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

PREPARED REBUTTAL TESTIMONY OF
EAN O'NEILL ON BEHALF OF
THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION

1 Q. PLEASE STATE YOUR NAME.

2 A. Ean O'Neill.

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4 Q. ARE YOU THE SAME EAN O'NEILL WHO PROVIDED INITIAL
5 TESTIMONY IN THIS PROCEEDING ON THE SUBJECT OF ENERGY
6 SALES TO THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
7 CORPORATION ("ISO") UNDER SECTION 202 (C) OF THE FEDERAL
8 POWER ACT ("FPA")?

9 A. Yes, I am.

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1 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2 A. I will respond to the issues on the topic of sales of electric energy under
3 FPA Section 202 (c) raised by the following entities and witnesses:

- 4 • Bonneville Power Administration ("BPA"): David Mills,
- 5 • Coral Power ("Coral"): Hank Harris,
- 6 • City of Burbank ("Burbank"): Paul G. Scheuerman,
- 7 • City of Glendale ("Glendale"): Paul G. Scheuerman,
- 8 • Los Angeles Department of Water and Power ("LADWP"): Mark S. Ward,
- 9 • Modesto Irrigation District ("MID"): Roger VanHoy,
- 10 • Northern California Power Agency ("NCPA"): Fred E. Young,
- 11 • City of Pasadena ("Pasadena"): Steven K. Endo,
- 12 • Pinnacle West/Arizona Public Service Company ("APS"): Steve Murphy,
- 13 • Portland General Electric Company ("Portland"): William S. Casey,
- 14 • PPL Montana ("PPLM"): Bryan C. Bradshaw,
- 15 • Public Service Company of Colorado ("PS Colorado"): Benjamin G.S.
16 Fowkes, III,
- 17 • Sacramento Municipal Utility District ("SMUD"): Douglas Calvert and
18 James A. Tracy,
- 19 • City of Riverside ("Riverside"): Gary L. Nolff,
- 20 • City of Anaheim ("Anaheim"): Stephen J. Sciortino, and
- 21 • California Department of Water Resources ("CDWR"); State Water Project
22 ("SWP"): Richard D. Jones.

1 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

2 A. I reach the following basic conclusions in my rebuttal testimony:

- 3 • Because the ISO had not satisfied an essential precondition to the
4 invocation of the Section 202(c) Order until December 20, 2000, the
5 sales made to the ISO prior thereto by Coral and Portland do not
6 qualify for treatment as sales under the DOE Order.
- 7 • MID, NCPA, PS Colorado, Pasadena and SMUD made sales of energy
8 to the ISO subsequent to the ISO's first certification invoking the DOE
9 Order on December 20, 2000. However, some of these sales were
10 made on days on which the ISO did not invoke the DOE Order by
11 providing a certification to DOE as required in that Order. Therefore,
12 these sales do not qualify for treatment as sales made pursuant to
13 Section 202(c) under the DOE Order.
- 14 • Ancillary Services are bid into the ISO markets as defined in the ISO
15 Tariff Section 2.5 and are considered market transactions, which
16 should not qualify for treatment as sales made under the DOE Order.
- 17 • The ISO's notations on its OOM Sheets are the most reliable method
18 of determining which transactions were entered into pursuant to
19 Section 202(c).
- 20 • Sales from LADWP made during this period were made pursuant to
21 Service Schedule 13 and not the DOE Order.

- 1 • Energy provided by SMUD, MID and NCPA during this period was
2 provided under ISO Operating Procedure E-516 and not the DOE
3 Order.
- 4 • Excess energy provided to the ISO by Pasadena, Anaheim and
5 CDWR/SWP was required to be provided under the terms of the
6 Participating Generator Agreement each entered into with the ISO and,
7 therefore, the argument that they would not have provided energy to
8 the ISO but for the existence of the DOE Order is specious.
- 9 • The energy sales of Burbank and Glendale to the ISO were scheduled
10 through Sempra and Coral Power, respectively. Neither Sempra nor
11 Coral Power indicated to the ISO that energy from these entities was
12 provided pursuant to the DOE Order. Therefore, these sales should
13 not be treated as sales made pursuant to the DOE Order.
- 14 • The sales made to the ISO by Riverside were not from “excess”
15 supplies and, therefore, should not be treated as sales made pursuant
16 to the DOE Order.

