128 FERC ¶ 61,271
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Calpine Corporation, Citigroup Energy Inc., Dynegy Power Marketing Inc., J.P. Morgan Ventures Energy Corporation, BE CA, LLC, Mirant Energy Trading, LLC, NRG Energy, Inc., Powerex Corporation, and RRI Energy, Inc.

Docket No. EL09-62-000

v.

California Independent System Operator Corporation

ORDER ON COMPLAINT AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 23, 2009)

1. In this order, the Commission considers a complaint (Complaint) filed by Calpine Corporation, Citigroup Energy Inc., Dynegy Power Marketing Inc., J.P. Morgan Ventures Energy Corp., BE CA, LLC, Mirant Energy Trading, LLC, NRG Energy, Inc., Powerex Corp., and RRI Energy, Inc. (collectively, the California Sellers) against the California Independent System Operator Corporation (CAISO) under section 206 of the Federal Power Act (FPA).[1] The Complaint alleges that the CAISO's existing tariff rules governing the allocation of losses from defaults (Default Loss Rule) are unjust, unreasonable, and unduly discriminatory. In addition, the California Sellers contend that their alternative proposal for allocating default losses is just and reasonable and not unduly discriminatory or preferential. The California Sellers therefore request that the Commission direct the CAISO to remove its existing Default Loss Rule and replace it with their alternative. We agree with the California Sellers that the Default Loss Rule is unjust and unreasonable. However, we also find that the California Sellers have not satisfied their burden to demonstrate that their proposed alternative is just and reasonable. Accordingly, we are establishing hearing and settlement judge procedures.

[1] 16 U.S.C. § 824e (2006).

Background

2. The CAISO, like other Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs), has in its tariff Commission-approved credit policies applicable to entities that transact in its markets. ISO and RTO credit policies are important tools in helping to ensure liquid energy markets while at the same time reducing the risk of exposure to those market participants transacting in organized wholesale electricity markets.[2] However, poorly designed ISO and RTO credit policies may unreasonably shift a disproportionate amount of risk onto market participants. The Commission's *Credit Policy Statement* expressed concern over "mutualized default risk" in ISO and RTO markets:

> Since ISOs/RTOs are typically non-profit entities that administer the market on behalf of market participants and, in this capacity, serve as the clearing firm to every transaction, ISO/RTO members are exposed to the credit risk of other members . . . . If collateral posted by a defaulting party is not sufficient to cover the amount of its default, the remaining credit risk exposure and costs are socialized across an ISO's/RTO's members. As such, the credit/default risk of undercapitalized market participants lies with the non-defaulting participants, not the ISO/RTO . . . . Furthermore, that exposure is not truly under a market participant's control because it is the ISO/RTO that serves as the gatekeeper for the integrity of the markets they administer. As a result, ISO/RTO market participants are exposed to risks based on an ISO's/RTO's determination of other market participants' creditworthiness, and they have little ability to mitigate that risk. Furthermore, market participants must trust ISOs/RTOs to implement their credit policies in a manner created to limit, as much as possible, the risk of credit defaults.[3]

[2] *See, e.g.*, *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 (2004) (*Credit Policy Statement*).

[3] *Credit Policy Statement* at P 17-18.

3. Accordingly, the *Credit Policy Statement* recommended several steps ISOs and RTOs could take to reduce this exposure, including establishing shortened settlement periods and netting obligations owed by and to individual market participants whenever possible.[4] The *Credit Policy Statement* also encouraged ISOs and RTOs to consider other approaches for reducing mutualized default risk, such as procuring credit insurance.[5]

4. The CAISO's Default Loss Rule is contained in its tariff section governing billing and settlements. The Default Loss Rule provides that, in the event of insufficient funds as a result of a default, the CAISO shall "reduce payments to all . . . CAISO Creditors proportionately to the net amounts payable to them on the relevant Payment Date to the extent necessary to clear the CAISO Clearing Account through a shortfall allocation."[6] The CAISO is required to account for this reduction in its ledger accounts "as amounts due and owing by the non-paying CAISO Debtor to each CAISO Creditor whose payment was so reduced."[7]

5. On March 31, 2009, the CAISO's Market Redesign and Technology Upgrade (MRTU) market design went into effect. Prior to MRTU implementation, the CAISO filed a package of proposed revisions to its credit policies to reflect this new market design.[8] The CAISO proposed to lower the maximum unsecured credit limit permitted under its tariff, modify the process for determining unsecured credit limits, and implement other measures to mitigate credit-related risk. The CAISO did not propose any revisions to the Default Loss Rule. Some of the individual California Sellers

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[4] *See id.* P 21-30.

[5] *See id.* P 31.

[6] *See* CAISO Tariff at § 11.29.17.1. In addition, the CAISO must first pay in full every CAISO Creditor whose net amounts receivable on the relevant Payment Date is less than $5,000. *See id.*

[7] *Id.* Under the CAISO's tariff, a "CAISO Creditor" is defined as a "Business Associate to which amounts are payable under the terms of the CAISO Tariff and agreements with the CAISO" and a "CAISO Debtor" is defined as a "Business Associate that is required to make a payment to the CAISO under the CAISO Tariff and agreements with the CAISO." In turn, a "Business Associate" is defined as "[a]n entity with whom the CAISO interacts related to the CAISO Markets." *See* CAISO Tariff at Appendix A, Master Definitions Supplement.

