THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

<table>
<tr><td>San Diego Gas & Electric Company,
Complainant,

v.

Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange,
Respondents</td><td>)
)
)
)
)
)
)
)
)
)
)</td><td>Docket Nos. EL00-95-081
EL00-95-074
EL00-95-086
EL00-95-062</td></tr>
<tr><td>Investigation of Practices of the California Independent System Operator and the California Power Exchange</td><td>)
)
)
)
)
)</td><td>Docket Nos. EL00-98-069
EL00-98-062
EL00-98-073
EL00-98-051</td></tr>
<tr><td>Public Meeting in San Diego, California</td><td>)
)</td><td>Docket No. EL00-107-010</td></tr>
<tr><td>Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C.,
Complainants,
v.

California Independent System Operator Corporation,
Respondent</td><td>)
)
)
)
)
)
)
)
)
)
)</td><td>Docket No. EL00-97-004</td></tr>
<tr><td>California Electricity Oversight Board
Complainant,
v.

All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange,
Respondents</td><td>)
)
)
)
)
)
)
)
)
)</td><td>Docket No. EL00-104-009</td></tr>
</table>

California Municipal Utilities Association,	)	**Docket No. EL01-1-010**
Complainant,	)	
	)	
v.	)	
	)	
All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange,	)	
Respondents	)	
	)	
Californians for Renewable Energy, Inc. (CARE),	)	**Docket No. EL01-2-004**
Complainant,	)	
v.	)	
	)	
Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation,	)	
Respondents	)	
	)	
	)	
Puget Sound Energy, Inc.,	)	**Docket No. EL01-10-004**
Complainant,	)	
	)	
v.	)	
	)	
All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and /or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement,	)	
Respondents	)	
	)	
	)	
California Independent System Operator Corporation	)	**Docket No. ER01-607-003**

California Independent System Operator Corporation	)	Docket No. RT01-85-009
Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council	)	Docket No. EL01-68-014
California Power Exchange Corporation	)	Docket No. ER00-3461-004
California Independent System Operator Corporation	)	Docket No. ER00-3673-003
California Independent System Operator Corporation	)	Docket No. ER01-1579-004
Southern California Edison Company and Pacific Gas and Electric Company	)	Docket No. EL01-34-003
Arizona Public Service Company	)	Docket No. ER01-1444-004
Automated Power Exchange, Inc.	)	Docket No. ER01-1445-004
Avista Energy, Inc.	)	Docket No. ER01-1446-006
California Power Exchange Corporation	)	Docket No. ER01-1447-004
Duke Energy Trading and Marketing, LLC	)	Docket No. ER01-1448-006
Dynegy Power Marketing, Inc.	)	Docket No. ER01-1449-007
Nevada Power Company	)	Docket No. ER01-1450-004
Portland General Electric Company	)	Docket No. ER01-1451-007
Public Service Company of Colorado	)	Docket No. ER01-1452-004
Reliant Energy Services, Inc.	)	Docket No. ER01-1453-008
Sempra Energy Trading Corporation	)	Docket No. ER01-1454-004
Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC	)	Docket No. ER01-1455-010
Williams Energy Services Corporation	)	Docket No. ER01-1456-011

REQUEST FOR CLARIFICATION AND/OR REHEARING OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Pursuant to Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212, the California Independent System Operator Corporation ("ISO")[1] submits this request for clarification or, in the alternative, rehearing in the above-captioned dockets. The ISO respectfully requests that the Commission clarify several items in its October 16, 2003, Order on Rehearing, 105 FERC ¶ 61,066 ("October 16 Main Order"), which dealt with requests for rehearing of its March 26, 2003 order in this proceeding,[2] and its October 16, 2003 Order on Rehearing and Clarification, 105 FERC ¶ 61,065 ("October 16 Second Order"),[3] which addresses requests for rehearing and clarification of its May 15, 2002 order in this proceeding.

I. REQUESTS FOR CLARIFICATION

The ISO respectfully requests that the Commission clarify the following with respect to the October 16 Main Order:

- That the ISO has already complied with the Commission's requirement that it "accurately reflect CERS as the Scheduling Coordinator for the net-short load" of the California IOUs, and therefore, no modifications to the ISO's settlement data base are necessary to implement this directive.

---

[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] San Diego Gas & Electric Co., et al., 102 FERC ¶ 61,317 (2003) ("March 26 Order").

[3] Throughout this pleading, these two orders will be referred to collectively as the "October 16 Orders."

- That the compliance filing that the Commission has required the ISO to submit will be limited to the rerun of the ISO's settlement system, and that the ISO's proposed schedule for reasonable.
- That the ISO, in correcting any instances in which dispatches associated with a combustion turbine's minimum run time have been mischaracterized as residual or uninstructed energy, may use a one hour minimum run time for all of the combustion turbines that sold into the ISO Markets during the Refund Period.[4]
- That the ISO's methodology, modified to allocate interest mismatches as set forth in the October 16 Main Order, properly accounts for interest on both overcharges and amounts unpaid, as well as any adjustments to transactions that took place during the Refund Period.

The ISO respectfully requests that the Commission clarify the following with respect to the October 16 Second Order:

- That the gas price data series developed by the California Parties and adopted by the Commission for use in calculating the MMCP does not include a data point for the AEPCO units that the Commission indicated are eligible to set the MMCP, and that the Commission should adopt the California Parties' proposed methodology for calculating such a data point.