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1 **Q. DO YOU AGREE WITH THE BASIC ANALYTICAL FRAMEWORK FOR**
2 **ASSESSING WHETHER A TRANSACTION FALLS UNDER THE DOE**
3 **ORDER AS DESCRIBED IN THE TESTIMONY OF FERC STAFF**
4 **WITNESS LINDA PATTERSON?**

5 A. Yes. Ms. Patterson's analysis is a reasonable method for determining
6 which transactions are *eligible* for designation as transactions "made
7 pursuant to Section 202(c)." Specifically, in order for a transaction even
8 to be considered as potentially having been made pursuant to Section
9 202 (c) all of the following criteria should first be met:

- 10 • the selling entity must be listed on Attachment A to the DOE
11 Orders,
- 12 • the transaction occurred on a day covered by a certification filed by
13 the ISO with DOE,
- 14 • the transaction had to be a "non-market" transaction, i.e., a
15 transaction entered into outside the ISO's formal markets for
16 energy and capacity, and
- 17 • for certification day January 9, 2001, the price demanded must
18 have been at or below \$64/ MWh.

19 Ex. No. S-1 (Prepared Direct Testimony of Linda M. Patterson) at 12:17-
20 13:6.

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1 **Q. DO YOU BELIEVE THAT A TRANSACTION SHOULD**
2 **AUTOMATICALLY BE CONSIDERED TO HAVE BEEN MADE**
3 **PURSUANT TO SECTION 202(c) IF IT MEETS THESE FOUR**
4 **CRITERIA?**

5 A. No. Although I agree that any transaction that does not satisfy the criteria
6 set forth by Ms. Patterson should not be eligible for designation as a
7 Section 202(c) transaction, I do not believe that a transaction was
8 necessarily made pursuant to Section 202(c) solely by virtue of the fact
9 that it meets these criteria. After December 20, 2000 (the first date on
10 which the ISO invoked the DOE Order), the procedure for arranging
11 transactions under the DOE Order was clear: The ISO would file a
12 certification for each date on which it was “unable to acquire in the market
13 adequate supplies of electricity to meet system demand.” Ex. No. ISO-11
14 at 2. At the time of certification, the ISO was also required to seek from
15 suppliers “information on the availability of resources subject to the order.”
16 *Amended Order Pursuant to Section 202(c) of the Federal Power Act*,
17 attached as Exhibit No. ISO-22. Once these prerequisites were satisfied,
18 the Order requires that “the entities [subject to the Order] will make
19 arrangements to generate, deliver, interchange, and transmit electric
20 energy, when, as, and in such amounts *as may be requested by the*
21 California Independent System Operator,” Ex. No. ISO-11, with the caveat
22 that suppliers were only required to make available to the ISO pursuant to

1 this order “excess” energy. *Id.* In obtaining this energy, the Order
2 contemplated that the ISO and supplier would reach some agreement as
3 to the “terms of any arrangement subject to this order.” *Id.* I interpret
4 these phrases to mean that only those transactions with respect to which it
5 was clear to the ISO that suppliers were providing energy based on the
6 ISO’s request for excess energy pursuant to the terms of the DOE Order
7 should be classified as 202(c) transactions. This is the case because the
8 ISO could hardly come to “terms . . . subject to this order,” *id.*, with
9 suppliers if it didn’t, in the first instance, understand that the energy that it
10 was purchasing was being made available pursuant to the DOE Order. As
11 I explain more fully below, there were a number of reasons why suppliers
12 might have been supplying the ISO with energy other than the fact that the
13 DOE Order existed, and thus, it was, and is, reasonable for the ISO not to
14 assume that all sales during this period were made pursuant to Section
15 202(c).

