

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

San Diego Gas & Electric Company,)	Docket No. EL00-95-045
)	
Complainant,)	
)	
v.)	
)	
Sellers of Energy and Ancillary Service Into)	
Markets Operated by the California)	
Independent System Operator Corporation)	
and the California Power Exchange,)	
)	
Respondents.)	
)	
Investigation of Practices of the California)	Docket No. EL00-98-042
Independent System Operator and the)	
California Power Exchange.)	

**RESPONSE OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO THE JOINT MOTION OF THE MARKETER GROUP
TO CONFINE THE DISTRIBUTION OF DATA**

To: The Honorable Bruce Birchman
Presiding Administrative Law Judge

The California Independent System Operator Corporation (“ISO”) opposes the Motion of the Marketer Group seeking to restrict very significantly the distribution of transaction-specific data.

Preliminarily, it is important to understand exactly what Movants request: that the ISO divide the transaction data into individual market participant data files. In the context of the ISO markets, this would require preparation of a distinct data file for each Scheduling Coordinator (“SC”), the entities with whom the ISO interacts. There were approximately 70 SCs that transacted business in the ISO markets during the relevant

period. Under Movants' proposal, once the discrete data files were prepared, each SC would be provided only the data file containing its transaction information, with copies provided to the Presiding Judge and Commission Staff, but to no one else.

In judging the reasonableness of this requested process, it is appropriate, as is the case whenever data dissemination limitations are at issue, to balance fairness to the parties and consider the impact on the decision-making process. By either measure, the requested limitations are inappropriate; indeed they would hopelessly confound the decisional process and fundamentally prejudice the due process rights of those representing the interests of buyers.

As a matter of process, Movants' suggestion, if adopted, would potentially extend the schedule significantly, and would certainly create a chaotic hearing and decisional process. If no seller were permitted to see data other than its own, the concept of "grouping" would become untenable. Indeed, only the entity to whom the data pertains could be in the hearing room (together with ISO representatives and Staff) when its transactions were subject to scrutiny, creating a constant need to reshuffle parties into and out of the hearing room, and creating the need for party-specific hearing transcripts and for numerous different briefs by Staff and the ISO. Apart from the inevitable confusion and delay, the potential for mistakes would be pronounced.

As a matter of equity as well, the conclusion here must be in favor of dissemination, certainly at least to those who are participating as representatives of buyers. Absent full access to the transactional data, the ability of those representatives advocating for refunds would be severely prejudiced, to the point of raising due process

concerns. Indeed, it is not even clear that they would be free or able to participate in critical portions of the hearing.¹

It is always appropriate to consider a balancing of public interest considerations when weighing the propriety of disclosure limitations. The ISO itself has argued for limitations where, in the particular context, the harm likely to be associated with the breadth of the requested disclosure outweighed the benefits to be achieved. But here, we are dealing with a disclosure that is reasonably tailored considering the issues that require resolution.² And, most importantly, we are dealing with a proceeding that was convened for the very purpose of rectifying harm that has been imposed on consumers, on the very consumers who would be denied the ability to participate effectively under Movants' proposal.

¹ For example, in the ISO's Imbalance Energy market, the ISO collectively takes the cost of the resources procured and allocates those costs to the purchasers whose load is served in real-time. The ISO does not assign specific resources or MWhs to customer-specific demands, rather all of the costs of the sales made to the ISO are allocated to all of the purchasers or load. In order to assure themselves that the refunds have been calculated correctly, the buyers' representatives need to review the transaction data for all real-time transactions.

² For example, the data that has been shared is not as extensive as the data that was at issue in the Amendment 25 proceeding cited by Movants, where disclosure would have included all bid data, not just that relating to bids that resulted into transactions.

CONCLUSION

To safeguard the integrity of the hearing process, and to provide minimal due process to the representatives of a central constituent group in this proceeding, we submit that the balance of public interest considerations here requires rejection of Movants' request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Restricted Service List compiled by the Presiding Administrative Law Judge in this proceeding.

Dated at Washington, D.C., this 22nd day of August 2001.

Michael Kunselman