

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Philip D. Moeller,
and Jon Wellingshoff.

San Diego Gas & Electric Company

Docket Nos. EL00-95-000
EL00-95-045

v.

Sellers of Energy and Ancillary Services
into Markets Operated by the California
Independent System Operator and the
California Power Exchange

Investigation of Practices of the California
Independent System Operator and the

Docket Nos. EL00-98-000
EL00-98-069

California Power Exchange

ORDER ADDRESSING REFUND PROCESS DISPUTES
AND PROVIDING GUIDANCE

(Issued August 23, 2006)

1. In this order, we address outstanding disputes filed by market participants pursuant to a Commission order dated August 8, 2005.¹ The August 8 Order established a December 1, 2005 deadline for parties to file any disputes with the California Independent System Operator Corporation's (CAISO), the California Power Exchange's (Cal PX or PX), and/or the Automated Power Exchange's (APX) refund calculation processes and refund offsets, including fuel cost allowance (FCA) claims, cost-and-revenue study offsets, and emissions cost offsets.²

¹ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 112 FERC ¶ 61,176 (2005) (August 8 Order).

² *See Id.* at P 116.

2. In this order, we resolve issues raised by parties in their dispute filings, as discussed in detail below, and provide further guidance on outstanding concerns with regard to refund calculation and allocation processes.

Background

3. In the August 8 Order addressing the framework for submitting cost filings,³ the Commission emphasized its desire to expedite the resolution of the refund proceeding and announced a December 1, 2005 deadline for market participants to submit to the Commission any disputes with refund reruns, cost offsets, FCA claims, and emissions costs offset claims.⁴

4. The following parties have filed disputes in accordance with the August 8 Order directive: Pacific Gas and Electric Company (PG&E); Portland General Electric Company (Portland General); the City of Santa Clara, California, doing business as Silicon Valley Power (SVP); California Parties⁵; Merrill Lynch Capital Services, Inc. (MLCS), Commerce Energy, Inc., and Morgan Stanley Capital Group, Inc. (collectively, APX Sellers); Calpine Corporation and Calpine Energy Service, L.P. (collectively, Calpine); the Northern California Power Agency (NCPA); Powerex Corporation (Powerex); and Puget Sound Energy, Inc. (Puget).

5. Answers to the dispute filings were submitted by the CAISO, California Parties, Midway Sunset Cogeneration Company (Midway Sunset), APX, SVP, PX, Nevada Power Company (Nevada Power), the Los Angeles Department of Water and Power (LADWP), and Puget.

6. Answers to answers were submitted by Portland General, PG&E, SVP, and the California Parties. Rule 213(a) of the Commission's Rules of Practice and Procedure,

³ Cost filings were submitted in support of cost-and-revenue study offset claims and include the evidence intended to demonstrate that the refund methodology results in an overall revenue shortfall for sale transactions in the relevant markets from October 2, 2000 through June 20, 2001 (Refund Period).

⁴ *See supra* n. 2.

⁵ California Parties include the People of the State of California *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison Company.

18 C.F.R. § 385.213(a), prohibits answers to answers, unless otherwise permitted by the decisional authority. We are not persuaded to allow answers to answers filed in the instant proceeding.

Discussion

A. Issues Related to the APX Refund Calculations

7. Calpine states that APX has failed to provide sufficient information to APX participants in order to allow for independent verification of the refund amounts that APX has calculated. According to Calpine, APX market participants submitted to APX bids to buy or options to sell to the PX. With those bids, APX ran a pre-matching process that would match quantities of the bids and the offers based upon price and quantity, and passed them through to the PX as a bid in the PX day-ahead market. Calpine asserts that the transactions in the PX pass-through market cannot be calculated directly due to the fact that the APX has no data identifying which transactions were pre-matched and which were just pass-through transactions. As a result, Calpine contends that APX participants need data on all individual transactions and an explanation of APX's refund calculations in order to validate refund liability.

8. In connection with the above, Calpine requests that the Commission order APX to provide: (1) data on all individual transactions; (2) a full explanation of the methodology to calculate refund liability; and (3) a list of all errors, disputes, or inquiries regarding APX, PX, or CAISO data from APX or any APX participant and whether resolution was reached on such disputes.

9. In its response, APX contends that sellers who participated in the APX market have received sufficient information and that APX has clarified numerous times how it performed certain calculations. Notably, APX states that providing the data that sellers seek raise confidentiality concerns regarding other sellers' data.

10. APX Sellers state that they cannot validate that APX has properly applied the \$150 breakpoint methodology for sales into the PX for January 2001. APX Sellers bolster their contention by stating that if the APX misapplied the breakpoint computations, it over-collected funds from its market participants when it initially applied the \$150 breakpoint to all January 2001 transactions in the APX/PX pass-through market instead of applying the breakpoint only to those transactions that were settled in the PX

market.⁶ As a result, APX Sellers state that in order to verify the APX's calculations of refund liability, APX should be required to provide the formulas and methodologies used to calculate refunds owed and owing, designations of the source data underlying the refund calculations, and definitions for each data field and charge type used in the data. They also request that APX be required to provide the universe of APX transaction data in order for market participants to independently verify the calculations.

11. Lastly, APX Sellers assert that APX should also confirm, with independent verification by APX participants, whether its netting practices cause a participant to forgo revenue or incur additional costs as a result of the netting.

12. In response, APX states that it reviewed the data the PX provided to APX and, in its review, determined that the PX followed the Commission's \$150 breakpoint methodology. APX notes, however, that the PX provided only a single total refund amount to APX. APX continues that the single refund total was then allocated on a *pro rata* basis, consistent with the Commission's October 16, 2003 Order.⁷ APX asserts that APX Sellers inappropriately rely on previous Commission orders. As a result, APX requests Commission guidance as to the guiding precedent on APX refund allocations.