[4] The Refund Period means the period October 2, 2000 through June 20, 2001.

II. DISCUSSION

A. The Commission should clarify that the ISO has already complied with the Commission's requirement in the October 16 Main Order that CERS be treated as the Scheduling Coordinator for the net-short load of the California IOUs.

1. The ISO has accounted for CERS as the Scheduling Coordinator for the IOUs net-short load by invoicing CERS directly for the Imbalance Energy acquired on behalf of the net short load, as required by the November 7, 2001 creditworthiness order referenced in the October 16 Main Order.

The October 16 Main Order required that the ISO adhere to the Commission's directive in *California Independent System Operator Corporation*, 97 FERC ¶ 61,151 (2001) ("the November 7 Order) to "correct its accounting to reflect CERS as the Scheduling Coordinator for the IOU's net short load." October 16 Order at P. 113. The ISO seeks clarification that its previous filings in the docket in which the November 7 Order was issued have met the directives of that order, and thus that the ISO is in compliance with the October 16 Main Order. If the Commission believes such clarification is not in order, the ISO seeks rehearing.

The November 7 Order was issued in the so-called "creditworthiness" docket, ER01-889. By the time of the November 7 Order, CERS had begun functioning as the creditworthy backer of the net short positions of the two non-creditworthy IOUs, enabling the ISO to continue accepting the IOUs' Schedules and to purchase real-time Energy on behalf of the portion of their load that was not met by the IOUs' own generation in their Schedules, *i.e.*, their net short positions. The issue the Commission was addressing in the November 7 Order, when it directed the ISO to treat CERS as the Scheduling Coordinator for that net short load, was one that had divided the ISO and

CERS, on the one side, and the IOUs on the other: to whom should the ISO issue invoices for the Energy purchased by the ISO in real time to meet the IOUs' net short load? The Commission found that the ISO had full authority under DWR's Scheduling Coordinator Agreement to bill CERS directly and that CERS had undertaken to pay in accordance with the ISO Tariff. The Commission's specific conclusion was:

> The ISO is obligated under its Tariff to invoice, collect payments from and distribute payments to DWR [*i.e.,* CERS], as the Scheduling Coordinator for all scheduled and unscheduled transactions made on behalf of DWR, including transactions where [CERS] serves as the creditworthy counterparty for the applicable portion of PG&E's and SoCal Edison's load.

Following the November 7 Order, the ISO submitted a compliance filing in which, in relevant part, it stated that it was treating CERS as the Scheduling Coordinator for the IOUs' net short positions by billing CERS directly for the transactions the ISO undertook on behalf of that load. *See* California Independent System Operator Corporation, 98 FERC ¶ 61,335. In an order issued March 27, 2002 ("March 27 Order"), the Commission accepted this part of the ISO's compliance filing: "We accept certain stated commitments by the ISO . . . to treat DWR as a Scheduling Coordinator and bill DWR directly for the non-creditworthy UDC's net short position." *Id*. at 62,434. In that same March 27 Order, the Commission rejected CERS's and the California Electricity Oversight Board's ("CEOB's") requests for rehearing of the November 7 Order insofar as that order had required the ISO to invoice CERS directly for the transactions undertaken on behalf of the IOUs' net short load:

> . . . [w]e reaffirm our November 7 Order finding that the ISO Tariff requires the creditworthy backer, [CERS], to be financially responsible for the costs associated with the net short positions of the non-creditworthy UDCs.
>
> . . . .

> . . . When DWR assumed financial responsibility for the non-creditworthy UDCs, the Commission relied on DWR's existing Scheduling Coordinator Agreement to allow the ISO to invoice [CERS] for transactions to serve the UDCs' net short position.

Id. at 62,429.

As the above recounting of the November 7 Order and its aftermath should make clear, the ISO already has complied with that November 7 Order, and thus with the reiteration of that order in the October 16 Main Order in this docket, by (in the words of the October 16 Main Order) "correct[ing] its accounting to reflect CERS as the Scheduling Coordinator for the IOU's net short load." October 16 Main Order at P. 113. It has done so by invoicing CERS directly for the transactions undertaken by the ISO to meet that net short load. The ISO made a compliance filing in which it explained that this was how it was complying, and the Commission accepted that compliance filing in relevant part. And, in the same March 27 Order in which it accepted that compliance filing in relevant part, the Commission also denied requests for rehearing filed by CERS and CEOB and reaffirmed that the ISO was to invoice CERS directly and that CERS was to be "financially responsible" for the net short loads of the IOUs. The ISO respectfully requests, therefore, that the Commission clarify that the ISO is in compliance with any requirement imposed by paragraph 113 of the October 16 Main Order.

To the extent the Commission intended in paragraph 113 to impose any requirement on the ISO beyond the direct invoicing of CERS that the ISO already has undertaken in compliance with the November 7 Order, the ISO seeks rehearing. Specifically, if the Commission intended in paragraph 113 to require the ISO to change *anything* about the way transactions associated with the net short load of the IOUs now appear in the ISO's settlements data base, the ISO seeks rehearing. No such change is necessary to comply with the November 7 Order since, as noted above, FERC has found the ISO in compliance with that order by its direct invoicing of CERS for the costs of Imbalance Energy assigned to the IOUs on behalf of that net short load. In addition, any change to the way these transactions appear in the data base, *e.g.*, changing the Scheduling Coordinator of record for the net short load in the real time market from the IOUs to CERS, would have to be done manually, would require hundreds of hours of effort, and would delay the completion of the refund re-run by several months.

