97 FERC – 61, 301
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

San Diego Gas & Electric Company,
Complainant,

v. Docket No. EL00-95-045

Sellers of Energy and Ancillary Service Into
Markets Operated by the California
Independent System Operator Corporation
and the California Power Exchange Corporation,
Respondents.

Investigation of Practices of the California Docket No. EL00-98-042
Independent System Operator and the
California Power Exchange

Coral Power, L.L.C., Enron Power
Marketing, Inc., Arizona Public
Service Company, Cargill Alliant,
LLC , San Diego Gas & Electric
Company, Avista Energy, Inc.,
Sempra Energy Trading Corp.,
PacifiCorp, and Constellation
Power Source

v. Docket No. EL01-36-000

California Power Exchange Corporation

Salt River Project Agricultural
Improvement and Power District

and Sacramento Municipal Utility
District

v. Docket No. EL01-37-000

California Power Exchange Corporation

Public Service Company of New Mexico

v. Docket No. EL01-43-000

California Power Exchange Corporation

ORDER ON CERTIFICATION

(Issued December 19, 2001)

On November 21, 2001, the presiding judge in Docket Nos. EL00-95-045 and EL00-98-042, pursuant to Rule 714 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.714 (2001), certified to the Commission a question regarding the scope of the evidentiary hearing established by the Commission's July 25, 2001 order, San Diego Gas & Electric Company, et al.[1] The certification cites an overlap of issues between the refund proceeding established by the July 25 order and an Offer of Settlement, submitted on October 5, 2001 by the Official Committee of Participant Creditors (Creditors Committee) of the California Power Exchange Corporation (CalPX).[2] The Offer of Settlement proposes an allocation of the money being held by the CalPX, e.g., for the nonpayments by Pacific Gas & Electric Company (PG&E) and Southern California Edison Company (SoCal Edison) and their impact on the CalPX, CalISO, and participants in the CalPX and CalISO markets.[3] The presiding judge asks

[1] 96 FERC − 61,120, on rehearing, 9_ FERC − 61,___ (2001) (July 25 order). In the July 25 order, the Commission established the scope of and methodology for calculating refunds related to transactions in the spot markets operated by the California Independent System Operator (CalISO) and CalPX during the period October 2, 2000 through June 20, 2001. The order also established an evidentiary hearing proceeding to further develop the factual record so that refunds may be calculated. Specifically, the order directed the presiding judge to make findings of fact with respect to: "(1) the mitigated price in each hour of the refund period; (2) the amount of refunds owed by each supplier according to the methodology established [in the July 25 order]; and (3) the amount currently owed to each supplier (with separate quantities due from each entity) by the ISO, the investor owned utilities, and the State of California." Id. at 61,045-46.

[2] The Offer of Settlement was filed in Docket Nos. EL01-36-000, EL01-37-000 and EL01-43-000, which are pending before the Commission. It was also filed separately in Docket Nos. EL00-95-000 and EL00-98-000 and "all related subdockets," which presumably would include the subdockets that relate to the evidentiary hearing to be conducted by the presiding judge.

[3] See Pacific Gas & Electric Company v. California Power Exchange Corporation, 95 FERC − 61,020 (2001) (PG&E v. CalPX)

(continued...)

whether he should address the Offer of Settlement in the refund proceeding, or the Commission will address it in Docket Nos. EL01-36-000, EL01-37-000 and EL01-43-000.

Discussion

The July 25 order directed the presiding judge to conduct a hearing and certify findings of fact on three specific issues needed to calculate refunds related to transactions in the spot markets operated by the CalPX and CalISO markets: the hourly price; refunds owed for sales above the hourly price; and amounts unpaid to suppliers. Prior to July 25, 2001, the Commission had issued an order relating to the CalPX's "chargeback" of nonpayments by PG&E and SoCal Edison to other CalPX market participants, and stated that the Commission would defer action on the "ultimate question of how the PX should account for the nonpayments."[4] When the Commission issued the July 25 order, it was aware of the issues related to the pending CalPX proceeding, but did not include any such issues in the carefully defined scope of the presiding judge's inquiry. Accordingly, the Offer of Settlement is outside the scope of the evidentiary hearing and properly before the Commission.

Further, the matters proposed to be resolved by the Offer of Settlement will likely be impacted by other pending proceedings, including the Order on Rehearing of the July 25 order, which is being issued concurrently with this order.[5] Likewise, in PG&E v. CalPX, the Commission noted that the question of how the CalPX should account for the nonpayments by SoCal Edison and PG&E would be significantly impacted by a decision on either SoCal Edison's Complaint, concerning whether it is, in fact, in default, or CalPX's Government Claims Board Complaint, seeking compensation for the State of California's "commandeering" of PG&E and SoCal Edison's block forward contracts.[6]

Because of the related, ongoing proceedings before the Commission and in other forums, it is inappropriate for the Offer of Settlement to be considered in the context of the refund proceeding. Rather, the Commission will address the Offer of Settlement at a future time.

[3] (...continued)
(finding unjust and unreasonable CalPX's application of the "chargeback" provision of its Tariff to the nonpayments).

[4] Id., 95 FERC at 61,045-46.

[5] San Diego Gas & Electric Company, et al., 9_ FERC – 61,__ (2001).

[6] PG&E v. CalPX, 95 FERC at 61,045-46.

The Commission orders:

For the reasons stated above, the Offer of Settlement will be addressed by the Commission in Docket Nos. EL01-36-000, EL01-37-000 and EL01-43-000.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.