

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

San Diego Gas & Electric Company,)	
Complainant,)	
)	Docket No. EL00-
95-087))
v.)	
)	
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)	Docket No. EL00-98-074
Independent System Operator and the)	
California Power Exchange)	

JOINT REQUEST FOR LEAVE TO RESPOND AND RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, CALIFORNIA PARTIES, AND SAN DIEGO GAS & ELECTRIC COMPANY. TO INDICATED GENERATORS' ANSWER TO THE JOINT MOTION FOR CLARIFICATION OR, IF NECESSARY, RECONSIDERATION OF PARAGRAPH 82 OF THE COMMISSION'S OCTOBER 16, 2003 ORDER ON REHEARING

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2001), the California Independent System Operator Corporation ("ISO"),¹ California Parties,² and San Diego Gas & Electric Company ("SD&GE") (collectively, the "Moving Parties") request leave to respond

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² The California Parties consist of the California Attorney General, the California Public Utilities Commission, the California Electricity Oversight Board, Pacific Gas and Electric Company, and Southern California Edison Company.

and hereby submit their response to the Indicated Generators' ("Generators")³ Answer to the Motion for Clarification or, if Necessary, Reconsideration of Paragraph 82 of the Commission's October 16, 2003 Order on Rehearing⁴ ("Motion") of the California Independent System Operator Corporation, California Parties, and San Diego Gas & Electric Company. Although Rule 213 does not normally permit an answer to an answer, the Moving Parties request waiver of Rule 213 to permit them to make this response. Good cause exists for granting this waiver because this response will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case.⁵

For the reasons set forth herein, the Commission should grant the Moving Parties' request for clarification, or if necessary, reconsideration of paragraph 82 of the October 16 Order.

I. OVERVIEW

In their response, the Generators state that they do not dispute the Moving Parties' contention that Paragraph 82 of the October 16 Order inaccurately describes how CT 485 charges should be allocated. The Generators recognize that CT 485 charges should not be allocated *pro rata* according to the Scheduling Coordinators metered demand as determined in Paragraph 82 of the October 16

³ The Indicated Generators consist of Duke Energy, Reliant, and Mirant.
⁴ 105 FERC ¶ 61,066 (2003) ("October 16 Order")

Order because, at the time the ISO was collecting CT 485 penalties, SABP Section 6.5.2(b) controlled. That section provided that funds received from CT 485 charges should be allocated first towards any expenses, loss, or costs incurred by the ISO.

The Generators, however, raise two concerns with respect to the Motion. One is based on a misunderstanding of the Motion and the other is based on a desire to redirect the flow of the penalty funds away from those harmed by the actions that resulted in the penalties. Both concerns should be dismissed and the Motion should be granted.

II. DISCUSSION

The Generators argue that there should not be any disbursements of CT 485 funds until after they have been adjusted by the mitigated market clearing price (“MMCP”). The Moving Parties do not dispute this and the Motion does not suggest otherwise. This concern is apparently based upon a misunderstanding of the Motion.

The Generators maintain that the ISO should be obligated to ensure that it has sufficient funds to reimburse suppliers for any penalties that will be mitigated during the refund stage. Thus, according to the Generators, only if the ISO determines that it has additional funds after refunds have been distributed, should the issue of allocating excess funds be addressed, and “the Commission should find that the existing funds in the CT 485 account should be distributed to

⁵ See, e.g., *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC

those suppliers entitled to refunds” Generator Response at 5. The Generators therefore request that the Commission rule that no funds from the CT 485 account will be disbursed to the grid management charge (“GMC”) at this time. *Id.*

As set forth in the Motion, the ISO charged Participating Generators approximately \$122 million in CT 485 penalties during the refund period. Of that amount, the ISO has, to date, collected approximately \$60 million. Pursuant to the Commission-approved settlement of the 2001 GMC proceeding, the ISO allocated approximately \$20 million of the CT 485 penalties already collected to offset the GMC, with the remaining \$40 million deposited in an interest-bearing escrow account. The clarification sought by the Moving Parties with respect to the allocation of CT 485 penalties involves only the amount of CT 485 penalties that the Participating Generators will owe *after* the MMCPs are applied.⁶ With respect to the \$40 million in CT 485 penalties currently held by the ISO in escrow, the Moving Parties recognize that it would be inappropriate to allocate these funds pending application of the MMCPs and calculation of the amount of CT 485 penalties that Participating Generators owe for the refund period. Obviously, if all of the CT 485 penalty amounts currently held in escrow are determined to be owed back to Participating Generators, then the issue of how to allocate those amounts is moot.

[¶] 61,098, at 61,259 (2000).

⁶ For example, if the ISO determines that after applying the MMCP to CT 485 penalties, Participating Generators owe \$80 million in CT 485 penalties for the refund period, as opposed to the \$122 million originally owed, then only \$60 million would be available for allocation (\$80 million minus the \$20 million already allocated to the GMC pursuant to the settlement of the 2001 GMC proceeding).

The Generators also contend that the Commission should not allow the ISO to "apply any remaining funds to reduce, in its next GMC filing, to the fullest extent possible, the rates of GMC categories that are billed based on load and exports." The Generators claim that this proposal is inconsistent with the ISO Tariff. The Generators are wrong. The GMC reflects costs incurred by the ISO to manage the electric grid. These costs are calculated and then passed on to those entities that use the grid through the GMC. The Motion's proposal to use the penalty funds to reduce the GMC for those entities who serve retail load (i.e. consumers) is consistent with SABP 6.5.2(b) of the ISO Tariff,⁷ and ensures that those parties most harmed by the generators' actions that resulted in the levying of the penalties will be reimbursed for that harm. Finally, any other proposal for allocation of the CT 485 Penalties may have the absurd result of funneling penalty funds back to the wrongdoers.

III. CONCLUSION

Wherefore, for the reasons set forth above the Commission should grant the Moving Parties' Motion for Clarification, or if Necessary, Reconsideration of Paragraph 82 of the Commission's October 16, 2003 Order on Rehearing. Moreover, given that the Generators were the only party to respond to the Moving Parties' motion for clarification, and the fact that the Generators agreed that CT 485 penalties should be allocated to offset the ISO's costs, the Moving Parties respectfully request that the Commission act on this matter in an

⁷ That section permits the ISO to apply CT 485 penalty revenues towards "expenses, loss or cost" incurred by the ISO." Necessarily, therefore, it permits the ISO to apply penalties to

expedited fashion, because prompt resolution of this issue is necessary in order for the ISO to complete its refund process calculations.

Respectfully Submitted,

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Dated: July 19, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Folsom, CA, this 19th day of July, 2004.

/s/ Gene L. Waas
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