2. The California Generators' argument would allow them to escape financial responsibility for Imbalance Energy charges that they should pay for, and would improperly treat CERS as the Scheduling Coordinator for all real time load.

CERS not only provided financial backing for the costs of Imbalance Energy allocated to the net short load of the IOUs, but also itself *provided* Imbalance Energy. It is important to recognize that the question of treating CERS as the Scheduling Coordinator for, and thus as financially responsible for, the costs of the Imbalance Energy allocated to the net short load of the IOUs has nothing to do with the question of how to treat the Imbalance Energy *provided by* CERS. In the case of treating CERS as the Scheduling Coordinator for the net short load, one is dealing with assigning costs of Imbalance Energy that was provided in real time, either through bids in the BEEP stack, or through out-of-market ("OOM") transactions. In the case of the Imbalance Energy provided by CERS, one is dealing with paying the provider for the Imbalance Energy provided. The situation with CERS can be confusing because CERS *as a single Scheduling Coordinator* both provided Imbalance Energy to the Market *and*, as a result of the November 7 order, has been found to be directly responsible, financially, for the costs of Imbalance Energy allocated to the IOUs' net short load. Moreover, when CERS as an Scheduling Coordinator provided Imbalance Energy to the Market, most of the load that was responsible for the costs of that Imbalance Energy was the net short load of the IOUs and therefore CERS as an Scheduling Coordinator is financially responsible for those costs – CERS, in effect, is responsible for paying itself for providing Imbalance Energy.

One of the ways CERS provided Imbalance Energy to the Market was to agree directly with generators or other sellers of Energy to pay them for producing such Energy. In the case of these so-called "CERS transactions," the generators or other sellers received payment from CERS; there was no direct relationship between the sellers and the ISO Markets. The Market, however, received the benefit of this Imbalance Energy, and therefore, it is only equitable that those in the Market pay for that benefit. CERS, as the Scheduling Coordinator providing the Imbalance Energy (by having paid the generators or other sellers to produce it), appropriately receives that payment. As noted earlier, among the beneficiaries was the net short load of the IOUs, and as to that load, the Scheduling Coordinator that actually pays for that benefit is CERS. However, there was other load in the ISO Control Area that also shared the benefit of that Imbalance Energy, and therefore, should share the costs. Among that other "load" is the "load" created by generators who failed to generate to the extent they had been scheduled to do so – the failure contributed to the need for Imbalance Energy, and therefore those generators share the costs of the Imbalance Energy provided by CERS (as well as the costs of other Imbalance Energy).

These "CERS transactions" have been addressed previously in this proceeding. First, the Commission has decided that the prices paid by CERS to the generators and other sellers will not be mitigated. *See* San Diego Gas & Electric Co., *et al*., 96 FERC ¶ 61,120 (2001) at 61,414-61,515 ("July 25 Order"). Second, it has been established that the amounts paid to CERS as the Scheduling Coordinator providing the Imbalance Energy also will not be mitigated, so that the amount paid by CERS to the suppliers and the amount paid by the beneficiaries of the Imbalance Energy will continue to match up.[5] Third, the Commission has determined that because the actual purchase from the supplier in these transactions was made by CERS, not the ISO, the transactions do not qualify for consideration in calculating the amount of certain penalties paid by generators when they fail to perform as dispatched, i.e., the so-called CT 485 penalties. 102 FERC ¶ 61,317, at P. 88.

This previous treatment of the CERS transactions is perfectly consistent with the way these transactions now appear in the ISO's settlements data base, *i.e*., as the provision of Imbalance Energy by CERS. CERS and not the ISO actually purchased the Energy, and therefore the price of the Energy is not considered in calculating CT 485 penalties, but the Energy still became Imbalance Energy to meet load in real time in the same way Energy actually purchased directly by the ISO in real time became Imbalance Energy. The beneficiaries of the Energy, including generators who failed to perform as scheduled, must pay for the Energy just as they paid for any other Imbalance Energy, and those payments flow to CERS as the Scheduling Coordinator

[5] The ISO in its initial settlements re-run removed these transactions from mitigation, **Exh. ISO-24 at 29:6-8,** and this treatment of the transactions was not made an issue before the Presiding Administrative Law Judge.

providing the Energy. Because the Commission has concluded that the prices paid by CERS to the suppliers of this Energy should not be mitigated, the amounts paid by the beneficiaries of this Energy (which includes generators that failed to generate up to the amount they scheduled) through the ISO settlements system also is not being mitigated.