[8] *See Amendments to Credit Policy Provisions of the CAISO Tariff*, Docket No. ER09-589-000 (Jan. 29, 2009) (Credit Policies Filing).

protested or commented on the CAISO's filing, arguing, among other things, that the Default Loss Rule was unjust and unreasonable and should be revised.[9]

6. The Commission accepted the CAISO's filing.[10] With respect to the protests regarding the Default Loss Rule, the March 30 Order found that they were beyond the scope of the Credit Policies Filing, since the CAISO had not proposed any changes to the Default Loss Rule. However, the March 30 Order also noted that the CAISO had committed to a stakeholder process to evaluate the Default Loss Rule, and encouraged the CAISO "to complete that process quickly."[11] The March 30 Order rejected requests to initiate a section 206 proceeding and order a paper hearing to address the Default Loss Rule, finding that the requests were too broad and without sufficient substantiation to warrant relief. The March 30 Order explained that this rejection was without prejudice to the filing of a properly developed complaint.[12]

Complaint

7. In their Complaint, the California Sellers argue that the CAISO's Default Loss Rule is unjust, unreasonable, and unduly discriminatory because risks of default are borne entirely by sellers. They contend that the CAISO is an outlier among all other ISOs and RTOs in this regard because other ISO/RTO credit policies allocates default losses among all market participants, not just sellers.

8. The California Sellers note that in September 2008 the CAISO had published a White Paper on its credit policies that proposed options for changing the Default Loss Rule, but that effort had been deferred until after MRTU start-up.[13] They also explain that the CAISO had circulated a notice to market participants in April 2009 about convening a stakeholder meeting on this issue, but that it later canceled this meeting on the grounds that consensus was unlikely. Thus, the California Sellers argue, the CAISO

[9] *See, e.g., Motion to Intervene and Protest of Powerex Corp.*, Docket No. ER09-589-000 (Feb. 19, 2009); *Motion to Intervene and Comments of J.P. Morgan Ventures Energy Corp. and BE CA, LLC*, Docket No. ER09-589-000 (Feb. 19, 2009).

[10] *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,285 (2009) (March 30 Order).

[11] March 30 Order, 126 FERC ¶ 61,285 at P 58.

[12] *See id.* P 59.

[13] The California Sellers also note that the CAISO did not address the Default Loss Rule in the Credit Policies Filing, but pointed to the Commission's encouragement to the CAISO to discuss the matter in the stakeholder process. *See* P 6, *supra*.

effectively decided to reject any changes to the Default Loss Rule. As a result, the California Sellers argue that they had no recourse other than to file this Complaint.

9. The California Sellers contend that the Default Loss Rule violates the Commission's "costs-follow-benefits" principle for mutualizing default risk among ISO/RTO market participants. According to the California Sellers, the Commission's precedent requires the CAISO to allocate default losses to all buyers and sellers that transact in the CAISO's markets and that benefit from market liquidity and credit security. The California Sellers point to cases involving the New York Independent System Operator, Inc. (NYISO) and PJM Interconnection, L.L.C. (PJM) in support of their contention that the Default Loss Rule is unduly discriminatory.

10. In the case of the NYISO, the Complaint explains that the NYISO had filed proposed tariff revisions regarding the allocation of bad debt losses and working capital contributions, and notes that the Commission had rejected the NYISO's proposal to limit the application of its proposed allocation methodology to new capital contributions as unduly discriminatory.[14] Instead, the Commission required the NYISO to revise its tariff to ensure that all market participants paid their fair share of costs under the proposal.

11. Further, the Complaint states that the Commission followed the same costs-follow-benefits principle that it had applied in *NYISO* in two cases involving PJM's default loss rule. In the first case, PJM had filed tariff revisions to allocate default losses to buyers and sellers based 50 percent on each market participant's risk profile and based 50 percent on the benefits each market participant received from its membership in PJM. The California Sellers state that the Commission rejected the use of a market participant's credit rating for allocating default losses because there was an insufficient nexus between the rating and the cost responsibility.[15] In the second case, PJM proposed to allocate default loss costs based 90 percent on a market participant's gross activity within PJM, with a specified exclusion for transmission owners. The Commission rejected this approach, citing *NYISO* and concluding that the exclusion was unduly discriminatory because it did not reflect any reduction in benefits that transmission owners receive from

[14] Complaint at 8 (citing *New York Indep. Sys. Operator, Inc.*, 104 FERC ¶ 61,311 (2003) (*NYISO*)).

[15] *Id.* at 9 (citing *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,116 (2004) (*PJM I*)).

activity in their own zones and throughout PJM.[16] The California Sellers emphasize that *PJM II* held that even a *de minimis* net cost shift did not justify disparate treatment.

12. The Complaint argues that the Default Loss Rule is inequitable and unduly discriminatory with respect to the "key drivers" of default risk. The California Sellers contend that the purchase of electricity products with unsecured credit positions is the activity that most contributes to or drives the risk of default losses. The California Sellers assert that buyers collectively drive the risk of default losses because they are permitted under the CAISO's rules to incur the unsecured obligations that give rise to the risk of default. The California Sellers argue that it defies logic to consider that sellers drive the risk of default losses. The California Sellers point to the *Credit Policy Statement's* discussion (quoted above) about the vulnerability of sellers to credit risk under the Default Loss Rule.

13. The California Sellers contend that economically rational sellers may take one or more steps to reduce their exposure to credit risk under the Default Loss Rule, including: (1) charging credit risk premiums for their products; (2) entering into offsetting transactions; (3) reducing imports into California or increasing exports; and (4) lessening or eliminating their participation in and supply to the CAISO's markets. These actions, the California Sellers allege, are economically inefficient for the CAISO's markets and could have adverse reliability or price impacts.

