UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

California Independent System Operator Corporation	Docket No. ER01-889-001
California Power Exchange Corporation	Docket No. ER01-902-001
San Diego Gas & Electric Company, Complainant, v.	
	Docket No. EL00-95-014
	Docket No. EL00-98-013
Sellers of Energy and Ancillary Services	Docket No. EL00-104-003
Into Markets Operated by the California	Docket No. EL00-107-004
Independent System Operator and the	Docket No. EL01-1-004
California Power Exchange, Respondents, et al.	

ORDER GRANTING CLARIFICATION IN PART AND DENYING REHEARING OF ORDER ON TARIFF CREDITWORTHINESS AMENDMENT

(Issued April 6, 2001)

In this order, we grant in part and deny in part a request by the California Power Exchange Corporation (PX) for clarification and deny its request for rehearing of California Independent System Operator Corporation, et al., 94 FERC ¶ 61,132 (2001), issued February 14, 2001 (February 14 Order). [1] The February 14 Order, inter alia, rejected proposed Amendment No. 22 to the creditworthiness provisions of the PX tariff.

[1] Other parties have filed additional requests for clarification or rehearing and related filings regarding the creditworthiness provisions of the California Independent System Operator Corporation (ISO) tariff. We will address those pleadings and filings in separate orders.

I. Background

The PX has operated wholesale trading markets for electricity in California. Amendment No. 22 was designed to relax the creditworthiness requirements for the investor-owned electric utility distribution companies (UDCs). The PX filed Amendment No. 22 in anticipation of downgrades in the credit ratings of two of the UDCs, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SoCal Edison).

The PX filed its amendment on January 5, 2001, and indicated that it was implementing the amendment immediately so that PG&E and SoCal Edison could continue to transact business in PX markets. The PX allowed PG&E and SoCal Edison to continue to buy power in its Day-Ahead and Day-Of energy markets through January 18, 2001, when the PX suspended their trading rights. The February 14 Order rejected the PX's proposed Amendment No. 22.

The February 14 Order also addressed proposed Amendment No. 36 to the tariff of the ISO, which controls the electricity grid throughout most of California. Like the PX's proposed Amendment No. 22, the ISO's proposed Amendment No. 36 was designed to relax the creditworthiness requirements for the UDCs. The February 14 Order accepted Amendment No. 36 in part subject to modification.

II. Pleadings

On February 26, 2001, the PX filed a request for clarification or, in the alternative, rehearing. The PX seeks clarification or rehearing of three issues: (1) the operating status of its Day-Ahead and Day-Of energy markets; (2) the propriety of allowing PG&E and SoCal Edison to trade in the PX markets from January 5 through January 18, 2001; and (3) the appropriate scope of its invoices for January 2001 transactions. The PX requested expedited treatment of its request so that it could issue correct and timely January invoices.

On March 9, 2001, San Diego Gas & Electric Company (SDG&E) filed an answer to the PX's request complaining that the PX's action made the PX prices more volatile and contributed to driving up prices in other markets. SDG&E also objects to retroactive approval of the proposed amendment stating that it relied on the standards in the PX tariff to provide protection against losses from defaults by other PX participants, losses that participants are now subject to as a result of the defaults of PG&E and SoCal Edison.

On March 13, 2001, Coral Power, L.L.C., Enron Power Marketing, Inc., Arizona Public Service Company, Avista Energy, Inc., Pacificorp, and Constellation Power Source (collectively Western Power Providers and Marketers) filed a motion to intervene out of time in Docket No. ER01-902-001.

On March 13, 2001, the PX notified the Commission that it had filed for Chapter 11 bankruptcy protection on March 9, 2001. On March 15, 2001, the PX filed a letter in Docket Nos. ER01-902-000 and EL00-95-000, stating its view that the automatic stay provision of the bankruptcy code, 11 U.S.C. § 362, prohibited the Commission and parties "from continuing further litigation in the above proceedings as such litigation pertains to CalPX, including filing responsive pleading pursuant to Commission notices."