Because the prices by CERS are not mitigated and therefore the amounts paid to CERS for providing the Energy are also not mitigated, a significant portion of the amounts paid by and to CERS – the amount over the mitigated clearing price – will wind up being invoiced through Charge Type ("CT") 481 (the ISO Charge Type which contains the price of Imbalance Energy purchased over the applicable market clearing price) and will be paid, in part, by the generators who fail to perform as scheduled, under CT 487 (the ISO Charge Type through which amounts allocated to CT 481 are recovered from those Scheduling Coordinators who deviated from their schedules so as to create additional load in real time). It now appears, based on their argument on rehearing of this issue from the March 26 Order, that the California Generators ("Generators") would like to escape paying their fair share of that high-priced Imbalance Energy in intervals in which they failed to perform as scheduled. In that pleading, they maintain that CERS, solely because it has been found to be the Scheduling Coordinator for the IOUs' net short load, should also be shown in the ISO's settlement records as the *purchaser* of the Imbalance Energy that CERS itself provided to the real time market (having purchased it from generators and other suppliers outside that market). Joint Request for Rehearing and Clarification of the California Generators, filed in Docket Nos. EL00-95-045, et al. (April 25, 2003) at 51-52. The California Generators, in effect, seek to conflate CERS's role as the Scheduling Coordinator providing Imbalance

Energy, in which role it receives payments from the ISO Market, with its role as the Scheduling Coordinator for the IOUs' net short load, in which role it makes payments to the ISO Market (on behalf of the IOUs). As explained above, CERS does wind up, in its role as Scheduling Coordinator for the IOUs' net short load, paying for *most* of the Imbalance Energy it itself, as Scheduling Coordinator, provided to the ISO Market. But CERS should not have to bear the ultimate cost of *all* of that Imbalance Energy, as the California Generators' argument appears aimed to accomplish. As explained above, others in the real time market, including the Generators themselves when they failed to perform as scheduled, benefited from that Imbalance Energy and appropriately, under the ISO settlements system, share its cost (including the portion of that cost above the mitigated market clearing price). The ISO does not believe the Commission intended to accept these implications of the California Generators' argument in the October 16 Main Order and seeks clarification to that effect.[6] As stated above, the ISO believes that the Commission merely reiterated its requirement that the ISO treat CERS as the Scheduling Coordinator for the net short load of the IOUs. The ISO has done so by invoicing CERS directly for the Energy purchased on behalf of that load. If the Commission did, however, intend to exempt the Generators from financial liability for the Imbalance Energy, purchased by CERS and made available to the ISO Market, which

[6] The ISO notes that treating the CERS transactions as the California Generators sought would destroy the rationale under which the Commission concluded that the prices for these CERS transactions should not be mitigated. That rationale was that the transactions occurred outside the ISO's spot markets. July 25 Order at 61,414-61,415. But the California Generators would have the Commission treat the transactions, and direct the ISO to account for them, as if they had occurred within those markets, *i.e.*, with CERS as a purchaser in those markets. *If the Commission in fact directs the ISO to account for these transactions as purchases by CERS from the sellers within the ISO's markets, it should also revisit its previous rulings and hold that the prices that CERS paid to generators and other sellers for these transactions should be mitigated just as all other non-section 202(c) spot purchases by the ISO.*

ultimately benefited Generators along with all other Market Participants in the ISO Markets, then the ISO requests rehearing for the reasons stated.

B. The Commission should clarify the scope of the compliance filing that it has required the ISO to submit, as well as the timeframe for that filing.

In the October 16 Main Order, the Commission directed the ISO and PX to submit, within five months of the date of that order, compliance filings that contain “the results and supporting data of their respective settlement and billing processes that are the subject of this refund proceeding.” October 16 Main Order at P.194. There are two related issues concerning this compliance filing as to which the ISO respectfully requests clarification.

The first issue concerns the scope of the ISO’s compliance filing. The ISO understands that the ultimate goal of this proceeding is to arrive at a final accounting as to “who owes what to whom” for the Refund Period that takes into account refunds, amounts unpaid, as well as all of the various offsets to refunds. As the ISO has noted in previous filings in this docket and in Docket No. ER03-746 (the Amendment 51 docket) determining with any accuracy the post-refund obligations in the ISO markets requires the ISO first to correct its settlements data base by conducting the preparatory reruns discussed in the Amendment 51 docket, then to conduct the refund re-run. Second, interest assessed at the Tariff rate must be backed out and interest at the Commission’s rate calculated on refunds and amounts past due. Third, emissions costs attributable to transactions in the ISO Market must be offset against refund liability. Fourth, any approved fuel cost-allowances must be allocated to buyers and paid to suppliers.

Finally, all of these various inputs must be taken into account in order to arrive at final invoices showing "who owes what to whom" for the Refund Period.

The ISO interprets the October 16 Main Order to mean that the ISO is required to submit, for this compliance filing, *only* the results of the ISO's rerun of its settlements system and not the additional calculations necessary to reach a final accounting of "who owes what to whom." The ISO bases this interpretation on the directive in the October 16 Main Order that the compliance filing contain the results and supporting data of its rerun of its "settlement and billing process," and the Commission's original directive in the July 25 Order, in which the Commission recognized that the rerun of the ISO's settlement and billing process was only one step in the larger determination of "who owes what to whom."[7] Moreover, the five month timeframe provided by the Commission to submit a compliance filing is much closer to the time that the ISO estimated for completing the preparatory and refund reruns in its April 25, 2003 Request for Rehearing and/or Clarification of the March 26 Order, than to the timeframe for the entire process that includes reruns, additional calculations such as interest, and invoicing activities, which the ISO explained would take approximately nine months.