14. Moreover, the California Sellers argue that the Default Loss Rule imposes unjust and unreasonable financial burdens on suppliers. They assert that the risk of default is real, citing the nation's current financial crisis and the collapse or near-collapse of several financial institutions, as well as defaults that had already occurred in ISO/RTO markets. The California Sellers claim that default losses under the CAISO's credit system may be substantial, particularly given the increase in type and volume of transactions in the CAISO markets. They present an example in which an importer selling 1,000 MWh to the CAISO in all hours of a month could represent 10 percent of the CAISO's aggregate unsecured credit cap of $150 million, and could be exposed to a risk of default loss representing 35 percent of its gross revenue. While the California Sellers acknowledge that there will always be a risk of default, and that the ultimate costs of such a default are difficult to estimate with precision, they argue that the Default Loss Rule cannot be justified by assertions that financial burdens are speculative or overstated. They again cite to the *Credit Policy Statement* in support of their argument that minimizing the level of mutualized default risk borne by any market participant is an objective of just and reasonable credit policies. The California Sellers assert that the Default Loss Rule could

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[16] *Id.* at 9-10 (citing *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,366 (2004) (*PJM II*)).

be modified without changing any other of the CAISO's Commission-approved credit policies or implicate any of the policy goals articulated in the *Credit Policy Statement*.

15. The California Sellers advance an alternative to the Default Loss Rule that they believe would be just and reasonable, not unduly discriminatory, and consistent with the "costs-follow-benefits" principle. Under this proposal, default losses would be allocated to both CAISO Debtors and CAISO Creditors, based on the absolute value of each market participant's activities in the CAISO markets. The California Sellers point to three features of their proposal that effectuate equitable cost-sharing: (1) the allocation of default losses based on the sum of gross, absolute amounts payable to and payable by each market participant, without netting of activities; (2) the scope of the CAISO markets from which the absolute level of gross activities would be summed extends to all CAISO administered markets and services;[17] and (3) the scope of transactions in those markets from which the absolute level of amounts payable by and to each market participant would be summed extends to purchase transactions[18] and sales transactions.[19] The California Sellers argue that, with these features, their proposal would result in the broadest possible allocation of default losses. They state that buyers and sellers would share equitably in the allocation of default losses, and each market participant's share of allocated losses would reflect its overall level of activities in the CAISO markets. The California Sellers argue that these activities benefit from market liquidity, credit security, and reliability of administration of the transmission system. The California Sellers assert that their proposal minimizes the financial burdens on any one market participant and reduces disincentives for inefficient market participation, which will improve liquidity. The California Sellers note that the proposal does not change any other existing CAISO credit or settlement policy. Finally, the California Sellers contend that the proposal closely conforms to the default loss rules in the eastern ISO/RTO markets, including the rules approved by the Commission in *NYISO*, *PJM I*, and *PJM II*.

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[17] The California Sellers state that these markets include, without limitation, Inter-Scheduling Coordinator Trades of energy and ancillary services, self-scheduling of energy and ancillary services, Reliability-Must-Run Generation, the Transmission Access Charge, and the Grid Management Charge.

[18] Purchase transactions would include, without limitation, export energy, load energy, from scheduling coordinator Inter-scheduling coordinator trades, and capacity products.

[19] Sales transactions would include, without limitation, import and export energy, load energy, generation energy, to scheduling coordinator Inter-scheduling coordinator trades, congestion revenue rights, and capacity products.

16. The California Sellers urge the Commission to expeditiously invalidate the Default Loss Rule and replace it with their alternative proposal, to be made effective at the time of the filing of the Complaint or, at the latest, the date of the Commission's order. The California Sellers state that, until the Default Loss Rule is found unjust and unreasonable or unduly discriminatory and the alternative approach is approved, sellers face a period in which they bear inequitable and substantial burdens of credit risk under the existing rule.

Notice and Procedural Matters

17. Notice of the Complaint was published in the *Federal Register*, 74 Fed. Reg. 33433 (2009), with the CAISO's answer, as well as other interventions, comments, and protests, due on July 20, 2009. Motions to intervene were filed by the California Public Utilities Commission; the Metropolitan Water District of Southern California; the Modesto Irrigation District; Northern California Power Agency; the Power and Water Resources Pooling Authority; and the Transmission Agency of Northern California. The California Department of Water Resources State Water Project (SWP), Golden State Water Company (Golden State), and San Diego Gas & Electric Company (SDG&E) filed motions to intervene and comments. The City of San Francisco (San Francisco),[20] City of Santa Clara, doing business as Silicon Valley Power, and M-S-R Public Power Agency (together, SVP/M-S-R), Pacific Gas & Electric Company (PG&E), Sacramento Municipal Utility District (SMUD), Six Cities,[21] and Southern California Edison Company (SoCal Edison) filed motions to intervene and protests. The California Municipal Utilities Association (CMUA) filed a motion to intervene out of time and protest. Morgan Stanley Capital Group Inc. (Morgan Stanley) filed a motion to intervene out of time and comments in support of the Complaint. The CAISO filed an answer to the Complaint. The California Sellers filed an answer to the CAISO's answer and other protests and comments on August 4, 2009. The CAISO filed an answer to the California Sellers' answer.

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene and the notices of intervention serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant the late-filed motions to intervene filed by CMUA and Morgan Stanley given the parties' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

[20] San Francisco's pleading is styled as a motion to intervene and answer.

[21] Six Cities are comprised of the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

19. Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2009), answers to answers and protests are prohibited unless otherwise permitted by the decisional authority. We are not persuaded to accept the California Sellers' answer.[22] We also reject the CAISO's answer to the California Sellers' answer.

Responsive Pleadings

CAISO's Answer

20. The CAISO argues that the California Sellers have not met their burden under section 206 showing that the existing Default Loss Rule is unjust and unreasonable and that their alternative proposal is just and reasonable. The CAISO notes that the Default Loss Rule has been part of its tariff since its inception, and that the Commission most recently found the Default Loss Rule to be just and reasonable fewer than three years ago in anticipation of the MRTU market design.[23] Although the California Sellers attack the current netting system for allocating losses, the CAISO contends that the Commission would not have accepted the Default Loss Rule as just and reasonable if it concluded that netting were inequitable or unduly discriminatory.