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- 1 **Q. DO YOU AGREE WITH THE CONTENTION MADE BY HANK HARRIS**
2 **OF CORAL (EX. NO. CP-1 (DIRECT TESTIMONY OF HANK HARRIS)**
3 **AT 10:13-18) AND WILLIAM S. CASEY OF PORTLAND (EX. NO. PGE-1**
4 **(DIRECT TESTIMONY OF WILLIAM S. CASEY) AT 4:11-13, 6:1-3)**
5 **THAT ENERGY SALES TO THE ISO AFTER THE SECRETARY OF**
6 **ENERGY ISSUED HIS ORDER UNDER FPA SECTION 202 (C) ON**
7 **DECEMBER 14TH, BUT BEFORE THE ISO CERTIFIED AND INVOKED**
8 **THE PROVISIONS OF THE ORDER, QUALIFY FOR TREATMENT AS**
9 **SALES UNDER THE DOE ORDER?**
- 10 **A.** Absolutely not. The DOE Order was clear that the ISO could not request
11 excess energy from entities pursuant to the terms of the DOE Orders until
12 the ISO satisfied an explicit precondition: the filing of a signed certification
13 with DOE stating that it had been unable to acquire adequate supplies of
14 electricity in the market. See Ex. No. ISO-10 (Direct Testimony of Ean
15 O'Neill) at 4:4-6 and Ex. Nos. ISO-11 and ISO-12. Moreover, this
16 precondition had to be met separately for each day. Ex. Nos. ISO-11 and
17 ISO-12. The ISO filed its first signed certification with DOE on December
18 19, 2000 for operating day December 20, 2000. The terms of the Order
19 did not become effective until 6:00 a.m. (PST) December 20, 2000.
20 Therefore, energy transactions for prior hours and days do not qualify for
21 treatment as sales under the DOE Order for the simple reason that, under
22 the explicit terms of the DOE Order itself, that Order was not in effect

1 during those periods. Thus, during these periods, the ISO could not
2 demand energy, nor were suppliers under any legal obligation to make
3 excess energy available to the ISO, pursuant to the terms of the Order.
4 Suppliers' contentions as to what they feared their legal obligations *might*
5 *have been* are irrelevant, as the ISO could not, even if it desired, enter into
6 transactions under Section 202(c) on those days for which it did not file
7 the appropriate certification.

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9 **Q. WHY DID THE ISO WAIT UNTIL DECEMBER 19, 2000 TO FILE ITS**
10 **FIRST CERTIFICATION WITH DOE FOR OPERATING DAY**
11 **DECEMBER 20, 2000?**

12 A. There is no question that supplies were becoming exceedingly
13 constrained by mid-December. That is precisely why the ISO requested
14 action under Section 202(c). At the same time, the ISO was mindful of the
15 extraordinary nature of its request for relief and of the Secretary's action.
16 The ISO took seriously its responsibility to "invoke" the DOE's
17 authorization as it was intended: as a last resort to be used only after
18 market opportunities proved deficient. Accordingly, the ISO concluded
19 that the precondition to certification was not satisfied prior to operating day
20 December 20th and, therefore, did not file its first certification until
21 December 19th. As I stated in the previous response, the ISO could not

1 have made purchases pursuant to the DOE Orders on days before
2 December 20 because it had no authority from DOE to do so.

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4 **Q. DOES THE ISO AGREE THAT TRANSACTIONS THAT OCURRED**
5 **AFTER DECEMBER 20, 2000, BUT ON DAYS FOR WHICH THE ISO**
6 **DID NOT INVOKE THE DOE ORDER BY FILING A CERTIFICATION,**
7 **SHOULD BE ELIGIBLE FOR DESIGNATION AS BEING MADE**
8 **PURSUANT TO THE DOE ORDER?**

9 A. No. Recognizing, for the reasons discussed above, that the terms of the
10 DOE Order were effective only on those days covered by an ISO
11 certification, transactions made on the following claimed dates of activity,
12 by the following entities, should not be considered as having been made
13 pursuant to the DOE Order:

- 14 • MID: December 18-19, 2000 and January 7-8, 2001 (Ex. No. MID-
15 4),
- 16 • NCPA: January 11, 2001 (Ex. No. NCP-2),
- 17 • PS Colorado: January 15, 2001 (Ex. No. PSC-2), and
- 18 • Pasadena: January 5-8, 10-11 and 13-16, 2001. Ex. No. PAS-1A
19 (Prepared Responsive Testimony of Steven K. Endo) at 15:16-20.