Nevertheless, there are certain statements in the October 16 Main Order that suggest that the Commission expects that the ISO's compliance filing will reflect more than just the results of the rerun of the ISO's settlement system and the supporting data

[7] *See* San Diego Gas & Electric Co., et al., 96 FERC ¶ 61,120 (2001) at 61,519 ("Once the ISO has calculated the hourly market clearing prices for the refund period, this data should be used by both the ISO and PX to rerun their settlement/billing processes and all penalties. These revised settlements should be submitted to the administrative law judge and parties should use this information to form the basis of any offsets (*i.e.*, the amounts to be refunded against the payments past due).").

surrounding that process.[8] This is troublesome because of the timeframe allocated by the Commission, and because outstanding issues make it presently impossible for the ISO to present a final accounting of "who owes what to whom" for the ISO Markets during the Refund Period. First, the ISO does not yet have the data necessary to begin calculations relating to emissions offsets and fuel cost allowances, which are two of the issues that must be accounted for in a final determination of "who owes what to whom."[9] With respect to emissions, the Commission, adopting the Presiding Judge's finding, ruled that certain suppliers must re-calculate their emissions costs consistent with Commission Staff's pro-rata allocation methodology. March 26 Order at P. 112-113. Moreover, in the October 16 Main Order, the Commission granted the California Parties' request for rehearing, agreeing that emissions costs should not be recovered for intervals in which sales were not mitigated, October 16 Main Order at P. 153; presumably, this will require a recalculation of all emissions costs, including those previously approved by the Commission. As far as the ISO is aware, no final calculations with respect to emissions costs have been approved. Without approved emissions cost data from suppliers, the ISO obviously cannot offset those costs against suppliers' refund liabilities or allocate those offsets to buyers. This also impacts the calculation of interest, because, as explained in the ISO's April 25, 2003 Request for

[8] In discussing the specific adjustments to interest amounts made by the ISO, the Commission noted that "[w]e believe that the combination of the CAISO's proposed process for disseminating pertinent information to parties and our compliance proceeding where the CAISO will file its results together with appropriate support, will ensure that all parties' rights are protected." October 16 Main Order at ¶ 106. Additionally, in addressing the issue of how refund amounts will flow to customers, the Commission stated that "if any issues do arise, they can be raised following the submission by the CAISO and PX of the compliance filings ordered herein." *Id*. at P. 140.

[9] Moreover, as the Commission noted in the October 16 Main Order, the issue as to how to account for Williams' settlement with the State of California is still outstanding. October 16 Main Order at P. 182.

Rehearing and/or Clarification pleading, the ISO needs data on emissions offsets before it can calculate interest on refund amounts.

The ISO also lacks data relating to fuel-cost allowances. Although the Commission, in the October 16 Main Order, stated that any approved fuel cost allowances should be allocated on the same basis as emissions costs (*i.e.,* to Gross Control Area Load), the Commission has not approved any fuel cost allowances. The Commission recognized that this was still an open issue in the October 16 Main Order, noting that it planned to address fuel-cost allowance matters in a future order. October 16 Main Order at P. 199. Again, until the ISO has the necessary data, the ISO cannot account for fuel cost allowances in the compliance process.

As the ISO outlined in its April 25, 2003 Request for Rehearing and/or Clarification, the entire process, including reruns and final invoicing of amounts owed and owing for the Refund Period, would require nearly nine months, even if the ISO had the data on emissions and gas costs; without that data, the timeline is open-ended. Therefore, the ISO requests that the Commission clarify that the compliance filing discussed in the October 16 Main Order will consist of only the results of the ISO's reruns of its settlements system, along with any additional supporting data. If the Commission cannot grant such clarification, the ISO requests rehearing and asks that the Commission now order that the compliance filing will be so limited, or else make clear that the ISO will have the additional time necessary to complete the additional steps and that there will be a process for providing the necessary data to the ISO in a timely fashion.

Despite the ISO's devotion of all available resources and materials to the process, the shortest schedule the ISO has been able to prepare does not meet the Commission's 5-month deadline, even assuming the Commission intended the compliance filing to consist only of the reruns of the settlements and billing system, plus supporting papers.[10] Because of the complexity of the settlement system, extensive manual processes, and the "history" of this activity, the ISO must use experienced analysts who, in addition to the refund rerun, must complete tasks relating to daily production work. The ISO believes its schedule is the fastest possible, given the need to ensure accuracy as well as to include the promised mechanisms designed to assist Market Participants in understanding that process. The ISO's current schedule is essentially the same schedule previously filed by the ISO, accounting for the impact of the holiday season. The ISO estimates that it will begin publishing preparatory rerun statements in one to three weeks from the date of this pleading, and therefore, estimates that it will be able to file its compliance filing in June of 2004.[11]

The ISO therefore requests clarification that the Commission did not intend the five month period discussed in the October 16 Main Order a strict deadline for the ISO to submit its compliance filing in this proceeding, and that the ISO's proposed schedule is reasonable. In the event that the Commission did intend March 16, 2004 as an

[10] The ISO announced to the market its intent to publish this first round of rerun statements on or about November 17, 2003 which would result in submittal of the compliance filing in early May 2004. However, the ISO subsequently announced a need to delay that start date because of the issue regarding CERS, as discussed herein, and the fact that the Commission had yet to issue its final order on Amendment 51, which involves critical components of the ISO's rerun activities.

[11] In its April 25, 2003 Request for Rehearing and/or Clarification, the ISO listed the approximate intervals required to complete each step of the preparatory and refund reruns. To complete all of these activities, the ISO estimated that a total of six months would be needed. The ISO has not been able to shorten that period.

absolute deadline for the ISO to submit its compliance filing, the ISO requests rehearing of that decision, for the reasons stated above.