21. While the CAISO acknowledges that other ISOs and RTOs ultimately allocate default losses to all of their market participants based on a variation of an absolute value approach, it argues that this does not mean that the Default Loss Rule is unjust and unreasonable. The CAISO states that there is no single just and reasonable set of rates, terms, and conditions that a public utility must adopt. The CAISO states that the Commission has not established a requirement that all ISOs and RTOs apply the same default loss rule and argues that there are significant variations among ISO/RTO default

[22] The comments submitted in this proceeding by Golden State, SWP, and SDG&E are more akin to protests.

[23] *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 35 (2006) (*2006 MRTU Order*). The CAISO also explains that the Commission has acknowledged that the Default Loss Rule is consistent with the CAISO's market structure, citing a 2003 order concerning proposed revisions to the same "parent" section of the former CAISO tariff that contained the Default Loss Rule. *Cal. Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,284, at P 22 (2003) (*2003 CAISO Order*).

loss rules.[24] The CAISO also points out that the Commission has not required all ISOs and RTOs to use a strict absolute value approach in all circumstances. For instance, the CAISO notes that the Commission has authorized ISO New England Inc. (ISO-NE), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and the Southwest Power Pool (SPP) to use a netting approach similar to the CAISO's Default Loss Rule as the initial step of their respective processes for allocating default market losses. The CAISO also states that the Commission has authorized the Midwest ISO and SPP to allocate default losses for transmission service charges only to creditors.

22. In addition, the CAISO contends that *NYISO*, *PJM I*, and *PJM II* do not suggest, much less compel a finding, that the Default Loss Rule is unjust and unreasonable. The CAISO notes that *NYISO* was issued several months before the issuance of the *2003 CAISO Order*, and that *PJM I* and *PJM II* were issued several years prior to the *2006 MRTU Order*. Therefore, the CAISO claims, if the Default Loss Rule was inconsistent with those orders, the Commission would have said as much. The CAISO also disagrees with the California Sellers' reliance on the *Credit Policy Statement* in support of its arguments, noting that the *Credit Policy Statement* sets forth the methods that the Commission recommended for reducing mutualized default risk, such as shortened settlement periods, netting of obligations, and other measures unrelated to default loss rules. According to the CAISO, the *Credit Policy Statement* does not address what default loss rule an ISO or RTO must adopt, and nothing in the *Credit Policy Statement* suggests that the Default Loss Rule is unjust and unreasonable. The CAISO points out that the Default Loss Rule was accepted by the Commission in the *2006 MRTU Order*, two years after the issuance of the *Credit Policy Statement*.

23. The CAISO argues that the Complaint has not demonstrated that changed circumstances in the national economy have rendered the Default Loss Rule unjust and unreasonable. The CAISO notes that the Default Loss Rule was accepted as just and reasonable in 2006 after substantial default losses were allocated to creditors in the wake of the 2000-2001 western energy crisis, and argues that if that crisis did not cause the Default Loss Rule to become unjust and unreasonable, then there is no reason to conclude that general turmoil in the financial markets would have that effect. The CAISO also claims that the risk of default losses has declined over the years and will continue to do so, pointing to its Commission-accepted credit policies. According to the CAISO, this indicates that the Default Loss Rule is at least as just and reasonable now as it was when

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[24] As an example, the CAISO notes that ISO-NE alone maintains insurance to cover some portion of default losses. The CAISO also states that PJM is alone in allocating 10 percent of each default loss amount in equal shares to all of its members regardless of their level of participation in the market during the relevant period.

it was originally approved in 1997 and as subsequently accepted in the *2006 MRTU Order*.[25]

24. The CAISO states that the Complaint fails to provide an example of a default that has put a financial burden on sellers in the CAISO markets during this time. The CAISO again points to the 2000-2001 crisis, which it states was the only time that significant defaults occurred in its markets, and argues that the crisis and resulting defaults were one-time events. The CAISO points to Commission actions to address structural flaws in the CAISO markets and other issues to prevent a recurrence. The CAISO states that while it cannot represent that a default in its markets will never occur again, mere speculation that it might occur is not enough to satisfy section 206's burden.[26]

25. According to the CAISO, the Commission has already rejected several of the Complaint's arguments in the March 30 Order. Specifically, the CAISO points to language in the March 30 Order stating that "the protesting parties have not demonstrated that the existing payment default allocation process accepted by the Commission renders the MRTU tariff unjust, unreasonable or unduly discriminatory."[27] The CAISO contends that these arguments continue to lack merit. While the CAISO acknowledges the March 30 Order rejected these arguments without prejudice to the filing of a properly developed complaint, it argues that this cannot be understood to mean a complaint that simply repackages the same arguments without evidentiary support.

26. The CAISO asserts that the California Sellers' alternative proposal is unjust and unreasonable. First, the CAISO claims that the proposal covers or could cover products and services outside the scope of the CAISO's markets. Second, the CAISO asserts that the alternative does not conform to the default loss rules used by other ISOs and RTOs, notwithstanding the Complaint's suggestion to the contrary. The CAISO argues that there is no uniform set of detailed allocation rules used by other ISOs and RTOs, pointing out that some but not all ISOs and RTOs provide for netting or offsetting of charges in their rules and that several ISOs and RTOs generally net market participants' self-schedules and bilateral transactions from the default loss allocation.

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[25] The CAISO also explains that the White Paper, which was cited by the California Sellers, mistakenly attributed the position of power suppliers -- that the Default Loss Rule contains disincentives to sellers -- to the CAISO itself.