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1 **Q. SEVERAL ENTITIES INCLUDING MID (EX. NO. MID-3), BURBANK (EX.**
2 **NO. BUR-1 (RESPONSIVE TESTIMONY OF PAUL SCHEUERMAN) AT**
3 **9:18-10:1 AND EX. NO. BUR-2), GLENDALE (EX. NO. GLN-1**
4 **(RESPONSIVE TESTIMONY OF PAUL SCHEUERMAN) AT 12:1-7 AND**
5 **EX. NO. GLN-3), LADWP (EX. NO. DWP-4), PASADENA (EX. NO. PAS-**
6 **1A (ENDO) AT 12:7-11), AND CDWR/SWP (EX. NO. SWC-1**
7 **(RESPONSIVE TESTIMONY OF RICHARD D. JONES) AT 9:12-14)**
8 **ALLEGE THAT THEY MADE SALES OF ANCILLARY SERVICES TO**
9 **THE ISO UNDER THE PROVISIONS OF THE DOE ORDER. DO YOU**
10 **AGREE THAT SALES OF ANCILLARY SERVICES QUALIFY FOR**
11 **SUCH TREATMENT?**

12 A. No. Ancillary Services include Regulation, Spinning Reserve, Non-
13 Spinning Reserve, Replacement Reserve, Voltage Support, and Black
14 Start capability. Ancillary Services are bid into the Day-Ahead or Hour-
15 Ahead Markets or arranged through longer-term contracts by Scheduling
16 Coordinators, and, as market transactions, should be ineligible for
17 designation as “DOE transactions” for the reasons specified by Ms.
18 Patterson. Ex. No. S-1 (Patterson) at 17:1-20. Moreover, these
19 transactions should not be eligible for designation as 202(c) transactions
20 because the DOE Order explicitly refers to an obligation by suppliers to
21 deliver “electric energy” when requested by the ISO. Ex. No. ISO-11
22 (emphasis added).

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2 **Q. A NUMBER OF SUPPLIERS: SMUD (EX. NO. SMD-1 (DIRECT**
3 **TESTIMONY OF JAMES TRACY) AT 22:18-23:2), PS COLORADO (EX.**
4 **NO. PSC-1 (DIRECT TESTIMONY OF BENJAMIN G. S. FOWKE III) AT**
5 **7:1-8), PORTLAND (EX. NO. PGE-1 (DIRECT TESTIMONY OF**
6 **WILLIAM S. CASEY) AT 4:13-17), MID (EX. NO. MID-2 (DIRECT**
7 **TESTIMONY OF ROGER VANHOY) AT 7:19-8:10), AND BPA (EX. NO.**
8 **BPA-1 (DIRECT TESTIMONY OF DAVID MILLS) AT 13:8-17:16),**
9 **ARGUE THAT THERE IS NO BASIS FOR THE ISO'S RELIANCE ON**
10 **NOTATIONS MADE BY ISO OPERATORS AS A METHOD FOR**
11 **IDENTIFYING DOE TRANSACTIONS. DO YOU AGREE?**

12 **A.** No. Of course, now that DOE transactions are being excluded from
13 mitigation in this proceeding, it is to be expected that suppliers would want
14 their transactions deemed provided pursuant to the DOE Order. However,
15 there are numerous reasons why entities may have been supplying
16 energy to the ISO during this time period. As noted in my initial testimony,
17 high prices throughout California may well have encouraged suppliers to
18 sell to the ISO outside of the auspices of the DOE Order. I also explain in
19 greater detail below additional reasons why certain particular suppliers
20 might have also supplied energy to the ISO for reasons other than
21 pursuant to the DOE Order. The ISO, for its part, adopted a neutral

1 standard, and entities that wished to make clear their intentions could do
2 so, and in fact did do so.