The Commission today posted its decision in the Amendment 51 proceeding, dated last Friday. *Order on Rehearing and Compliance Filing*, California Independent System Operator Corporation, Docket Nos. ER03-746-001, ER03-746-002 (November 14, 2003) ("Amendment 51 Order"). The Commission stated its belief that the ISO had not explained why the preparatory reruns are "imperative prerequisites" to the refund rerun in this docket. Amendment 51 order at P. 20. In response, the ISO again explains, as it has previously in both this proceeding and the Amendment 51 proceeding, that the preparatory reruns are necessary in order to obtain an accurate baseline data set in the ISO's settlements system against which to conduct the refund rerun; to the extent the preparatory reruns are not conducted, the results of the refund rerun will have known errors, although the extent of the affect of those errors on any given Scheduling Coordinator will not be known; because of those known errors, the conclusion subsequently reached in this proceeding as to "who owes what to whom" will not be correct to the extent it would be if the preparatory reruns had been run.

The Commission in the Amendment 51 Order also directed the ISO to file a compliance filing by January 30, 2004 containing the results of the preparatory reruns approved in that order. The ISO is in the process of determining whether to seek rehearing of that portion of the order. The ISO's best schedule, discussed above, would not meet that deadline.

Finally, the Commission in the Amendment 51 Order stated that "we expect that the settlements and billing process in the CAISO California refund proceeding will not be delayed as a result of the CAISO establishing new baseline data in this proceeding." Amendment 51 Order at P. 20. The ISO remains committed to completing the refund settlements and billing process as quickly as humanly possible. To that end, the ISO will begin the preparatory rerun process on the assumption that the Commission will grant the clarification with respect to CERS that is requested in part A. of this filing, *i.e.*, that the ISO need not change its settlements data base; if the Commission orders otherwise, there will be a significant delay in the rerun process, possibly months. The ISO also notes that the Amendment 51 Order itself will require the ISO to change its settlements data base in significant ways, possibly introducing further delay into the process. For instance, the Commission directed the ISO "to take into account any verifiable data detailing instances of over-reported load." Amendment 51 Order at P. 23. The ISO must both seek to obtain and verify such data, and then enter it into the system; the time required to do so is not clear now. The Commission also deferred decision on the ISO's proposed treatment of certain mislogging/miscalculation issues relating to Williams. *Id.* at P. 27. The ISO already has expended hundreds of resource hours to deal with thousands of transactions affected by this issue. The ISO must now back out all of those changes; while this may not immediately affect the schedule for the reruns, it *will* significantly affect the schedule if the Commission subsequently orders the ISO to make the adjustments that were deferred in the Amendment 51 Order.

The ISO respectfully requests that the Commission grant the clarifications requested in this section, or in the alternative, grant rehearing.

C. The Commission should clarify that the ISO, in correcting any instances in which dispatches associated with a combustion turbine's minimum run time have been mischaracterized as residual or uninstructed energy, may to use a one hour minimum run time value for combustion turbines.

In the October 16 Main Order, the Commission clarified that the ISO must correct any instances in its records where it has mischaracterized a dispatch associated with a combustion turbine's minimum run time as anything other than dispatched energy. October 16 Order at P. 136. To do so, the ISO must determine a value for the minimum run times of the combustion turbines ("CTs") that participated in the ISO Markets during the Refund Period. The ISO proposes to use a one hour minimum run time for all of these CTs. This is reasonable given that all of the Generators that have provided minimum run time data for their CTs to the ISO to date have reported a one hour minimum run time.[12] Given the need to complete the refund rerun in the shortest time frame possible, it would be impractical for the ISO to solicit and verify a new set of minimum run time submissions from Generators. Therefore, the ISO requests that the Commission clarify that it is reasonable for the ISO to use a one hour minimum run time value in determining which dispatches from CTs have been mischaracterized as anything other than dispatched energy.

[12] There are several units for which the ISO has not received minimum run-time data. However, because the majority of CTs in the ISO Control Area have reported a one hour minimum run time, the ISO believes that it is reasonable to extrapolate this figure to the units for which it has no minimum run time data. This compromise is also supported by of the need to complete the refund rerun as soon as possible.

D. The Commission should clarify that the ISO's methodology properly accounts for interest on both overcharges and amounts unpaid, as well as any adjustments to transactions that took place during the Refund Period.

In the October 16 Main Order, the Commission stated that, with one exception, the ISO's proposal for calculating interest on unpaid amounts and refunds was appropriate. The Commission stated that the ISO must allocate mismatches between interest receivable and interest payable pro rata among both debtors and creditors, instead of allocating all positive mismatches to debtors and negative mismatches to creditors. October 16 Main Order at P. 105. The ISO does not seek rehearing of this decision, and will make this modification to its interest calculation methodology. The Commission also rejected the Generators' request for rehearing of the March 26 Order with respect to the interest issues, but clarified the following:

(1) No interest should be assessed on overcharges that were never collected, while overcharges that were collected should be assessed interest based on the date of collection.

(2) Because the refund associated with an uncollected overcharge will not include interest, the portion of the unpaid invoice associated with the same overcharge should not include interest either.

(3) If an adjusted payment resulted in an overcharge collected on a certain date, that date must be the starting point for interest calculations associated with that overcharge.