Commission Determination

13. We first respond to APX's request for the Commission's guidance regarding the appropriate application of the \$150 breakpoint in the Cal PX market during January 2001. APX contends that it is unclear how refund liability will be apportioned to APX participants, whereas APX Sellers contend that the settlement practices of the APX, through netting of transactions and then sales to the Cal PX pass-through market, caused an over-collection of payments by APX when it applied the \$150 breakpoint. Specifically, MLCS argues that because APX netted transactions among the APX participants, APX's application of the \$150 breakpoint to all MLCS transactions resulted

⁶ See APX Sellers' Dispute Filing, Docket No. EL00-95-000, at 2 n. 5, December 1, 2005. APX Sellers state that: "for example, APX initially recovered approximately \$7.1 million from MLCS by applying the \$150 breakpoint to all of MLCS's transaction in the APX/CalPX pass-through market. This represents an over-payment by MLCS insofar as only a portion of MLCS's January 2001 transaction were settled in the Cal PX versus netted among APX market participants and are therefore not subject to refund under the Commission's current orders."

⁷ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 105 FERC ¶ 61,066 (2003) (October 16 Order).

in an overstatement of charges because not all transactions were settled through the Cal PX pass-through market as a result of the netting practice.

14. We find that APX's response to APX Sellers does not address their concern. APX Sellers' position focuses on how APX settled energy transactions associated with its bids into APX that went to the Cal PX pass-through market. APX, on the other hand, discusses how it apportioned refund liabilities resulting from the Cal PX pass-through market. We agree with the APX Sellers that to the extent that APX's calculations are not consistent with its operating practices, APX should provide accurate settlements. APX appears to have applied the \$150 breakpoint inconsistently with its billing practices when collecting funds from the net pool of bids in the PX pass-through market. Therefore, APX is hereby directed to correct this billing error.

15. In regard to APX's contention that the refund liability apportionment should be based on a *pro rata* allocation, we note that this is correct only when APX cannot specifically apportion refund liability based upon the bid data. However, where the data for apportionment is insufficient, joint and several liability is appropriate for recovery of these refund liabilities.⁸ As we found in the October 16 Order, APX, as well as APX participants, should be held jointly and severally liable for refund liabilities, associated with energy scheduled by APX that cannot be apportioned to a specific entity.⁹ In addition, we clarify, per APX's request, that the guiding precedent on the refund liability apportionment is the October 16 Order, which determined how refund liability is shared by APX and the APX participants.

16. Furthermore, we will not address in this order the issue of whether the data provided by APX to market participants is sufficient because this issue is moot. In a January 26, 2006 Order, we directed the APX to submit its final revenue data within ten days after the CAISO submits its final data.¹⁰ On February 27, 2006, APX provided the APX settlement data to its market participants.

⁸ *See Id.* at P 170-171.

⁹ *See Id.*

¹⁰ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 114 FERC ¶ 61,070, at P 389 (2006) (January 26 Order).

B. Issues Related to the PX Refund Calculations

17. PG&E objects to the PX's calculation method for refunds associated with the nine percent of the total block forward market (BFM) contracts.¹¹ In PG&E's opinion, the PX's method for calculating refunds associated with the mitigation of the nine percent of the total BFM transactions under the PX's California Trading Services (CTS) rate schedule is not fully compliant with the Commission precedent. PG&E states that the Commission directed that the PX block forward adjustment be reversed with respect to the nine percent of such transactions that were not delivered through the PX's Day-Ahead and Day-Of markets. PG&E further explains that the PX's calculations reverse the required adjustment only half-way.

18. PG&E explains that the PX's method restores the refund owed on the supply side by mitigating the prices paid in order to supply the energy associated with the nine percent of CTS transactions that the block forward sellers failed to deliver. However, PG&E contends the PX failed to reverse the adjustment on the purchaser side. According to PG&E, by not mitigating the BFM price paid by the buyers, the PX's methodology improperly shifts refunds associated with the nine percent of the total CTS block forward transactions to all PX market participants, rather than to the block forward buyers. PG&E further states that the surplus created by the PX methodology results in a refund shift in the amount of approximately \$30 million. PG&E, therefore, requests that the Commission direct the PX to revise its calculations in order to reflect mitigation of the supply and the buyer transactions.

19. PG&E also states that it reserves its rights to dispute in the future issues that cannot be identified until the CAISO calculates the refunds.

20. In response to PG&E's dispute, the PX contends that the CTS rate schedule requires that the buyer's volumes not be mitigated. The PX explains that when a seller fails to deliver BFM volumes into the Day-Ahead Market, the buyer nonetheless received delivery of energy through the Day-Ahead Market schedules and then paid the price previously agreed upon in the BFM. In order to settle the transaction, the PX received the BFM contract price from the buyer and required payment from the seller for any difference between the BFM contract revenue from the buyer and the market clearing price.

¹¹ In its answer to PX's answer to PG&E's dispute filing, PG&E withdrew its objections related to: (1) the PX's no-pay credit mitigation; and (2) the PX calculations of the refund amount for day-ahead energy delivered in zone NP15.

21. PX contends that if it were required to resettle the buyer side volumes, the buyers would receive both the benefit of the long-term BFM contract as well as the mitigated price. PX further argues that such a determination would be contrary to the Commission's directives.