[26] The CAISO also derides, as unrealistic, the theoretical example posited by the California Sellers that 100 percent of any default loss could be allocated to a single net creditor, and states that in each month there are numerous net creditors.

[27] March 30 Order at P 58.

27. The CAISO acknowledges that the Default Loss Rule has become a subject of concern to some market participants, and it is prepared to discuss whether this should be revised in an appropriate forum. Because of the contentious nature of this issue, the CAISO believes that the most productive route would be the establishment of a Commission settlement process, as opposed to a stakeholder process. The CAISO states that it takes no position at this time on what a detailed default allocation rule should be under any proposed alternative to the existing Default Loss Rule, and believes that this issue and others should be discussed in settlement proceedings among affected parties. The CAISO states that any alternative should not have a significant adverse effect on market participation, market incentives, market liquidity, or reliability. The CAISO believes that if parties agreed to move to an “absolute value”-based rule, several issues would have to be resolved, including which charges and payments are within the scope of the rule and whether certain transactions should be exempted from default loss exposure.

Protests and Comments

28. Morgan Stanley is the only party that supports the Complaint in its entirety, arguing that the Default Loss Rule is unjust and unreasonable and that the California Sellers’ alternative proposal is just and reasonable. Accordingly, Morgan Stanley urges the Commission to grant the Complaint.

29. Load serving entities generally oppose the Complaint. SMUD, SoCal Edison, and SVP/M-S-R point out that the existing Default Loss Rule has already been accepted by the Commission, and nothing has changed that would warrant any revision to that rule now. Some protestors explain that the California Sellers have inaccurately characterized the Default Loss Rule as shifting the risk of default losses entirely to sellers. For instance, PG&E states that the Default Loss Rule does not discriminate between sellers and load serving entities because it allocates default losses to net creditors, not just sellers, and that, at times, load serving entities sell more than they purchase and, during such times, are net creditors. San Francisco states that the Default Loss Rule shifts some, but not all, of the burden associated with default losses from loads to generators.

30. PG&E, San Francisco, and SVP/M-S-R assert that the Default Loss Rule appropriately shifts more risk onto sellers than buyers. For example, PG&E states that, because the CAISO matches buyers and sellers, a seller takes the risk that a buyer will default on one or more transactions, and sellers presumably price this risk into their bid prices and that a buyer does not take on the risk that another buyer will default and thus does not price this risk into transactions. Therefore, PG&E argues, because buyers and sellers are differently situated with regard to the risks they assume and their ability to price those risks, it is appropriate to allocate default losses to net creditors and not to net debtors. Golden State argues that, by the Complaint’s own logic, a change in the default loss allocation methodology would appear to require many load serving entities to pay for these costs twice, once through a risk premium already factored into the purchase price of existing bilateral contracts and a second time through the new reallocation of these costs.

San Francisco states that sellers can recover their actual costs or mitigate their financial risk by reflecting estimated risk in their bid calculations or reflecting any actually allocated default costs in future bids. San Francisco also notes that sellers can avoid default risk through bilateral transactions or Inter-Scheduling Coordinator Trades[28] that do not utilize bids in the CAISO markets.

31. A number of protestors disagree with the Complaint's contention that existing default loss allocation rules in other ISO/RTO regions support a finding that the Default Loss Rule is unjust and unreasonable. SoCal Edison asserts that the California Sellers rely on an incomplete representation of the way the eastern ISOs/RTOs allocate default losses. In reality, SoCal Edison states, each of these ISOs/RTOs permit market participants to limit their exposure to defaults by netting buy and sell transactions – and that only the dollars remaining after the netting is completed are considered when allocating defaults. According to SoCal Edison, the Default Loss Rule has many similarities to default loss rules in place in the NYISO, the Midwest ISO, and PJM. Golden State asserts that *NYISO*, *PJM I*, and *PJM II* do not support a finding that the Default Loss Rule is unjust and unreasonable or suggest that there is a one-size-fits-all cost allocation policy.[29]

32. Several protestors object to the California Sellers' argument that the Default Loss Rule provides a disincentive to sellers to participate in the CAISO markets. Golden State points out that the Complaint only raises hypothetical concerns, but does not provide concrete evidence that the Default Loss Rule creates disincentives to sellers. Golden State also argues that the Complaint cannot rely on the White Paper, since there is no assessment in that paper of the significance of the alleged disincentive the Default Loss Rule imposes on supplier or its effect on the CAISO markets or prices. PG&E asserts that the contention that the Default Loss Rule may discourage supplier participation in the CAISO is unfounded. SVP/M-S-R state that the Complaint does not provide evidence of a nexus between the Default Loss Rule and market liquidity or any meaningful quantification of harm as a result of the Default Loss Rule being in effect.

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[28] Generally, Inter-Scheduling Coordinator Trades allow Scheduling Coordinators to balance their portfolios through bilateral trades with other Scheduling Coordinators. *See, e.g., Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 61,384, at P 9 (2005) (approving in principle the CAISO's conceptual proposal on Inter-Scheduling Coordinator Trades).

[29] Golden State also argues that the Complaint's reliance on the *Credit Policy Statement* is misplaced, since the issue of default loss allocation is different from the issue of minimizing mutualized risk default. Golden State notes that even if the *Credit Policy Statement* had addressed allocation issues, it cannot substitute for findings of fact.