The ISO respectfully requests that the Commission clarify that the ISO's current methodology for calculating interest, as set forth in its April 25, 2003 Request for Rehearing and/or Clarification of the March 26 Order, and its May 12, 2003 Answer to Requests for Rehearing and Clarification,[13] and modified to allocate interest shortfalls pro rata between creditors and debtors, complies with these statements, and therefore, no further modification of the ISO's methodology is necessary based on the Commission's clarification in the October 16 Main Order.

In the first two statements, the Commission indicates that the ISO should not assess interest on amounts due as refunds (*i.e.* overcharges) that were never collected by suppliers, and likewise, should not calculate interest on unpaid amounts that are not due to suppliers because they represent overcharges. As the ISO explained in its previous filings, it plans to assess interest on *all* unpaid amounts and *all* overcharges, and then net all interest amounts owed and owing to Scheduling Coordinators, to arrive at a final amount of interest that is either owing to a Scheduling Coordinator by the ISO Market, or is owed to the ISO Market by the Scheduling Coordinator. Although the ISO's methodology does not calculate interest through the same process as described by the Commission in these statements, the two approaches are mathematically equivalent, and therefore, the result reached by applying the ISO's methodology is precisely equivalent to the result reached by applying the Commission's methodology.

This can best be demonstrated by way of an example. Consider two Scheduling Coordinators, "SC A" and "SC B," both of whom participated in the ISO Market in

[13] In its May 12 pleading, the ISO corrected its April 25 pleading to make clear that interest on refunds (i.e. overcharges) would be assessed based on the invoice date for the month in which the transaction subject to refund took place.

February, 2001. SC A is an ISO Creditor with respect to February 2001, and is still owed $500,000 by the ISO Market for sales made to the ISO Market during that month. SC B, on the other hand, was an ISO Debtor for the month of February 2001, and still owes the ISO Market $500,000 for purchases made during that month. However, upon application of the mitigated price to SC A's sales for February 2001, SC A is now only owed $400,000 for that month (*i.e.,* the application of the MMCP shows SC A as owing $100,000 in refunds related to its sales for February 2001). Likewise, SC B now only owes the ISO Market $400,000. The first two Commission statements described above suggest that interest should be calculated as owing to SC A (and owed by SC B) on only the $400,000. Pursuant to the Commission's first statement, no interest would be calculated on the $100,000 refund, or overcharge, because that overcharge was never collected by SC B. Likewise, pursuant to the Commission's second statement, SC B should not be calculated as owing interest on the full $500,000, but only $400,000, because the portion of the unpaid balance associated with the overcharge (the $100,000) should not be assessed interest. The result is that SC A is owed interest by the ISO Market at the Commission's rate on the $400,000, while SC B owes the ISO Market interest at the Commission's rate on the $400,000. Assuming an interest rate of 10%, SC A is owed $40,000 in interest by the ISO Market, and SC B owes the ISO Market $40,000 in interest.

The ISO's methodology reaches the same result, but merely uses a different equation to reach that result. Using the present example, the ISO would calculate that SC A is owed interest by the ISO Market on the full $500,000 that it was originally owed by the ISO Market, and owes interest to the ISO Market on the $100,000 in refunds.

Again assuming a 10% interest rate, the ISO would show that SC A is owed $50,000 in interest by the ISO Market and owes the ISO Market $10,000 in interest. Therefore, SC A is owed a net $40,000 in interest by the ISO Market, and this net result is what will be invoiced to SC A by the ISO at the conclusion of this proceeding. With respect to SC B, the ISO would calculate that SC B owes the ISO Market interest on its original $500,000 unpaid balance, and is owed interest by the ISO Market on the $100,000 refund/overcharge associated with that unpaid balance. Therefore, the net result is that SC B would owe the ISO Market $40,000 in interest.[14] This is the same result as reached through the process described by the Commission.

It is also faster and more reliable for the ISO to calculate interest using the ISO's methodology, because the ISO's methodology assesses interest based on monthly invoiced amounts and all refunds associated with those amounts, while the Commission's methodology would require the ISO to engage in the much more laborious process of matching refunds with specific periods and transactions. Again, the result reached is the same. Accordingly, the ISO requests that the Commission clarify that the ISO's process for calculating interest, modified to allocate mismatches pro rate between creditors and debtors, is acceptable.

With respect to the third statement, the ISO likewise requests clarification that the Commission did not intend the ISO to modify its methodology for calculating interest (beyond changing the manner in which the ISO allocates interest mismatches). It is not entirely clear to the ISO what the Commission meant by the statement "[i]f an adjusted payment resulted in an overcharge collected on a certain date, that date must be the starting point for interest calculations associated with that overcharge." In calculating

[14] This result is reached through the following equation: ($500,000 * 0.1) – ($100,000 * 0.1) = $40,000.

interest on refunds (*i.e.* overcharges), the ISO intends to calculate interest based on the Payment Date of the invoice on which the transactions subject to refund is billed, regardless of any subsequent adjustments made with respect to those transactions. If by this statement, however, the Commission intended that the ISO should calculate interest on refund amounts based on the date that overcharges associated with the adjustments to the underlying transactions were collected, then the ISO respectfully requests rehearing of that decision.