Commission Determination

22. The BFM was a pay-as-bid forward market where buyers and sellers agreed on specific forward energy prices. Energy deliveries were usually done through the PX's Day-Ahead Market and settled as a contract for difference of the monthly weighted-average of the Day-Ahead zonal prices. In a March 26, 2003 Order¹² and the October 16 Order, the Commission affirmed the presiding judge's determination that BFM transactions were appropriately excluded from total volumes to be mitigated, except the nine percent of BFM transactions that were not long-term transactions.¹³ Specifically, the Commission noted Trial Staff's position that "the PX recognized that it made a nine percent error in its calculations to exclude block forward contracts (by including with the true block forward amount certain transactions that actually should have been mitigated)..."¹⁴ As a result, the Commission found that the PX should correct the nine-percent error.¹⁵

23. At the heart of the dispute between PG&E and the PX is the meaning of the Commission's decision regarding the nine-percent of the block forward contracts not excluded from mitigation. PG&E interprets our determination to mean that both the supply and the demand should have been mitigated. The PX reads our determination in conjunction with the CTS rate schedule and asserts that only the supply side (*i.e.*, purchases made by CTS on behalf of sellers that failed to deliver) should be mitigated. PX explains that mitigating the demand side would give the benefit of the block forward price, as well as the mitigated price, to the block forward buyers. For the reasons discussed below, we are not persuaded by the PX's argument and clarify that the nine-percent BFM transactions should have been mitigated on both the supply and the demand sides.

¹² *San Diego Gas and Electric Company*, 102 FERC ¶ 61,317 (2003) (March 26 Order).

¹³ See March 26 Order at P 96; October 16 Order at P 86-87.

¹⁴ *Id.* at P 95.

¹⁵ *Id.* at P 96.

24. Citing the Commission Trial Staff's comments, the Commission found in the March 26 Order that the nine percent error should not be excluded from mitigation. Specifically, the Commission relied on the fact that the PX witness agreed that the nine-percent volumes were not intended to be delivered to the Day-Ahead Market and that it would be reasonable that the volumes would not be included in the CTS delivery obligations, *i.e.*, not excluded from mitigation. Focusing on what volumes were at issue, the PX witness stated, when describing the nine percent error, that it was both the supply *and* demand volumes.¹⁶ As a result, the Commission determined that both the supply and demand volumes not included in the CTS delivery obligations are subject to mitigation. Therefore, we support PG&E's position and require the PX to resettle the nine percent error as mitigated volumes from both the seller side and the buyer side.

C. Issues Related to the CAISO's Refund Calculations

(1) Powerex's Dispute Filing

25. Powerex disputes the methodology used by the CAISO for mitigating imports in the rerun process. Powerex states that the CAISO was incorrectly mitigating import transactions by applying the hourly average mitigated market clearing price (MMCP) to the historical 10-minute interval prices for instructed energy imports. According to Powerex, the CAISO's settlement in that fashion resulted in an over-mitigation of import transactions.¹⁷

26. In response, the California Parties argue that Powerex is trying to reopen settled aspects of the CAISO's refund rerun process, which would substantially disrupt and delay the refund re-run process. In the California Parties' opinion, the CAISO followed the presiding judge's directive in the March 26 Order and correctly used hourly MMCPs to mitigate import transactions based on the rationale that imports are hourly products. According to the California Parties, Powerex proposes to change the historical prices it was actually paid for imported energy by averaging those prices over each hour rather

¹⁶ See Commission Trial Staff's Initial Brief in the Form of Proposed Findings of Fact, Docket Nos. EL00-95-045 and EL00-98-042, at 33-36 (October 4, 2002); and Commission Trial Staff's Comments Concerning Certification of Proposed Findings on California Refund Liability, Docket Nos. EL00-95-045 and EL00-98-042, at 35 (January 13, 2003).

¹⁷ Powerex incorporates by reference its March 4, 2005 motion for expedited consideration filed in Docket Nos. ER03-746-000, EL00-95-074, and EL00-98-062, as well as its March 31, 2005 answer to answers to its March 4, 2005 motion.

than by comparing the MMCP to the actual historical prices that were calculated and applied by the CAISO on a ten-minute interval basis.

Commission Determination

27. We reject Powerex's dispute regarding the methodology for mitigation of energy imports. We have addressed this issue in the October 16 Order, in response to Competitive Supplier Group's request. Specifically, we found that the eligibility of energy imports to set the Balancing Energy Ex-Post Interval Price in each interval, and the Hourly Ex-Post Price if the next resource is not dispatched, is no different from the price-setting rights of *any* dispatched resource.¹⁸ In the October 16 Order, we also clarified that "our adoption of the presiding judge's finding on this issue simply reflected that Energy Imports should be mitigated just like all other types of energy."¹⁹ Accordingly, we find that Powerex's dispute on this issue constitutes a collateral attack on our previous order and is therefore rejected. For the same reasons, we will deny Powerex's March 4, 2004 motion.

(2) Puget's Dispute Filing

28. Puget contends that recent data disks from the CAISO failed to include all the dispute resolutions between Puget and the CAISO from the preparatory rerun phase. Puget states that the updated electronic data sets for the FCA and cost filings were incomplete. Puget claims that it has not been able to correct or challenge errors, and thus filed its dispute in order to put the Commission on notice and to reserve the right to challenge a compliance filing by the CAISO.

29. In response to Puget's data concerns, the CAISO requests that the Commission defer action on Puget's issues pending further discussions between Puget and the CAISO on the data discrepancies.

Commission Determination

30. In light of the CAISO's offer to work with Puget on data discrepancies, we will defer action on Puget's dispute. However, we direct that, within 15 days of the date of issuance of this order and every 15 days thereafter, the CAISO and Puget submit a report detailing the progress made regarding Puget's data concerns and informing the Commission of any further data issues. If this dispute is not resolved by the time of the

¹⁸ See October 16 Order at P 54.