III. The PX's Request

A. The operating status of the PX's Day-Ahead and Day-Of energy markets

The PX seeks clarification that it has suspended, rather than closed, its Day-Ahead and Day-Of energy markets. The PX notes that the February 14 Order, at 61,511, stated:

> We understand that the PX has closed its Day-Ahead and Day-Of energy markets. Therefore, revision of the creditworthiness provisions of the PX tariff is no longer an issue. Consequently, we will reject the PX's proposed tariff amendment.

The PX argues that clarification that the markets were actually suspended is appropriate to ensure an accurate record in this proceeding. More importantly, the PX suggests that we reconsider our rejection of Amendment No. 22 in light of any misunderstanding of this point.

B. The propriety of allowing PG&E and SoCal Edison to trade in the PX markets from January 5 through January 18, 2001

The PX seeks clarification that it acted reasonably in allowing PG&E and SoCal Edison to continue to purchase power from January 5 through January 18, 2001. The PX asserts that the February 14 Order did not address this issue. The PX then offers four reasons why we should sanction its unilateral implementation of proposed Amendment No. 22 during this period, notwithstanding any decision we make to reject the prospective application of that amendment.

First, the PX argues that its actions were reasonable because they helped maintain reliable service to California consumers. The PX notes that although the California

Department of Water Resources (DWR) eventually began purchasing power on behalf of PG&E and SoCal Edison, the DWR was not appropriated funds to do so until January 19, 2001. Therefore, the PX argues, if it had applied the creditworthiness requirements of its tariff without Amendment No. 22 from January 5 through January 18, 2001, it would have been forced to suspend the trading privileges of PG&E and SoCal Edison, which would have resulted in rolling blackouts.

Second, the PX argues that the manner in which it relaxed the creditworthiness requirements from January 5 through January 18, 2001 was reasonable. The PX notes that during this period, PG&E and SoCal Edison still had credit ratings of at least investment grade. The PX further notes that once the credit ratings for these UDCs fell below investment grade, the PX demanded that they post collateral, and when they failed to do so, the PX terminated their trading privileges.

Third, the PX notes that at the time it filed Amendment No. 22, intense negotiations were going on among all major market participants and government authorities. The PX asserts that termination of the trading rights of PG&E or SoCal Edison during this period would have threatened those discussions.

Fourth, the PX notes that on January 16, 2001, it filed proposed Amendment No. 23, with the support of many of the market participants, to give SoCal Edison two more days to make its mid-January payment for December 2000 transactions. The PX observes that we accepted Amendment No. 23, and waived notice requirements so that it could be effective immediately, without expressing any concerns about SoCal Edison trading in the PX markets at that time. [2]

C. The appropriate scope of the PX's invoices for January 2001 transactions

Consistent with its arguments that it acted reasonably in allowing PG&E and SoCal Edison to continue trading from January 5 through January 18, 2001, the PX states

[2] See California Power Exchange Corporation, 94 FERC ¶ 61,042 (2001).

that we should clarify that its invoices for January 2001 transactions may properly reflect purchases made by PG&E and SoCal Edison during that period. [3]

IV. Discussion

A. Procedural Matters

[3] The PX has stated in its compliance filing in Docket Nos. EL00-95-015 and EL00-98-014 that it will not send out January 2001 invoices until after the Commission issues an order in that proceeding.

Rules 213(a)(2) and 713(d) of the Commission's Rules of Practice and Procedure [4] generally prohibit an answer to a request for rehearing. We are not persuaded to allow SDG&E's proposed answer, and accordingly will reject it.