Assessing interest on refunds in this manner would require that the ISO undertake a burdensome and time-consuming analysis, resulting in a significant delay in completion of the rerun process. It would require ISO personnel to determine, for each transaction subject to refund, whether the original price of that transaction had ever been adjusted. Then, for each of the transactions that involved a price adjustment (or adjustments), the ISO would have to compare the original price of the transaction, along with the amount of each price adjustment, to the MMCP, to determine the point at which the price of the transaction constituted an "overcharge," and the amount of each overcharge in relation to the original price of the transaction.

An example is appropriate to better illustrate this issue. Assume that SC A made a sale to the ISO Market during the Refund Period for a price of \$200. Several months later, the ISO concluded that the price paid for the original transaction should have been \$400, rather than \$200. Also assume that the ISO determines that the MMCP for that interval is \$300. Because the total historical price for the transaction is \$400, the application of the MMCP would result in a \$100 refund. In determining the interest due on the \$100 overcharge, the ISO intends to begin assessing interest on \$100 on the

Payment Date for the invoice on which the original transaction was billed, rather than on the Payment Date for the invoice on which the adjustment was billed. To do otherwise would require that the ISO, for this transaction and every other transaction involving a price adjustment, determine whether the overcharge was triggered by the original transaction price, or by an adjustment to the original transaction price, and then allocate the total amount of the overcharge between the original transaction and the adjustment or adjustments. What this means, in practice, is that instead of calculating interest based on monthly invoiced amounts, as described in the ISO's April 25 Request for Rehearing and/or Clarification, the ISO would need to perform interest calculations that track individual transactions. This would represent a complete departure from the way in which the ISO accounts for interest in production, and would dramatically change the amount of time necessary to complete the ISO's interest calculations, and, therefore, the total amount of time necessary to complete the rerun effort. Given the Commission's clear desire to conclude the compliance process as soon as reasonably possible, the ISO urges that the Commission clarify, or in the alternative grant rehearing on, this issue, and affirm that the ISO's methodology for calculating interest amounts on refunds, as described in its April 25 Request for Rehearing and/or Clarification, and modified to allocate interest mismatches pro rata between creditors and debtors, does not require further modification as a result of the Commission's three clarification statements in the October 16 Main Order.

E. The Commission should clarify that the current gas price data series developed by the California Parties and approved by the Commission for use in calculating the MMCP does not include a proxy price for the AEPCO units, and therefore, if those units are to be considered eligible to set the MMCP, a proxy price for those units will need to be determined using the Commission Staff's producing basin methodology.

In the March 26 Order, the Commission adopted, with certain modifications, Commission Staff's proposal to modify the MMCP formula to use producing basin gas prices plus a tariff-rate transportation allowance, rather than relying on California spot market gas prices, which the Commission Staff found had been tainted by manipulation. March 26 Order at P. 59. The Commission also stated that this modification was to apply to out-of-state generators that were eligible to set the MMCP. *Id.* at P. 51. In that same order, the Commission adopted the Presiding Administrative Law Judge's finding that sales made by the Arizona Electric Power Cooperative ("AEPCO") into the ISO's Markets during the Refund Period were eligible to set the MMCP. *Id*. at P. 52.

In response to a rehearing request of the California Parties maintaining that the appropriate gas price input for out-of-state generators is a price that "reasonably approximates the daily spot market average delivered price that the out of state generator would experience in its geographic location," the Commission, in the October 16 Second Order, reaffirmed that gas prices for out-of-state generators should be calculated using producing-area prices with a transportation allowance. October 16 Second Order at PP. 6-7.

In the October 16 Main Order, the Commission found a specific basin plus transportation data series of gas proxy prices, provided by the California Parties as

Exhibit No. CA-16, Appendices N and O, from the California Parties March 3, 2003 filing in this proceeding, to be reasonable and accurate, and directed the ISO to use that data series in calculating the MMCPs. However, that data series does not include any point for the AEPCO units that the Commission has found to be eligible to set the MMCP during the Refund Period. Therefore, the ISO requests that the Commission clarify that a new data point should be adopted for the AEPCO units, pursuant to the Commission Staff's methodology of using producing basin prices along with a tariff-rate transportation allowance. Using a new data point for AEPCO is necessary and reasonable given that the current data series was devised specifically for California units, and that the transportation allowance for AEPCO's Arizona units would almost certainly be different from the transportation allowance appropriate for California units.

In this regard, the ISO supports the California Parties' proposal, as set forth in their Motion for Clarification of Gas Proxy Series for Generation Located Outside California, filed in these Dockets on November 14, 2003, to calculate a proxy price for AEPCO by using the basin plus transportation cost series already calculated by the California Parties, less the California intrastate transportation charges. The ISO agrees with the California Parties that this mechanism is consistent with the Commission orders addressing the appropriate gas price for out-of-state generators while, at the same time, offering the benefit of simplicity.

III. CONCLUSION

Wherefore, for the reasons discussed herein, the ISO respectfully requests that the Commission clarify, or grant rehearing of, the October 16 Main Order and October 16 Second Order as indicated above.

Respectfully submitted,

*/s/ J. Phillip Jordan*____________

Charles F. Robinson	J. Phillip Jordan
Gene Waas	Michael Kunselman
The California Independent	Swidler Berlin Shereff Friedman, LLP
System Operator Corporation	3000 K Street, N.W., Suite 300
151 Blue Ravine Road	Washington, DC 20007
Folsom, CA 95630	Tel: (202) 424-7500
Tel: (916) 608-7147	

Dated: November 17, 2003

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 17th day of November, 2003.

/s/ Gene Waas
Gene Waas