

106 FERC ¶ 61, 201  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Sudeen G. Kelly.

California Independent System Operator Corporation      Docket No. ER03-942-002

ORDER DENYING REHEARING

(Issued March 3, 2004)

1. On January 14, 2004, Pacific Gas & Electric Company (PG&E) filed a request for rehearing of the Commission's December 15, 2003 Order,<sup>1</sup> in which the Commission accepted in part, modified in part and rejected in part the California Independent System Operator Corporation's (ISO's) Tariff Amendment No. 53, which addresses late payments received by the ISO. PG&E, in its request for rehearing, argues that the Commission erred in failing to direct the ISO to defer the disbursement of payments by ISO creditors for defaulted receivables until after settlement re-runs are made in Docket No. EL00-95-000, et al. (the California Refund Proceeding). The Commission denies PG&E's request for rehearing.

Background

2. On June 10, 2003, as amended October 16, 2003, the ISO proposed tariff revisions that addressed, inter alia, the disbursement to ISO Creditors of amounts owed to the ISO by market participants paying late (i.e., defaulted receivables). For payments of default amounts owed for months during which no ISO Debtor is in bankruptcy, proposed section 11.16.2 provides that defaulted receivables would be distributed to ISO creditors for the month of default. Under that provision, if all ISO creditors for the month of default have been paid, then the proceeds would be paid pro rata to the ISO creditors in the oldest unpaid trade month. Under proposed section 11.16.3, a different distribution methodology would apply for payments of defaulted receivables for months in which: (1) there is at least one ISO Debtor in bankruptcy proceedings in which no full and final distribution has been made and (2) the default receivable is from a trade month for which

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<sup>1</sup> California Independent System Operator Corporation, 105 FERC ¶ 61,284 (2003) (December 15 Order).

all ISO Creditors for that trade month have been paid. In that case, all ISO creditor balances would be combined for the purpose of calculating the pro rata distribution of default collections.

3. In response,<sup>2</sup> PG&E proposed that the ISO hold in escrow defaulted receivables the ISO receives for the period May 2000 through June 2001, which coincides with the refund period in the California Refund Proceeding, until after preliminary and final settlement re-runs are made in the California Refund Proceeding. It claimed that the deferral of disbursements would avoid the potential for multiple adjustments and invoices that might otherwise be required, and would prevent disbursements of default receivables to non-creditworthy parties who might not be able to reimburse the ISO as necessary when the final adjustments and invoices are prepared in the California Refund Proceeding.
4. The December 15 Order accepted proposed section 11.16.2 with one modification, and rejected proposed section 11.16.3.<sup>3</sup> The Commission, while not specifically addressing PG&E's proposal, did not direct that the ISO hold in escrow payments for default receivables for months that coincide with the refund period in the California Refund Proceeding, as requested by PG&E.

#### PG&E Request for Rehearing

5. PG&E argues that the Commission erred in failing to direct the ISO to defer the disbursement of payments to ISO creditors of collected defaulted receivables until after settlement re-runs are made in the California Refund Proceeding. It claims that the failure to preserve the status quo during the interim until the re-runs are made threatens to undermine the integrity of the Refund Proceeding invoices.
6. PG&E notes that the Commission has held that offsetting is to be performed when calculating the amounts due to and from parties in the refund proceeding.<sup>4</sup> According to PG&E, it follows that the Commission should require that all amounts related to the refund period should be part of the netting process. Otherwise, if the ISO makes distributions on an ad hoc basis, invoices will have to be further adjusted in the California Refund Proceeding. Further, funds may be disbursed to non-creditworthy

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<sup>2</sup> PG&E filed a protest to the ISO's tariff filing on July 1, 2003. On November 6, 2003, PG&E filed comments on the ISO's amended tariff filing.

<sup>3</sup> We note that PG&E, in its request for rehearing at 3, erroneously states that the Commission accepted section 11.16.3, with modification. The Commission, in fact, rejected section 11.16.3.

<sup>4</sup> Citing San Diego Gas & Electric Co., et al., 105 FERC ¶ 61,066 at P 180 (2003).

parties who may not be able to reimburse the ISO when the final adjustments and invoices are prepared. PG&E further claims that, by deferring payment, the Commission will avoid potentially discriminatory results from the use of different allocation or distribution methodologies for funds related to the same period.

7. PG&E also argues that the holding of funds until the calculations in the California Refund Proceeding are completed would be consistent with Commission's orders directing that funds and collateral relating to the Refund Period held by the California Power Exchange Corporation (PX) may not be disbursed until the conclusion of the Refund Proceeding.<sup>5</sup>

### Discussion

8. The Commission denies PG&E's request for rehearing. In the first instance, this docket is not the proper forum for PG&E's proposal. As noted by the ISO, Amendment No. 53 relates only to the methodology for disbursements.<sup>6</sup> However, the underlying ability of the ISO to make such disbursements is a separate matter that is not part of this proceeding and not affected by the ISO's tariff filing.

9. Addressing the substance of PG&E's argument, the ISO's creditors should not have to face further delays in receiving payments, and defaulted receivables should be timely disbursed, unless some compelling reason for deferring payment is provided. We find that PG&E has not provided sufficient justification for such deferral.

10. PG&E claims that the failure to defer the disbursement of defaulted receivables will undermine the integrity of the California Refund Proceeding invoices. However, PG&E has not adequately demonstrated that the adjustments in the refund proceeding that it believes would be necessary as a result of the disbursement of defaulted receivables would be so complicated as to justify a delay in paying creditors. Further, while the period of accrual of some defaulted receivables may coincide with the refund period in the California Refund Proceeding, that does not mean that the receivables are monies to be included in the refund proceeding. In that way, they are distinguished from collateral and funds being held by the PX, which are directly related to the Refund

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<sup>5</sup> Citing, e.g., *Powerex Corp. v. California Power Exchange Corp.*, 102 FERC ¶ 61,328, granting clarification and denying reh'g, 104 ¶ 61,119 (2003). PG&E also contends that its proposal is consistent with the ISO's own proposal to defer disbursement of funds in Docket No. ER03-889-015. However, no such pleading exists in the identified docket.

<sup>6</sup> July 16, 2003 ISO answer at 11. See also December 15 Order, 105 FERC ¶ 61,284 at P 28 (section 11.16.2 simply clarifies the ISO's current practice of disbursing default receivables).

Proceeding. Further, PG&E is concerned about the possibility of ISO Creditors receiving payments for defaulted receivables prior to the re-runs in the Refund Proceeding and then not being able to make payment for refund obligations due to creditworthiness problems. However, PG&E has not provided sufficient information on this point, and the mere possibility of a market participant receiving payment for default receivables and later not being able to make payment for its refund obligation is not sufficient reason to require the deferral of payments.

11. Finally, we note that the ISO, in response to PG&E's November 2003 comments, committed to provide market participants with 15 days notice prior to the disbursement of default receivables for the period May 2000 through June 2001 in order that market participants that object to such disbursement can file an appropriate pleading with the Commission.<sup>7</sup> This notice provides sufficient protection to market participants. Accordingly, the Commission denies PG&E's request for rehearing.

The Commission orders:

Pacific Gas & Electric Company's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>7</sup> November 21, 2003, ISO Response, at 6.