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4 As I noted above, beginning with the December 20, 2000 Amendment,
5 entities on "Attachment A" were required to provide to the ISO their
6 availability of excess resources within 6 hours of an ISO certification. In
7 many cases, these entities did not comply with this requirement. In other
8 instances, these entities forecasted an availability of zero MW. According
9 to the ISO's records, there was only one entity, Portland, that provided its
10 estimates of resource availability to the ISO on all 34 days that the ISO
11 filed certifications with DOE, although it should be noted that out of the 34
12 days, Portland forecasted zero MWs of resource availability for 17 of those
13 days. Additionally, on 11 of the 17 days that Portland forecasted zero
14 MWs of resource availability, it claims to have provided energy to the ISO
15 pursuant to the DOE Order. Attached, as Exhibit No. ISO-23 is a
16 spreadsheet that I have prepared, which shows the numerous instances in
17 which entities either did not provide an estimate of excess energy to the
18 ISO, or forecasted an availability of zero MW. Therefore, the ISO had
19 good reason to assume that these entities were not providing energy in
20 response to the ISO's request for excess energy pursuant to the DOE
21 Order. Due to inconsistencies of the Attachment A entities of either (1) not
22 faxing their resource availability sheets to the ISO or (2) claiming zero

1 MWs of resource availability, the ISO had no choice but to rely on the
2 notifications on its OOM sheets.

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4 Based of these realities, I still believe that the designation on the OOM
5 sheets represents the best method for identifying the universe of
6 transactions made pursuant to the DOE Order, and that those should be
7 the only transactions accepted as subject to the DOE Order absent
8 convincing evidence from suppliers establishing that they were selling with
9 recognition by the ISO that the sale was being made pursuant to Section
10 202(c).

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12 **Q. IN YOUR PREVIOUS ANSWER YOU NOTED THAT HIGH PRICES**
13 **THROUGHOUT CALIFORNIA MAY WELL HAVE ENCOURAGED**
14 **SUPPLIERS TO SELL TO THE ISO OUTSIDE OF THE AUSPICES OF**
15 **THE DOE ORDER. DO YOU HAVE ANY EVIDENCE TO SUPPORT**
16 **THIS STATEMENT?**

17 A. Yes. There were a number of entities that provided energy to the ISO in
18 OOM transactions prior to the DOE Order, on non-certification days during
19 the December 15, 2000, through February 7, 2001 period, and after the
20 DOE Order was no longer in effect. For example, from December 10,
21 2000 through December 19, 2000, (the period prior to the ISO's first

1 certification), energy was provided to the ISO in OOM transactions from
2 the following entities:

- 3 • BPA: 20,119 MWs,
- 4 • Portland: 47,214 MWs,
- 5 • APS: 11,988 MWs,
- 6 • PS Colorado: 945 MWs,
- 7 • LADWP: 70,400 MWs, and
- 8 • Coral: 25,153 MWs.

9 On non-certified days during the DOE Order period, energy was provided
10 to the ISO in OOM transactions from the following entities:

- 11 • BPA: 153,152 MWs,
- 12 • Portland: 23,848 MWs,
- 13 • APS: 2,485 MWs, and
- 14 • LADWP: 118,900 MWs.

15 During the period immediately following the DOE period, energy was
16 provided to the ISO in OOM transactions from the following entities
17 through CERS:

- 18 • APS: 20,350 MWs, and
- 19 • LADWP: 22,363 MWs.

20 This indicates to me that the high prices being commanded during this
21 period was incentive enough to sell energy to the ISO prior to the DOE
22 Order, on non-certified days during the DOE Order period, and

1 immediately after the DOE Order expired; and this certainly suggests that
2 entities may have been selling to the ISO on certification days for the
3 same reason. Also, I would emphasize that these figures only account for
4 those entities making OOM sales to the ISO, and does not factor in
5 transactions settled through the ISO's formal markets for Energy and
6 Ancillary Services. There were numerous market transactions that
7 occurred during this period, on both certification and non-certification
8 days, some of which are claimed as 202(c) transactions by parties to this
9 proceeding.

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11 **Q. HAVE ANY SELLERS PROVIDED THE ISO WITH CONVINCING**
12 **PROOF THAT THEY ENGAGED IN TRANSACTIONS PURSUANT TO**
13 **THE DOE ORDERS BEYOND THOSE ORIGINALLY IDENTIFIED BY**
14 **THE ISO?**

15 A. Only one. Portland provided the ISO with a number of transcripts of
16 conversations between operators for Portland and the ISO. During those
17 conversations, Portland operators explicitly stated that they were providing
18 energy pursuant to the DOE Order, and the ISO accepted the energy with
19 that caveat. Therefore, the ISO has informed Portland and the other
20 parties in this proceeding that it considers the sales discussed in those
21 conversations to have been made pursuant to Section 202(c) of the FPA.