¹⁹ *Id.*

third progress report, both parties will be required to file their final positions on any remaining data issues raised by Puget in this initial dispute filing no later than five days after the date of submission of the last progress report.²⁰ We also note that we intend to resolve the data discrepancies raised in Puget's dispute filing prior to the submission of the CAISO's compliance filing.

(3) Portland General's Dispute Filing

31. Portland General states that it anticipates a potential data error in the CAISO's refund report. According to Portland General, the CAISO might inappropriately mitigate certain transactions that it claims are similar to exchange transactions. Portland General asserts, citing testimony submitted in its September 14, 2005 cost filing, that its recirculation transactions are buy/sale transactions with the ISO that occurred in the same hour over Portland General's ownership rights on the Southern Intertie. Portland General explains that the recirculation transactions are akin to energy exchanges, and like exchanges, should not be mitigated. Portland General explains that the CAISO's rerun data have characterized the recirculation transactions as instructed and uninstructed energy sales and purchases. In Portland General's opinion, it is conceivable that the CAISO will mitigate these transactions when the CAISO ultimately completes the refund process.

32. Portland General further states that, as of the time of its dispute filing, it does not know whether the CAISO will subject the recirculation transactions to mitigation. In the event that the transactions are mitigated, Portland General states that it will dispute the calculations at that time.

33. In response, the California Parties argue that, contrary to Portland General's assertion, the recirculation transactions are not energy exchanges but rather are simultaneous sales and purchases of power from the CAISO, which are subject to mitigation pursuant to Commission precedent. In addition, the California Parties and the CAISO argue that Portland General should have raised the issue of the recirculation transactions during the evidentiary hearing before the presiding judge but failed to do so. The CAISO and the California Parties state that Portland General was provided during the evidentiary hearing with a list of the transactions exempted from the refund liability, but failed to raise the issue of recirculation transactions. In the CAISO's opinion, to allow Portland General to raise this issue at this stage of the proceeding would violate the

²⁰ If Puget and the CAISO determine that agreement will not be reached before that time, they should inform the Commission of their final positions on the matter immediately.

due process rights of other parties to the proceeding and jeopardize the efficient resolution.

Commission Determination

34. We reject Portland General's dispute filing as a collateral attack on prior Commission orders. Portland General's dispute filing purports to expand the list of transactions exempted from mitigation. The issues of which transactions should be exempt from mitigation and how energy exchange transactions should be treated were addressed in the evidentiary hearing,²¹ as well as the Commission's March 26 Order.²² However, Portland General failed to raise the issue of alleged similarity of its recirculation transactions to energy exchanges during the evidentiary hearing, in its brief on exceptions upon the completion of the hearing, or on rehearing of March 26 Order. Neither has Portland demonstrated grounds for reopening the record of this proceeding. For these reasons, we find that Portland General's dispute is an improper attempt to seek reconsideration of the Commission's final orders, and is hereby rejected.

(4) SVP's and NCPA's Dispute Filings

35. SVP states that it has not been fully compensated by PG&E for the energy sales to PG&E for resale to the CAISO. SVP explains that it sold power to PG&E, which PG&E then resold to the CAISO. SVP contends that if it sold to PG&E, then sales are appropriately included in PG&E's refund rerun to determine the refund obligation. If these transactions are not considered to be sales from SVP to PG&E, but rather directly to the CAISO, SVP states that these sales should be excluded from the refund calculations because SVP is a non-jurisdictional entity protected under the recent court decision.²³

²¹ See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 101 FERC ¶ 63,026, at P 466, 530-536 (2002).

²² See March 26 Order at P 14, 153, and 154.

²³ SVP cites to *Bonneville Power Administration v. FERC*, 422 F.3d 908 (9th Cir. 2005) (*Bonneville*). The Ninth Circuit Court of Appeals held "that FERC does not have refund authority over wholesale sales made by governmental entities and non-public utilities." Any party may file a petition for rehearing of the Court's opinion within 45 days of its issuance, Fed. R. App. P 40(a)(1), and the Court's mandate will not issue until seven calendar days after the time to file a petition for rehearing expires, or seven calendar days after entry of an order denying a timely petition for rehearing, whichever is later, Fed. R. App. P 40(b).

36. SVP also contends that the CAISO rerun fails to reflect the correct transaction price for portions of each sale of the SVP energy made by PG&E to the CAISO. SVP states that this error impacts it because PG&E is withholding the difference between what the ISO paid PG&E and PG&E should have paid SVP. Notwithstanding, SVP asserts that the price paid by PG&E to SVP has no bearing on what PG&E received from the CAISO for the energy.²⁴

37. The CAISO, in its answer, agrees with SVP that the CAISO dealt with PG&E, not SVP. However, the CAISO argues that the dispute between PG&E and SVP should not impact the CAISO's refund rerun and should be settled strictly between these parties.

38. In their answer, the California Parties argue that PG&E, as a Scheduling Coordinator, did not take title to the power delivered by SVP. The California Parties therefore conclude that any dispute concerning SVP's sales is between SVP and the CAISO.

39. In response to SVP's contention that the CAISO has applied incorrect prices for portions of the energy bought from PG&E, the CAISO states that this dispute has been resolved. The CAISO explains that the CAISO and PG&E agreed that the CAISO would make certain adjustments. The CAISO concludes that prices at issue should be considered correct and not subject to adjustment.

40. NCPA generally contends that because the CAISO has not completed the financial settlement of the refunds, it is premature to ascertain what disputes will arise as a result of the refund calculations. NCPA further states that it anticipates potential disputes in regard to two sets of sales made by NCPA.