Pursuant to Rule 214(d)(1) of the Commission's Rules of Practice and Procedure, [5] we deny the untimely intervention motion of the Western Power Providers and Marketers for failure to demonstrate good cause warranting late intervention. To permit the Western Power Providers and Marketers' late intervention after issuance of the February 14 Order and more than two weeks after the PX filed its rehearing request would result in unjustified delay and disruption of the proceeding and undue burden on other parties. [6]

B. The PX Day-Ahead and Day-Of energy markets were suspended, not closed

In the interest of having an accurate record in this proceeding, we will grant in part the PX's request for clarification and note that the PX stated that it has suspended, not closed, its Day-Ahead and Day-Of energy markets. However, our statements in the February 14 Order concerning the operating status of these markets were not the basis for our earlier rejection of Amendment No. 22. The statements with which the PX takes issue were simply designed to explain why we were not providing guidance to the PX on how it might modify its proposed amendment to gain our acceptance, whereas we did provide such guidance to the ISO. In light of the fact that the PX Day-Ahead and Day-Of energy markets were no longer operating, we concluded that it was unnecessary to address revision of the PX's Amendment No. 22. The statements that the PX points to were intended merely to reflect that conclusion, and our clarification today has no effect on our other rulings in the February 14 Order.

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[4] 18 C.F.R. §§ 385.213(a)(2) and 385.713(d) (2000).

[5] 18 C.F.R. § 385.214(d)(1) (2000).

[6] Accord Southern Company Services, Inc., 92 FERC ¶ 61,167 (2000).

C. Request for rehearing or clarification that PX acted reasonably from January 5 through January 18, 2001

The basis for our rejection of the PX's proposed Amendment No. 22 and the ISO's proposed Amendment No. 36 as applied to transactions affecting third-party suppliers is set forth in the February 14 Order, at 61,510. We articulated three reasons for rejecting the amendments. Our primary reason was that by lowering the standards for the two largest buyers in these markets, acceptance of the proposed amendments would have resulted in an inappropriate unilateral shifting of unacceptable financial risks to both large and small third-party suppliers. We also explained that acceptance of the proposed amendments could increase prices paid by consumers, because suppliers would likely charge the UDCs a higher risk premium as part of their bid price to supply energy to them. Finally, we expressed concern that relaxing creditworthiness standards only for the three large investor-owned UDCs could disproportionately affect small municipal customers.

Notwithstanding the PX's assertion to the contrary, the February 14 Order did address the issue of the propriety of the PX implementing proposed Amendment No. 22, and thus allowing PG&E and SoCal Edison to continue trading from January 5 through January 18, 2001. The February 14 Order rejected the PX's proposed Amendment No. 22 in its entirety, and nothing that the PX has raised in its current petition leads us to change that decision.

First, the PX's argument that its unilateral implementation of Amendment No. 22 from January 5 through January 18, 2001, was justified on the basis of reliability is misplaced. The February 14 Order did discuss the ISO's duty to ensure reliability, but that discussion concerned whether there was good cause to waive the notice requirements for the portion of the ISO's Amendment No. 36 that we concluded was acceptable. The portion of the ISO's Amendment No. 36 that we considered acceptable was its application to UDCs using their own generation and transmission lines to serve their load. The UDCs must go through the ISO even when they are using their own generation and transmission lines to serve their loads, and we concluded that application of the ISO's Amendment No. 36 was acceptable in such instances because there was no effect on third parties.

With regard to the PX markets, on the other hand, our December 15, 2000 order barred the UDCs from selling their own generation into the PX markets. See San Diego Gas & Electric Company, et al., 93 FERC ¶ 61,294 at 62,001 (2000), reh'g pending

(December 15 Order). [7] Therefore, effective January 1, 2001, the UDCs were no longer permitted to trade in the PX markets when they used their own generation to serve their loads. Thus, the PX's proposed Amendment No. 22 could only apply to transactions with third-party suppliers. Given that we rejected a similar relaxation provision for third party creditworthiness proposed by the ISO, whose link to reliability as the actual control area operator of the grid is more direct than that of the PX, which simply operates a trading exchange, it follows that the PX's proposal must also be rejected.