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1 **Q. MARK WARD OF LADWP (EX. NO. DWP-1 (DIRECT TESTIMONY OF**
2 **MARK S. WARD) AT 9:1-9) CLAIMS THAT ENERGY TRANSACTIONS**
3 **ENTERED INTO BETWEEN LADWP DURING THE DOE ORDER**
4 **PERIOD WERE MADE PURSUANT TO THE DOE ORDER. IS THERE**
5 **ANY ANOTHER REASON THAT LADWP MIGHT HAVE BEEN**
6 **SUPPLYING ENERGY TO THE ISO?**

7 A. Yes. It is the ISO's contention that LADWP was providing power to the
8 ISO pursuant to Service Schedule 13 rather than the DOE Order. Service
9 Schedule 13 is an Interconnected Control Area Operating Agreement that
10 had been in place and had been implemented prior to the Secretary of
11 Energy issuing orders pursuant to Section 202 (c). Service Schedule 13
12 outlines how LADWP and the ISO will assist each other in an emergency
13 situation. The ISO was clearly in an emergency situation prior to the
14 invocation of the DOE Orders. As documented in the ISO System Status
15 Log located on the ISO website, the ISO had declared a Stage 1 or
16 greater Emergency thirteen times prior to December 20th. LADWP
17 provided energy to the ISO during this period prior to the invocation of the
18 DOE Orders pursuant to Service Schedule 13. Therefore, as far as the
19 ISO knew, during those periods in which the ISO certified under the DOE
20 Order, LADWP continued to provide energy to the ISO under Service
21 Schedule 13 rather than the DOE Order.

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1 **Q. WAS THERE ALSO A MECHANISM, OTHER THAN THE DOE ORDER,**
2 **UNDER WHICH SMUD, MID AND NCPA PROVIDED "EXCESS**
3 **ENERGY" TO THE ISO?**

4 A. Yes. The ISO had, and has, in place Operating Procedure E-516:
5 *Dispatch of Muni/Western Reserves and Excess Energy.* Operating
6 Procedure E-516 was written with input from the municipalities, including
7 SMUD, MID, and NCPA. Operating Procedure E-516 sets forth the actions
8 to be taken by the ISO and the affected parties, in the event of a Stage 1
9 Emergency or in order to prevent a greater Emergency, and includes
10 provisions for these entities to provide excess energy to the ISO under
11 these conditions. Under Operating Procedure E-516, the ISO may obtain,
12 under the above mentioned conditions, Energy from Excess Capacity and
13 Energy from Spinning and Non-Spinning Operating Reserves associated
14 with generating units owned or controlled by various municipalities, NCPA
15 and the Western Area Power Administration ("Western"), which operate
16 within the ISO's Control Area. It is the ISO's contention that this is
17 precisely what occurred during the time period in which the DOE Orders
18 were in effect. The specific entities as outlined in Operating Procedure E-
19 516 include:

- 20 • City and County of San Francisco ("CCSF"),
- 21 • City of Redding ("COR"),
- 22 • MID,

- 1 • NCPA,
- 2 • SMUD,
- 3 • Silicon Valley Power ("SVP"),
- 4 • Turlock Irrigation District ("TID"), and
- 5 • Western Area Power Administration ("Western").

6 A Stage 1 Emergency or greater occurred, and therefore, the Operating
7 Procedure E-516 was in effect, for all days covered by an ISO certification
8 with the exception of December 25-28, 2000, and January 2, 2001.

9

10 Nevertheless, the ISO does not believe that it is appropriate to draw a
11 distinction with respect to December 25-28, 2000, and January 2, 2001.
12 Although the provisions of E-516 did not apply on those dates, SMUD,
13 MID and NCPA would likely have been motivated to supply energy to the
14 ISO to prevent the ISO from declaring a Stage 1 Emergency or greater, in
15 order to avoid rolling blackouts that would have impacted those entities'
16 customers. Witnesses for both SMUD and MID admit that this was a
17 paramount concern for those entities. (Ex. No. SMD-1 (Direct Testimony
18 of James A. Tracy) at 16:21-17:11) and (Ex. No. MID-2 (Direct Testimony
19 of Robert VanHoy) at 9:5-10).