41. First, NCPA states that PG&E used NCPA units to implement existing contracts and that energy sales from those units by PG&E to the CAISO were actually sales between the CAISO and NCPA. Thus, NCPA contends that CAISO's final rerun should exempt these sales, as NCPA is a non-jurisdictional protected under *Bonneville*.

42. In response, the CAISO states that its records indicate these transactions were correctly settled with PG&E as the Scheduling Coordinator. The CAISO further asserts that any refund liability associated with these transactions would properly flow from the CAISO to PG&E, not NCPA. In the CAISO's opinion, the issue of which entity should be properly reflected as the transacting party with the CAISO is beyond the scope of the refund proceeding.

²⁴ SVP states that it has also filed this claim with the bankruptcy court in PG&E's bankruptcy proceeding.

43. Further, NCPA states that it made sales to the CAISO under Reliability Must Run contracts that the CAISO reclassified as out-of-market transactions, which are subject to mitigation. Again, NCPA argues that, pursuant to *Bonneville*, its RMR sales to the CAISO should not be subject to refund.

44. In response, the CAISO states that until the mandate for *Bonneville* issues and the Commission provides specific direction, the CAISO is in no position to change its refund rerun data.

Commission Determination

45. Since the CAISO interacted only with Scheduling Coordinators, the transactions from both SVP and NCPA are identified by the CAISO as being completed by PG&E. The Commission has generally held that refund liability in this proceeding attaches to the Scheduling Coordinator of the transaction.²⁵ Thus, the transactions at issue here are subject to mitigation. The specific issues pertaining to the transactions between SVP and PG&E, and NCPA and PG&E, respectively, are beyond the scope of this proceeding. Therefore, the disputes made by NCPA and SVP as to refund liability for sales made by PG&E to the CAISO are rejected.

D. California Parties' Dispute Filing

46. The California Parties raise issues in regard to refund offsets and reserve the right to dispute in the future possible interest shortfalls, and the preliminary re-run and refund re-run processes.

(1) FCA Claims

47. As a preliminary matter, the California Parties state that they have not had access to the FCA working papers supplied to Ernst and Young (E&Y) for audit and thus have not had the opportunity to review or test the bases for E&Y's audits and audit results. The California Parties further state that there are data discrepancies identified by E&Y that should be resolved prior to the CAISO's processing of the claims and it is still unclear whether they have been resolved. The California Parties state that for all these reasons, they dispute certain claims²⁶ in their entirety. The California Parties also

²⁵ See, e.g., *See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 107 FERC ¶ 61,166, at P 18 (2004) (May 12 Order).

²⁶ See Attachment A to the California Parties' Disputes Filing.

request that the Commission establish an evidentiary hearing to evaluate whether FCA claims and cost filings contain overlapping transactions.

48. Further, the California Parties request that the Commission complete the process of determining refund obligations of governmental and municipal entities which might not be subject to refund liability pursuant to *Bonneville*. The California Parties explain that they are preparing civil claims to obtain refunds from governmental and municipal entities in the event that the court mandate exempts those entities from refund liability.

49. The California Parties also contend that E&Y, in its auditing process, has made certain exceptions to FCA data. In support of its claim, the California Parties incorporate by reference issues raised by E&Y in its various audits reports submitted to the Commission, as well as the CAISO's motion for clarification pending in this proceeding.²⁷

50. The California Parties further argue that allocation of the FCA amounts associated with uninstructed energy sales should be computed on a net basis, consistent with the way that uninstructed energy (UE) is settled, rather than on a gross UE basis. In the California Parties' opinion, in some of the FCA submissions, sellers attempt to maximize the volumes associated with units eligible for FCA recovery by reflecting gross sales in the calculation, even though UE itself is settled only on a net basis.

51. California Parties also challenge the approach employed by E&Y in regard to the accounting for hedging activities in Sempra Energy Trading Corporation's (Sempra) audit report, dated August 26, 2005. Specifically, the California Parties contend that E&Y has failed to identify short-term gas costs associated with hedges that should have been allocated to the longer-term gas transactions associated with the hedge. According to the California Parties, E&Y's test for reviewing whether Sempra's hedging or other financial transaction are relevant to the gas purchases reflected in its FCA filing, is flawed. The California Parties assert that, contrary to the May 12 Order's directive, E&Y failed to test whether a short-term physical transaction was associated with a hedge on a purchase of any length. California Parties aver that if the review had been performed correctly, the physical transaction would have been assigned to the period represented by the hedge.

²⁷ The California Parties refer to the CAISO's Motion for Clarification Concerning the Processing of Fuel Cost Allowance Claims, Docket No. EL00-95-045 (November 22, 2005).

52. In addition, the California Parties argue that the flawed test employed by E&Y in regard to hedging transactions resulted in the omission of swap transactions from Sempra's FCA calculations. In connection with this, the California Parties request that the Commission direct Sempra to provide all its hedging data.

53. California Parties argue that City of Burbank (Burbank), the City of Redding (Redding), and Midway Sunset are ineligible to make an FCA claim for transactions for which they did not serve as their own Scheduling Coordinators in the CAISO and PX markets. In the California Parties' opinion, the fact that Sempra filed an FCA claim on behalf of Burbank does not provide a way around the Commission ruling that only Scheduling Coordinators are eligible to claim FCA. Accordingly, the California Parties contend that the filings by and on behalf of Burbank, Redding, and Midway Sunset should be summarily rejected. The California Parties further state that to the extent the FCA filings are not rejected, they should be allowed the opportunity for review and discovery of the final audit reports pertaining to Burbank's and Redding's FCA claims, given that these reports have not been completed. California Parties also claim that they did not have an opportunity to review the audit report completed for the City of Anaheim (Anaheim), as they did not receive the report.²⁸

54. The California Parties further argue that the data submitted by Midway Sunset, an APX participant, is unverifiable. According to the California Parties, because APX data are insufficient to apportion the refund liability to a specific APX participant,²⁹ there is no means of verifying whether Midway Sunset's FCA (which is based on sales to the CAISO through APX) is consistent with APX's overall position in the CAISO market.