33. Some protestors explain that the CAISO is working on credit policies designed to mitigate default risk. PG&E notes that it has worked with the CAISO and other stakeholders to implement several tools, such as payment acceleration and a reduction in the maximum unsecured credit limit, designed to mitigate credit risk. San Francisco contends that the Complaint ignores that the CAISO already has policies in place to mitigate the risk of default, pointing to the reduction in the maximum unsecured credit limit accepted in the March 30 Order. Therefore, San Francisco contends that the Commission has already addressed the highest risk market activity cited by the California Sellers and the Complaint is a collateral attack on the balance struck by the Commission between various options to address credit risk.

34. Protestors argue that the California Sellers' alternative proposal is unjust and unreasonable. PG&E, Six Cities, SVP/M-S-R, and SMUD state that the burden of default losses under the alternative would fall disproportionately on loads. Similarly, Six Cities, SoCal Edison, SMUD, SVP/M-S-R, and CMUA argue that the alternative does not account for entities that have both supply and demand. SoCal Edison explains that these entities often do not benefit from the CAISO's market but, as a result of MRTU market rules, must effectuate delivery of their own supply to their own load through the CAISO's system, and argues that there is no way for these entities to limit their exposure to defaults under the alternative.[30] It argues that the proposal has the effect of shifting the bulk of any default costs away from sellers and onto utility customers, even if those customers are served entirely by self-supply.[31] Six Cities and SVP/M-S-R explain that all transactions that touch the CAISO-controlled grid result in a purchase charge or sale credit and many (such as self-scheduled transactions or Inter-Scheduling Coordinator Trades) result in both. Six Cities also state that sellers are generally subject to a more limited array of charge codes under the CAISO's settlements structure than entities that perform multiple roles, such as load serving entities. Thus, Six Cities and SVP/M-S-R contend that the alternative methodology would impose a substantially higher percentage of default losses on load serving entities than on sellers, and there would be a disparate impact among load serving entities based solely on differences in resource procurement practices and historical resource commitments. According to SVP/M-S-R, this would

[30] SoCal Edison includes the affidavit of Mr. Jeffrey Nelson, CFA, its Manager of Market Design and Analysis (Nelson Affidavit). The Nelson Affidavit includes a hypothetical example where an entity that had both supply and demand would have an exposure of 0.0018 percent under PJM's system for allocating default losses while it would have an exposure of 20 percent under the California Sellers' proposal.

[31] SoCal Edison asserts that the CAISO's existing tariff recognizes that self-supply transactions must be effected through the CAISO's markets under MRTU and includes features – significantly, netting – to avoid unreasonable outcomes.

disproportionately shift risk onto load serving entities while entities that sell their products in the market for a purely financial benefit would have disproportionately less exposure.

35. According to SWP, the Complaint's failure to use a tailored approach belies its assertion that the alternative proposal follows cost causation principles. SWP explains that the CAISO's Grid Management Charge is different from the costs of grid services provided by certain market participants for others, but for which the CAISO serves as a payment conduit, requiring the socialized allocation of default losses. Thus, SWP argues, the Grid Management Charge and other charges not associated with services provided by market participants should not be included in any gross measure of market participation used to allocate bad debt, and a more tailored approach is necessary.

36. Six Cities argue that the alternative would create perverse incentives, since load serving entities with an entitlement to a resource outside of the CAISO Balancing Authority Area could reduce their risk by selling the resource outside of the CAISO's markets and purchasing the equivalent amount of energy from the CAISO rather than bidding or self-scheduling the resource into the CAISO's markets, and that this could threaten reliability since the CAISO relies heavily on imported resources.

37. PG&E, SDG&E, San Francisco, Six Cities, SoCal Edison, and SVP/M-S-R disagree with the Complaint's claim that the alternative approach closely conforms to the default loss rules of the eastern ISOs/RTOs. PG&E and SVP/M-S-R note that the Commission has approved a range of default loss rules in ISO/RTO markets. SDG&E contends that Complaint inaccurately describes other ISO/RTO default loss rules, and states that many ISOs and RTOs (including the CAISO) recognize that different forms of netting have to some degree the effect of minimizing mutualized default risk exposure as set forth in the *Credit Policy Statement*. According to SoCal Edison, the default loss rules of the NYISO, the Midwest ISO, and PJM all include provisions that permit the netting of buy and sell transactions, with only the dollars remaining considered when default losses are allocated, while the alternative proposal does not permit netting.[32] SVP/M-S-R contend that the alternative is not likely to be consistent with the rules of the eastern ISOs/RTOs in light of the market design and operational differences in

[32] In the Nelson Affidavit, Mr. Nelson evaluates the tariff provisions of the NYISO, PJM, and the Midwest ISO with respect to default loss allocations, and concludes that these ISOs/RTOs permit some form of netting of buy and sell transactions, such that only the dollar amounts that remain after netting are considered as part of the default loss allocation.

California.[33] SWP notes that while the Complaint urges the use of a PJM-style allocation methodology, it fails to explain that PJM excludes certain transactions from its default loss allocation methodology.[34] SWP argues that the Commission has endorsed this approach, and contends that the CAISO should be required to do so as well. According to SWP, transactions that can be isolated from CAISO markets from the allocation of default losses should not be subject to a default loss rule.[35]

38. Finally, some protestors argue that if the Commission believes the Default Loss Rule should be revised, it should establish procedures to address any revisions. For example, San Francisco and SDG&E suggest that the appropriate course is to require additional proceedings such as a CAISO-administered stakeholder process or Commission-sponsored technical conference or settlement proceedings. Six Cities do not believe that a further stakeholder process would be productive, although it believes that Commission-sponsored settlement procedures may be helpful. PG&E states that settlement negotiations should be required if the Commission does not reject the Complaint so that parties can work together to develop a just and reasonable alternative. CMUA states that settlement procedures or a Commission-sponsored technical conference may be appropriate to assess appropriate loss allocation methodologies. SVP/M-S-R believe that any further process must take into account market design and operational issues, the CAISO's credit policies, and the relative benefits and burdens to all market participants.