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1 Q. DO YOU AGREE THAT PASADENA (EX. NO. PAS-1A (ENDO) AT 12:7-
2 8), ANAHEIM (EX. NO. SOC-2 (DIRECT TESTIMONY OF STEPHEN J.
3 SCIORTINO) AT 4:19-22), AND CDWR/SWP (EX. NO. SWC-1 (DIRECT
4 TESTIMONY OF RICHARD D. JONES) AT 14:23-15:6) PROVIDED
5 EXCESS ENERGY TO THE ISO ONLY BECAUSE OF THE EXISTENCE
6 OF THE DOE ORDERS?

7 A. No. Pasadena, Anaheim and CDWR/SWP executed Participating
8 Generator Agreements ("PGAs") with the ISO in July 1999, March 1998,
9 and April 1998, respectively. These PGAs clearly state, in Section 4.2,
10 that generators will comply with the applicable provisions of the ISO Tariff,
11 including Section 2.3.2: *Management of System Emergencies*, Section
12 2.5.3.4: *Voltage Support*, and Article 5: *Relationship Between ISO and*
13 *Generators*, Section 5.6: *System Emergencies*. Section 5.6.1 specifically
14 states:

15 "All Generating Units, System Units and System Resources that are
16 owned or controlled by a Participating Generator are (without
17 limitation to the ISO's other rights under this ISO Tariff) subject to
18 control by the ISO during a System Emergency and in
19 circumstances in which the ISO considers that a System
20 Emergency is imminent or threatened. The ISO shall, subject to
21 Section 5.6.2, have the authority to instruct a Participating
22 Generator to bring its Generating Unit on-line, off-line, or increase

1 or curtail the output of the Generating Unit and to alter scheduled
2 deliveries of Energy and Ancillary Services into or out of the ISO
3 Controlled Grid, if such an instruction is reasonably necessary to
4 prevent an imminent or threatened System Emergency."

5 Therefore, despite their arguments to the contrary, if Pasadena, Anaheim,
6 and CDWR/SWP had declined to provide the ISO with energy during this
7 time period, the ISO would not have needed to invoke the provisions of
8 the DOE Order to obtain energy from these entities. Instead, the ISO
9 could have simply called on them under their PGAs, in which case they
10 would have been *contractually obligated* to generate regardless of the
11 existence of the DOE Order.

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13 **Q. DO YOU AGREE WITH THE ARGUMENT MADE BY BURBANK AND**
14 **GLENDALE THAT THEY MADE SALES PURSUANT TO THE DOE**
15 **ORDERS BECAUSE "THE CONTEXT WITHIN WHICH THESE SALES**
16 **WERE MADE INDICATES THAT [THEIR] MOTIVATION TO MAKE**
17 **THESE SALES WAS FIRST AND FOREMOST THE DOE ORDERS?"**
18 **EX. NO. JBG-1 (JOINT RESPONSIVE TESTIMONY OF PAUL**
19 **SCHEUERMAN) AT 19:12-14.**

20 **A.** No. Burbank and Glendale have Interconnection Agreements with
21 LADWP and schedule their energy through Sempra Energy Trading and
22 Coral Power respectively. The ISO's responsibility is to communicate with

1 Scheduling Coordinators, not Burbank or Glendale. In turn, the
2 responsibility for communicating with Burbank and Glendale lies with
3 Sempra and Coral Power respectively. Ex. No. BUR-1 (Scheuerman) at
4 3:11-17 and Ex. No. GLN-1 (Scheuerman) at 3:1-9. As I made clear
5 previously, there were reasons beyond the existence of the DOE Order for
6 suppliers to make sales to the ISO during this time period. According to
7 the ISO's OOM sheets, neither Sempra nor Coral Power indicated to the
8 ISO that energy from Burbank or Glendale was being provided pursuant to
9 the DOE Order.