Second, we disagree with the PX's argument that the manner in which it relaxed creditworthiness standards from January 5 through January 18, 2001, was reasonable. As discussed in the February 14 Order, at 61,510, acceptable creditworthiness requirements are ones consistent with applicable provisions of commercial law. California market participants negotiated over, and agreed to do business with the PX subject to tariff provisions that included standard creditworthiness protections. In these circumstances, the PX had no reasonable grounds for assuming its relaxed standard would be accepted. The PX's failure to comply with its filed rate schedule and with appropriate creditworthiness standards from January 5 through January 18, 2001, as well as its unilateral decision to immediately implement its tariff revision (relaxing creditworthiness provisions) prior to the date of Commission acceptance, were unreasonable.

Third, it is difficult to say what effect earlier termination of PG&E's and SoCal Edison's trading rights would have had on negotiations among market participants and government authorities. In fact, earlier termination of these trading rights could just as likely have accelerated the negotiations. Therefore, we find the PX's claim that such termination would have threatened those discussions to be unfounded speculation, and not grounds for approving the PX's unilateral decision to expose third parties to the credit risks involved.

Finally, we are unpersuaded that we are somehow barred from rejecting the PX's decision to allow PG&E and SoCal Edison to continue trading from January 5 through January 18, 2001, because we accepted the PX's proposed Amendment No. 23 on

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[7] See PX's Petition in Docket No. ER01-902-000, at 1-2 (filed Jan. 5, 2001)(PX acknowledged this fact).

January 16, 2001, without objecting to continued trading by SoCal Edison. The issue regarding Amendment No. 23 was limited to the discrete question of whether to allow a 48-hour deferral of the payment of accounts receivable to the PX by SoCal Edison for transactions occurring during the December 2000 invoice month. Amendment No. 23 did not provide for a delay in the date for payment by the PX to suppliers and, thus, did not expose suppliers to additional payment risks. The creditworthiness standard to be applied to the UDCs in the PX markets was simply not at issue in that proceeding, and interested persons were already on notice that we would be considering that issue in Docket No. ER01-902-000. Therefore, our treatment of Amendment No. 23 has no bearing on our evaluation of the PX's unilateral decision to allow continued trading by PG&E and SoCal Edison in violation of its tariff provisions on creditworthiness in this proceeding. Further, and unlike its treatment of Amendment No. 22, the PX did not implement Amendment No. 23 prior to our action on that filing.

Thus, we find that the PX acted unreasonably by unilaterally implementing its proposed Amendment No. 22 to allow PG&E and SoCal Edison to continue trading in its Day-Ahead and Day-Of markets from January 5 through January 18, 2001, despite the downgrades in their credit ratings. We hereby deny the PX's requested rehearing and clarification on this point.

D. January Invoices

With regard to the PX's request for clarification on how to prepare invoices for the period January 5 through January 18, 2001, we note that although the PX acted unreasonably in allowing PG&E and SoCal Edison to trade during this period, the third-party suppliers who sold energy to PG&E or SoCal Edison in the PX markets during this period are nonetheless entitled to payment. Therefore, we direct the PX to include all sales to PG&E or SoCal Edison by third-party suppliers from January 5 through January 18, 2001, in its January 2001 invoices.

Also, we note that effective January 1, 2001, the UDCs were required to "self supply" their generation resources to serve their load (i.e., they could no longer bid their own resources into the PX markets and buy the energy back at the market clearing price). Therefore, we direct the PX to match the UDCs' own generation resources with an equivalent amount of load and net those transactions out of the market with no transfer of funds. [8]

[8] This adjustment does not apply to the PX block forward market.

E. Effect of the Bankruptcy Proceeding

Finally, with regard to the PX bankruptcy proceeding, although the Bankruptcy Code provides that the filing of a bankruptcy petition automatically stays certain actions against the debtor, [9] the Code also provides an exception from this automatic stay for:

> An action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power. [10]

The Commission has found in the past that actions taken under the authority granted it by the Federal Power Act and the controlling regulations fit within this exception, and, therefore, are exempt from the automatic stay provision. [11] In the instant matter, we are exercising our regulatory power under section 205 of the Federal Power

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[9] 11 U.S.C. § 362(a)(1) (1994).