Discussion

39. FPA section 206 "requires a complainant to satisfy a dual burden in order to obtain the relief it seeks in a complaint. The complainant must establish that the current rate is unjust and unreasonable and the complainant must then establish that its alternative rate

[33] SVP/M-S-R state that if other ISOs/RTOs do not require all gross load to be served through the market, then the losses will be allocated differently than what is proposed in the Complaint, and load serving entities will not incur as many offsetting charges for generation and load so the absolute value of their charges will be less.

[34] SWP cites to a PJM tariff filing in which PJM explained that bilateral transactions are "non-pool" transactions and, accordingly, it does not establish credit requirements for these transactions.

[35] SWP claims that transactions using existing transmission contracts were obvious candidates for such treatment. SWP also states that other kinds of transactions, such as self-supply and Inter-Scheduling Coordinator Trades, should be exempted as well.

proposal is just and reasonable."[36] We agree with the California Sellers that the Default Loss Rule is unjust, unreasonable, and unduly discriminatory. However, we find that the California Sellers have not demonstrated that their proposed alternative is just and reasonable. Therefore, we are setting the Complaint for hearing and settlement judge procedures.

The Default Loss Rule is Unjust, Unreasonable, and Unduly Discriminatory

40. This has been our first opportunity to fully consider the Default Loss Rule since the CAISO's inception. While we accepted the rule as part of the CAISO's filing in anticipation of MRTU in the *2006 MRTU Order*, we were not squarely presented with any challenges to the Default Loss Rule.[37] Thus, while the CAISO and other protestors are correct in pointing out that we had accepted the Default Loss Rule in that earlier proceeding, we note that this earlier proceeding involved an omnibus tariff filing, where the primary focus had been on the new MRTU-related tariff features, rather than the "legacy" features of the CAISO's previously effective tariff.[38] We also disagree with San Francisco that the Complaint is a collateral attack on the CAISO's existing credit policies.

41. FPA section 206 first requires that a complainant demonstrate that an existing rate is unjust and unreasonable. At the outset, we note that the courts and this Commission have recognized that there is not a single just and reasonable rate.[39] Instead, we evaluate tariff provisions to determine whether they fall into a zone of reasonableness.[40] So long

[36] *Ark. Pub. Serv. Comm'n v. Entergy Corp., et al.*, 128 FERC ¶ 61,020, at P 23 (2009).

[37] As explained above, the March 30 Order found that challenges to the Default Loss Rule were outside the scope of that proceeding.

[38] *See, e.g., Gas Transmission Northwest Corp. v. FERC*, 504 F.3d 1318, 1320 (D.C. Cir. 2007) ("FERC's acceptance of a pipeline's tariff sheets does not turn every provision of the tariff into 'policy' or 'precedent.' ").

[39] *See, e.g., Montana-Dakota Utils. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251 (1951) ("Statutory reasonableness is an abstract quality represented by an area rather than a pinpoint. It allows a substantial spread between what is unreasonable because too low and what is unreasonable because too high.").

[40] *See, e.g., New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,238, at P 35 (2008) (finding tariff revisions addressing interconnection cost allocation to be within a zone of reasonableness).

as the end result is just and reasonable, the tariff provision will satisfy the statutory standard.[41] In this case, we agree with the Complaint's contention that the Default Loss Rule is unjust, unreasonable, and unduly discriminatory because it only allocates default losses to CAISO Creditors. While CAISO Creditors can include buyers if they make net sales over the relevant time period, they are primarily sellers and these entities bear a disproportionate share of default risk.

42. It is beyond doubt that buyers as well as sellers benefit from a liquid wholesale energy market, such as the one administered by the CAISO. For example, buyers benefit from a wide diversity of sellers offering their energy products in the centralized market. The CAISO's locational marginal pricing structure under MRTU ensures that buyers in general pay no more than the applicable market clearing price for a particular location. The CAISO's market also gives buyers the choice of procuring resources through the CAISO markets or through bilateral transactions and, accordingly, buyers have the ability to decide whether purchasing in the CAISO's day-ahead and real-time markets would be more efficient than engaging in a bilateral transaction. Thus, because all market participants benefit from their participation in liquid ISO/RTO markets, it would be equitable for a default loss allocation rule to apply to all market participants.[42]

43. Some protestors argue that sellers can account for exposure under the Default Loss Rule by pricing the risk into their bids. This may be true for some, but not all, sales. Risk premiums would be expected to be a more common feature of bilateral transactions, where a seller may view a particular counterparty as being more likely to default, than in "pool-wide" or "cleared" market transactions where the seller is not transacting with an individual buyer. In the CAISO's centralized clearing market, sellers generally receive the market clearing price for a particular location, and thus the addition of a risk premium to a bid might endanger the bid "clearing" the market. Moreover, even if sellers were able to recover a risk premium for all of their "pool" transactions, our policy is that ISO and RTO credit policies should reduce all market participants' default risk exposure, and the Default Loss Rule still allocates losses to net creditors but not to net buyers. It could hardly be said that having one class of market participants bear all the risk, even with the

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[41] *See, e.g.*, *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944) ("If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end.").

[42] Buyers (and sellers) also benefit from other aspects of ISO/RTO membership, such as system reliability and standardized market rules.

ability to include the price of that risk in their bids, achieves the goal of mitigating default risk for all market participants.[43]

44. The CAISO points out that the Default Loss Rule was in effect during the 2000-2001 western energy markets crisis. This is true, but much has changed in the interim. Since that time, the Commission's creditworthiness policies have continued to evolve. As discussed above, we issued the *Credit Policy Statement* in 2004, which set forth our concerns regarding credit policies in ISO/RTO regions, as well as our suggested solutions for ensuring that market participants' exposure to defaults was minimized. We have also considered a number of credit policies proposed by individual ISOs and RTOs. Throughout, one consistent theme has been that ISOs and RTOs should establish credit policies that minimize the risk of defaults on all market participants. Notwithstanding our more recent approval of other CAISO credit policies, such as in the March 30 Order, we conclude that the Default Loss Rule does not achieve this goal.