55. The California Parties also dispute the heat rates included in the FCA filings by LADWP, Nevada Power, Puget, and Sempra. According to the California Parties, because these entities are outside of the CAISO control area, their heat rate data were not on file with the CAISO and cannot be verified. The California Parties claim that while E&Y concluded that LADWP's heat rate calculations appear reasonable, the auditor noted that the heat rates were not based on third-party evidence for verification. Accordingly, the California Parties state that they dispute the FCA claims by these parties and request the opportunity for discovery through evidentiary proceedings.

²⁸ The California Parties do not explain whether they requested a copy of the audit report from Anaheim and what Anaheim's response was. The California Parties also do not state what relief, if any, they seek from the Commission.

²⁹ The California Parties cite to the October 16 Order at P 170.

56. In the case of Sempra, the California Parties also point out the discrepancy in the heat rate submissions by Sempra and Reliant Energy Services, Inc. (Reliant). The California Parties explain that the heat rates in those submissions differed for the same units claimed by both entities. The California Parties further state that both claims were found acceptable by E&Y, which appears not to have recognized that the different entities claimed different heat rates for the same units.

57. Further, the California Parties dispute the accuracy of gas costs included in LADWP's and Puget's FCA claims. Specifically, the California Parties argue that LADWP should be required to explain why the revenues received from gas sales to Reliant, which are reflected in the Reliant FCA submission, are not included in LADWP's submission. The California Parties, however, acknowledge that the Commission "has ruled (over the California Parties objections) that the profits from gas sales should not be used to offset the FCA."³⁰ The California Parties also state that LADWP's FCA claim fails to recognize litigation in which LADWP has sought relief against Reliant for allegedly manipulating gas prices ultimately charged by Reliant to LADWP during the Refund Period. In a footnote, however, the California Parties acknowledge that LADWP's claim against Reliant has been dismissed.³¹

58. According to the California Parties, Puget appears to have made high-priced gas sales on the same days it claimed high-price gas purchases in its FCA. The California Parties sees it as a potential double-counting issue when the same gas that was sold was included in the FCA calculations.

59. Additionally, the California Parties claim that data associated with LADWP's pumped storage units are not verifiable and request an evidentiary hearing to evaluate LADWP's FCA claim. The California Parties also question the omission of affiliate transactions from Sempra's FCA calculations and request the opportunity to examine whether any of Sempra's affiliates conducted gas transactions used to serve generation that was then sold by Sempra into California.

(2) Emissions Costs Offsets

60. In its filing, the California Parties remind the Commission of the number of issues pending rehearing and/or appeal. As to specific issues, California Parties incorporate by

³⁰ See California Parties' Dispute Relating to Cost Offsets and Refund Re-Runs, Docket No. EL00-95-000, at 19 (December 1, 2005).

³¹ *Id.* at 18 n.32

reference their October 20, 2005 rehearing request of the Commission September 20, 2005 Order³² accepting the LADWP's emissions costs offset compliance filing.

(3) Cost Offset Claims

61. The California Parties incorporate by reference all their comments on the cost offset filings. The California Parties also raise issues with the cost filing submitted by Merrill Lynch Commodities, Inc. (ML Commodities). California Parties also state that they reserve their rights to dispute any claims that may be made by non-jurisdictional entities at a later date.³³

Answers to the California Parties' Dispute Filing

62. Nevada Power and LADWP argue that the California Parties' general objections to FCA claims, as well as their request for further procedures, and their objections to individual claims constitute an impermissible collateral attack on the Commission's prior orders. LADWP also requests the Commission to clarify that any further action in the refund proceeding to investigate or calculate refund liability or offsets for the sales made by governmental entities is suspended pending the issuance of the mandate in *Bonneville*.

63. Midway Sunset argues that claims for APX transactions are proper because the refund liability for APX transactions is being assessed against Midway Sunset in accordance with Commission precedent.³⁴ Midway Sunset reasons that if a refund is being asserted for any particular interval against Midway Sunset, then Midway Sunset should be allowed to claim an FCA for that interval. Midway Sunset further states that E&Y verified by reviewing the refund schedule from the CAISO that Midway Sunset was asserting an FCA only for those intervals in which it was mitigated. Midway Sunset believes that the California Parties' dispute is based on incomplete data, and suggests that the Commission should defer any consideration of the FCA-related disputes until the submission of the CAISO's compliance filing.

64. LADWP states that contrary to the California Parties' assertion, E&Y verified the source data on heat rates included in LADWP's FCA calculations. E&Y's statement that

³² *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 112 FERC ¶ 61,323 (2005).

³³ The Commission issued a notice deferring the filing of cost offset demonstrations for non-jurisdictional entities as a result of the *Bonneville Decision*.

³⁴ Midway Sunset cites *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 110 FERC ¶ 61,293, at P 55 (2005) (March 18 Order).

LADWP's heat rates were not based on objective third-party evidence was made in connection with the fact that LADWP's heat rate data were not on file with the CAISO. According to LADWP, E&Y found LADWP's heat rate calculations reasonable and performed with professional care. LADWP states that E&Y did not question the validity of its heat rate calculations.

65. In response to the California Parties' contention that LADWP's FCA should be offset by the amount of profit from gas sales and the proceeds from potential litigation against Reliant, LADWP states that the California Parties provide no reasonable explanation for their request that the Commission change the methodology for FCA calculations.