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11 **Q. DO YOU AGREE WITH RIVERSIDE (EX. NO. SOC-5 (DIRECT**
12 **TESTIMONY OF GARY L. NOLFF) AT 2:18-21) THAT ALL OF ITS**
13 **SURPLUS ENERGY WAS NECESSARILY PROVIDED PURSUANT TO**
14 **THE DOE ORDER?**

15 A. No. Riverside is its own Scheduling Coordinator, and as such procures
16 energy to meet its forecasted load. Mr. Nolff, in his direct testimony,
17 emphasized the fact that Riverside had procured resources only *adequate*
18 to meet its forecasted load. Ex. No. SOC-5 (Nolff) at 3:6-11. Ex. No.
19 SOC-6 indicates that Riverside provided "uninstructed" energy to the ISO.
20 This means that Riversides' units generated more in real time than
21 Riverside's Scheduling Coordinator had indicated in its forward schedules,
22 without having been instructed by the ISO to do so. The ISO has no way

1 of knowing what Riverside's intentions were when it over-generated.
2 Therefore, the ISO contends that this uninstructed energy should not be
3 considered to have been provided pursuant to Section 202 (c). After all,
4 the Order said that entities were to provide such energy "as may be
5 *requested by*" the ISO, and the ISO certainly did not request uninstructed
6 energy. Ex. No. ISO-11 (emphasis added).

7

8 **Q. DO YOU AGREE WITH THE ARGUMENTS ADVANCED BY SEVERAL**
9 **ENTITIES THAT THE ISO'S IDENTIFICATION OF DOE SALES IN**
10 **YOUR EARLIER TESTIMONY CONFLICTS WITH THE ISO'S**
11 **REPRESENTATIONS MADE IN ITS CERTIFICATION LETTERS**
12 **SUBMITTED TO THE COMMISSION?**

13 A. No. Although the ISO did state that the "certification allowed the ISO" to
14 arrange for a certain amount of import deliveries, this statement does not
15 necessarily mean that the ISO arranged each of those transactions
16 pursuant to the terms of the DOE Order. Again, I would reiterate that
17 there were a number of reasons that entities might have been making
18 sales to the ISO during this period, and absent some reference to the
19 DOE Order, it would not be reasonable for the ISO to simply assume that
20 every sale was being made pursuant to Section 202(c).

21

1 **Q. DO YOU AGREE WITH MR. DOUGLAS CALVERT’S STATEMENT**
2 **THAT THE ISO DID NOT ROUTINELY E-MAIL ITS CERTIFICATION**
3 **NOTICE TO SMUD ON DAYS THE ISO FILED ITS CERTIFICATION**
4 **WITH THE DOE (EX. NO. SMD-3 (AFFIDAVIT OF DOUGLAS**
5 **CALVERT) AT 3, ¶ 5)?**

6 A. No. Immediately upon sending the Certification documents to Mr. Paul
7 Carrier at DOE, the ISO sent out the redacted version of these documents
8 to those entities on Attachment A. The ISO records indicate that both Mr.
9 Doug Calvert and Mr. Brian Jobson at SMUD were on the distribution list.
10 In order to ensure that no one was omitted, ISO Management had ISO
11 Client Relations send out the same documents to the ISO Market
12 Participant email list. SMUD employees on the Market Participant list
13 include W. Shannon Black, Greg Brownell, Doug Calvert, Craig Cameron,
14 Ralph Carmona, Nick Henery, Dilip Mahendra, Robert Schwermann, and
15 Tad Simms.

16
17 **Q. DID THE ISO INITIATE PEAK DAY CONFERENCE CALLS ONLY**
18 **DURING THE PERIOD COVERED BY THE DOE ORDERS, AS**
19 **CONTENDED BY SMUD (EX. NO SMD-3 (CALVERT) AT 2, ¶ 4)?**

20 A. No. The ISO initiated peak day conference calls prior to the period
21 covered by the DOE Orders. The ISO did so in order to keep all relevant
22 operating personnel informed of the potential for the declaration of Stage

1 1, 2, and 3 Emergencies and of the possibility that load-shedding
2 measures might have to be implemented.

3

4 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5 **A. Yes it does.**