45. We disagree with arguments that this issue is distinct from the matters addressed in the *Credit Policy Statement*. While the *Credit Policy Statement* was focused on specific credit policies rather than ISO/RTO billing and settlement rules, one of its overarching goals was to ensure that ISOs and RTOs mitigated market participants' exposure to credit risk.[44] As discussed herein, we find that the Default Loss Rule fails to achieve this goal.

46. The Default Loss Rule is unduly discriminatory in that it allocates all risk of default only to net creditors, which are primarily sellers. While the details of their respective mechanisms differ, other ISOs/RTOs allocate default losses to both buyers and sellers. Although the CAISO and others are correct that we have not prescribed a one-size-fits-all approach to default loss rules in organized markets, the inequitable allocation of default losses only to net creditors causes the Default Loss Rule to be unduly discriminatory. As the California Sellers note, we considered default loss allocation rules in the NYISO and PJM, found that they were inequitable to varying degrees, and directed further filings to remedy the inequality so that losses were equitably allocated to all market participants.[45] Specifically, the Commission found that "those who benefit most

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[43] Further, to the extent that sellers are including risk premiums into their bids, the elimination of an unduly discriminatory market rule that provided the rationale for the premium would mean that there would be no reason to include such a premium in the seller's bid, thereby reducing the offer price.

[44] *See Credit Policy Statement* at P 17-31.

[45] *See* P 10-11, *supra*.

from activity in the NYISO's markets should pay a larger share of default costs" and "the connection between the benefits a member experiences and the level of costs shared is a logical one."[46] The default loss rules of the Midwest ISO and SPP also allocate default losses to all market participants, regardless of whether they are buyers or sellers.[47]

47. We are not persuaded by the CAISO's citation to the Midwest ISO and SPP rules that allocate default losses for transmission service charges only to creditors.[48] This proceeding concerns default loss rules associated with market participant defaults, and not specifically transmission customer defaults. As discussed above, the Midwest ISO and SPP rules governing market participant defaults allocate such losses to all of their market participants.

The California Sellers Have Not Demonstrated That Their Alternative Proposal is Just and Reasonable

48. While we find that the Default Loss Rule is unjust, unreasonable, and unduly discriminatory, we cannot conclude that the California Sellers have demonstrated that their alternative approach is just and reasonable. The Commission notes that, while the alternative proposal broadly allocates defaults to all market participants, it fails to adequately demonstrate whether market participants with both load and generation should be allowed to net certain transactions and does not adequately demonstrate whether certain participants (e.g., self-suppliers) should be exempt from the default allocation rule. The alternative proposal would not permit any type of netting arrangement. In addition, the Complaint sets forth a wide range of activities including self-scheduled transactions, Inter-Scheduling Coordinator Trades, and a number of other transactions that would be included in determining how default losses should be allocated among market participants under the alternative proposal. Moreover, the Complaint indicates

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[46] *PJM I* at 6.

[47] *See* Midwest ISO FERC Electric Tariff, Third Revised Vol. No. 1, § 7.10 ("The Uncollectible Obligation shall be allocated by the Transmission Provider to each Market Participant that had been invoiced by the Transmission Provider during the same period of time as the unpaid invoice(s) of the Market Participant whose unpaid Past Due Amount has been declared an Uncollectible Obligation."); SPP FERC Electric Tariff, Fifth Rev. Vol. No. 1, Att. L, § V.3 ("SPP shall proceed to recover the Uncollectible Obligation from all Market Participants who conducted business in the market during the period covered by the invoice(s) associated with the Uncollectible Obligation(s) on a pro rata basis . . . .").

[48] *See* CAISO Answer at 12.

that the universe of the activities included under this rule is greater than the already expansive list of activities that are specifically mentioned in the Complaint.[49]

49. For the foregoing reasons, we conclude that the California Sellers have not demonstrated their proposal is just and reasonable. Accordingly, we are setting the Complaint for hearing and settlement judge procedures.

Hearing and Settlement Judge Procedures

50. Because we find that the existing Default Loss Rule is unjust and unreasonable, and because we further find that the California Sellers have not demonstrated that their proposed alternative is just and reasonable, we are establishing hearing procedures. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009). If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[50] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

Refund Effective Date

51. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b), as amended by section 1285 of the Energy Policy Act of 2005, requires that the Commission establish a refund effective date that is

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[49] *See* Complaint at 16 (stating that "the scope of the CAISO markets from which the absolute level of gross activities would be summed extends *to all CAISO administered markets and services, including, without limitation*," to the activities specifically listed in the Complaint) (emphasis added).

[50] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,[51] we will set the refund effective date at the earliest date possible, i.e., the date of the filing of the complaint, which is June 30, 2009.

52. Section 206(b) of the FPA also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Based on our review of the record, we expect that if this case does not settle, the presiding judge should be able to render a decision within six months of the commencement of hearing procedures or, if the case were to go to hearing immediately, December 14, 2009. We thus estimate that if the case were to go to hearing immediately we would be able to issue our decision within approximately four months of the filing of briefs on and opposing exceptions, or by September 20, 2010.

<u>The Commission orders</u>:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning this Complaint, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

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[51] *See, e.g., Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co*., 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

(C) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date established pursuant to section 206(b) of the Federal Power Act is June 30, 2009.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.