66. Nevada Power argues that with regard to heat rates, the California Parties' conclusions were wrong. According to Nevada Power, E&Y found the source data used to calculate heat rates to be correct and comprehensive and the heat rate calculations to be reasonable and performed with professional care; however, E&Y noted that the heat rates provided by Nevada Power are not based on objective third-party evidence. Nevada Power argues that it followed Commission precedent and used actual and verifiable heat rate data in its FCA calculations and no further validation of these data by a third party is needed.

67. Puget argues that, in its audit report, E&Y raised no substantive issues in regard to Puget's heat rates, and in fact approved of the substantial documentation that Puget provided in support of its heat rates. Puget states that E&Y's sole concern was that the heat rates have not been verified by an independent third party, even though the Commission directed E&Y itself to perform that verification.

68. In response to the California Parties' concern over possible double-counting of gas costs in the FCA claim, Puget states that the Commission has twice rejected the argument that the FCA methodology should account for potential uses of a seller's shortest-term natural gas purchases other than the generation of electricity for sale in the CAISO and PX markets.³⁵

69. In a letter dated December 30, 2005, Sempra states that, contrary to the California Parties' assertions that there are outstanding issues with Sempra's heat rate data, E&Y

³⁵ In support Puget cites March 26 Order at P 61, May 12 Order at P 25, and *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 112 FERC ¶ 61,176, at P 32 (2004) (September 24 Order).

confirmed in a letter to Sempra that the audit report had no unresolved issues. A copy of the letter from E&Y is enclosed with Sempra's filing.

Commission Determination

70. First, we will respond to the California Parties' contention regarding the lack of access to E&Y's working papers, which, in their opinion, denied them an opportunity to review and test the bases for the audit and audit results. The California Parties' argument constitutes a collateral attack on the Commission's prior order. The Commission has already responded to this contention by the California Parties in the September 24 Order when we denied the California Parties' request for an evidentiary hearing to adjudge the FCA claims. Specifically, we stated that:

[t]he bulk of the analysis will entail data verification and review of calculation methodologies that are well suited for independent review under the procedures we have provided, and it may be conducted in a quicker time frame and thus is an appropriate means to promote administrative efficiency and economy. Moreover, the May 12 Order prescribed specific sets of data that each seller must identify in its claims that will lend consistency to the data the auditor will review and will obviate the need for claim-by-claim discovery or data requests. (*footnote omitted*)³⁶

71. We reiterate here that the auditor requirement was established in order to resolve the FCA proceeding in an efficient and equitable manner. E&Y is an independent auditor bound by professional accounting standards; it was appointed by the Commission to perform ministerial functions of reviewing and verifying that the source data used in FCA calculations are correct and comprehensive and that the calculations performed to determine an FCA conform to the Commission's directives. The Commission set explicit guidelines for E&Y to follow and, in addition, provided for an opportunity for parties to raise concerns that they may have regarding the *verified* claims. For these reasons, we find the California Parties' dispute on the basis of the lack of access to be without merit.

72. We also reject the California Parties' request for an evidentiary hearing to examine whether FCA claimants are using the same transactions to claim an offset through a cost filing. There are only two parties who have claimed both an FCA and submitted a cost filing. These parties are Sempra and Puget. Both Sempra and Puget included expected FCA in their accounting of revenues for their cost filings.³⁷

³⁶ *Id.* at P 94.

³⁷ *See* January 26 Order at P 312 and 336.

73. Furthermore, the California Parties state that they incorporate by reference issues raised in E&Y's audit reports, as reflected in the CAISO's November 22, 2005 motion for clarification. In that motion, the CAISO sought the Commission's guidance on exceptions taken in E&Y's audit reports on claims by Burbank, LADWP, Nevada Power, Puget, and Mirant Corporation (Mirant).³⁸ We address the issues raised by the CAISO in regard to the FCA claims by Burbank, LADWP, Nevada Power, and Puget below.³⁹

74. In regard to Mirant's FCA claim, E&Y concluded that it is not possible to verify data included in Mirant's FCA claim.⁴⁰ As we stated in the May 12 Order, all FCA claims must be verified by an independent auditor. Specifically, the auditor, among other things, is to "verify that the source data used in fuel cost calculations are correct and comprehensive."⁴¹ In its audit report, E&Y concluded that certain source data provided by Mirant to support its FCA claim are unverifiable. We note that the audit report at issue here is the second supplemental audit report addressing Mirant's revised FCA claim. E&Y reviewed Mirant's original FCA claim and found it unverifiable. Subsequently, E&Y and Mirant tried to resolve the concerns over the incompleteness of the source data included in Mirant's original FCA claim. Their joint efforts resulted in certain revisions to Mirant's original claim. However, the identified issues remained unresolved and were again raised in E&Y's supplemental audit report.

75. Specifically, E&Y indicates that it is not possible to conclusively link affiliate transactions to third-party transactions included in Mirant's FCA claim. E&Y was also unable to verify the completeness and accuracy of the financial transactions included in Mirant's FCA claim.⁴² In addition, E&Y was unable to determine whether Mirant

³⁸ The following Parties filed answers to the CAISO's motion for clarification: California Parties, LADWP, and Puget.

³⁹ The issues raised in the CAISO's motion for clarification in regard to FCA claims by Burbank, LADWP, Nevada Power, and Puget are identical to the issues raised by the California Parties in their dispute filing.

⁴⁰ The CAISO's Motion for Clarification Concerning the Processing of Fuel Cost Allowance Claims, Attachment A, October 10, 2005 Supplemental Accountants' Report on Fuel Cost Allowance Claim of Mirant Corporation, Docket Nos. EL00-95-045 and EL00-98-069 (November 22, 2005).

⁴¹ *See* May 12 Order at P 14.