[10] 11 U.S.C. § 362(b)(4) (1994).

[11] See Virginia Electric and Power Company, 84 FERC ¶ 61,254 (1998); and Century Power Corp., 56 FERC ¶ 61,087 (1991). The Commission conclusion on this matter is consistent with judicial precedent regarding the scope of the exemption to the automatic stay. E.g., Board of Governors of the Federal Reserve System v. MCorp Fin., Inc., 502 U.S. 32 (1991); SEC v. Brennan, 250 F.3d 65 (2nd Cir. 2000); NLRB v. Continental Hagen Corp., 932 F.2d 828 (9th Cir. 1991); United States v. Commonwealth Cos. Inc. 913 F.2d 518 (8th Cir. 1990); NLRB v. Edward Cooper Painting, Inc. 804 F.2d 934 (6th Cir. 1986); Penn Terra Ltd. v. Dept. of Environmental Resources, 733 F.2d 267 (3rd Cir. 1984); see generally 3 Collier on Bankruptcy § 362.05 (15th ed. rev. 2000).

Act as permitted by section 362(b)(4) of the Bankruptcy Code to issue an order that does not threaten the bankruptcy court's control over the property of the bankruptcy estate. [12]

The Commission orders:

(A) The PX's request for clarification that it suspended rather than closed its Day-Ahead and Day-Of energy markets is hereby granted, as discussed in the body of this order.

(B) The PX's request for rehearing and clarification that its relaxation of creditworthiness standards for the period January 5 through January 18, 2001, was reasonable is hereby denied, as discussed in the body of this order.

(C) The PX shall include in its invoices for January, 2001, all amounts owed to third-party suppliers by the UDCs, as discussed in the body of this order.

By the Commission. Commissioner Massey dissented in part with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

[12] This order does not change any monetary obligations, and therefore, has no effect on the estate.

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(Issued April 6, 2001)

MASSEY, Commissioner, dissenting in part:

I dissent from the part of today's order that finds that the PX acted unreasonably by unilaterally implementing its proposed Amendment No. 22 to allow PG&E and SoCal Edison to continue trading in its Day-Ahead and Day-of markets from January 5 through January 18, 2001. This conclusion is unnecessary and somewhat gratuitous.

The PX had asked for clarification or rehearing to "provide needed guidance for the invoices for January trading."[1] Today's order directs the PX to include all sales to PG&E and SoCal Edison in its January 2001 invoices. I agree with that direction.

I have not reached the conclusion, however, that the PX acted unreasonably by allowing PG&E and SoCal Edison to trade under its proposed amendment from January 5 through January 18, 2001. This was a period of exceptional price volatility and razor thin generation reserves. Chaos seemed to rule. There is merit to the PX's argument that

[1] California Power Exchange Corporation's Request for Expedited Clarification or, Alternatively, Request for Rehearing at 9-10.

it needed to hold the system together while around-the-clock negotiations to end the chaos were occurring at the highest levels of the nations's government under White

House auspices. A decision by the PX to prohibit trading could very well have exacerbated the chaos.

Moreover, had the PX not allowed PG&E and SoCal Edison to trade in its forward markets, megawatts would have been pushed into the ISO's real time market. One of the fundamental conclusions of our December 15, 2000 remedial order was that decreasing the amount of load in the real time market would, in turn, decrease reliability risks. The PX decision may have had a positive effect on an already fragile reliability situation.

The bottom line here is that there is no need to reach any conclusion regarding the reasonableness of the PX's behavior. Yes, send the bills for the sales to PG&E and SoCal Edison. Beyond that, I would not second guess the PX in such extraordinary circumstances.

For these reasons, I dissent from the finding that the PX acted unreasonably. I support the other aspects of today's order.

William L. Massey
Commissioner