⁴² E&Y states that: "Mirant personnel have represented ... that certain hard-copy cannot be located and other necessary electronic files have been compromised by a virus...Mirant was unable to provide ... any additional documentation. Therefore, [E&Y

(continued...)

considered all necessary Canadian gas purchases in its weighted average cost of gas calculations.⁴³ E&Y also found price and quantity discrepancies between the data kept by the CAISO and the information provided by Mirant.

76. We reviewed the issues raised by E&Y in its audit report and find Mirant's FCA claim to contain unverifiable source data. As we stated in the September 24 Order, "if during its review of the claims the independent auditor determines that a filing is inaccurate, incomplete, or not in conformance with our orders, the claim should be found deficient."⁴⁴ Consistent with our ruling in the September 24 Order, we find that, because Mirant's FCA claim is based on unverifiable source data, it is deficient and, therefore, rejected.

77. In response to the California Parties' request to direct the CAISO to continue processing FCA claims by governmental and municipal entities, we note that the United States Court of Appeals for the Ninth Circuit did not stay Commission decisions concerning refunds, nor has it issued its mandate making *Bonneville* final. Accordingly, the Commission must determine the proper allocation of offsets, and move the refund proceeding closer towards completion, as Congress has asked us to do. Accordingly, we direct the CAISO to continue processing FCA claims that have already been submitted by governmental and municipal entities.⁴⁵

78. On the issue of hedging, we reject the California Parties' challenge of Sempra's FCA claim. The California Parties contend that E&Y has failed to identify short-term gas costs associated with hedges that should have been allocated to the longer-term gas

is] unable to conclude whether the financial transaction data in the FCA claim is correct or comprehensive." *See supra* n. 40 at 2.

⁴³ E&Y states that "[it] compared the Canadian physical gas purchases in the FCA claim to Mirant's Canadian general ledger. [E&Y] ha[s] not been able to reconcile the two sets of data due to limitations on the detail of information contained in the general ledger. Therefore, [E&Y is] unable to conclude on whether Mirant has considered all necessary Canadian gas purchases in its weighted average cost of gas calculation." *Id* at 3.

⁴⁴ September 24 Order at P 95.

⁴⁵ Nevertheless, it is important to note that, if governmental entities ultimately have no refund liability, just like any other entity lacking refund liability, they correspondingly have no refund liability to offset and, therefore, no possible FCA offset to allocate to other net refund recipients.

transactions associated with the hedge. We disagree. Contrary to the California Parties' assertion, the May 12 Order did not direct E&Y to test whether a short-term physical transaction was associated with a hedge on a purchase of any length. In the May 12 Order, the Commission rejected the California Parties' proposal that all hedging or other financial instruments should be assigned or allocated to all gas purchases, irrespective of term. Specifically, in that order, we stated that:

...in order to properly account for such transactions, and consistent with assigning short-term gas supplies to spot power sales and proceeding sequentially to the next shortest term supply, we direct generators to allocate gas purchases by the term associated with the underlying hedge.⁴⁶

79. We also reject the California Parties' contention that the test employed by E&Y to determine whether Sempra's hedging or other financial transactions are relevant to the gas purchases reflected in its FCA claim is flawed. The California Parties suggest that E&Y was supposed to test the extent to which gas purchases should be assigned to the hedge. We disagree. E&Y ascertained whether a specific hedge was associated with a specific gas purchase. Having found no correlation of hedges to any gas purchases, E&Y correctly concluded that none of Sempra's hedges or financial transactions are relevant to the gas purchases reflected in its FCA data.

80. Because we find the test employed by E&Y to evaluate Sempra's hedging transactions reasonable, we reject the California Parties' contention that E&Y's test resulted in the omission of swap transactions from the FCA calculations and deny their request to direct Sempra to provide information on all hedging transactions.

81. We also reject the California Parties' challenge of the method used by FCA claimants to account for UE sales when calculating FCA amounts.⁴⁷ In the March 18 Order, we found that "calculation of FCA claims and the allocation of FCA amounts

⁴⁶ See May 12 Order at P 30.

⁴⁷ Dr. Berry states that in FCA submissions, sellers compared the sum of gross UE sales from units for which an FCA is claimed to overall net UE sales in each interval. According to Dr. Berry, if the net uninstructed energy sales volume is greater than or equal to the sum of the gross UE sales volumes from the FCA-eligible units, then the seller makes an FCA claim based on total gross UE sales from the FCA-eligible units. If the net UE sales volume is less than the sum of the gross volumes from the FCA-eligible units, then UE sales volume for an FCA are limited to the net uninstructed energy volume. Dr. Berry argues that this method overstates the FCA claims. See The California Parties' Dispute Filing, Attachment C: Dr. Berry's Declaration, at P.

related solely to uninstructed energy transactions should be performed on a net basis.”⁴⁸ The Commission reasoned that:

[a]s indicated by the CAISO, there is no sales transaction price for positive uninstructed energy from individual units during intervals when the Scheduling Coordinator’s overall portfolio-level uninstructed deviation was negative. Consequently, this energy does not have a specific sales price, and calculating the Scheduling Coordinator’s FCA claim for uninstructed deviations based on a gross approach would not make sense.⁴⁹

82. However, net portfolio-wide UE sales do not necessarily reflect exclusively transactions from FCA-eligible units; net UE sales may include sales from other units as well. In order to ensure that FCA is claimed only for UE sales made from FCA-eligible units, sellers conducted a comparison of gross UE sales from FCA-eligible units to overall net UE sales in each interval. If the net UE sales volume was greater than the total gross number of UE sales from FCA-eligible units, sellers used the gross UE sales volume to calculate FCA amounts because a greater net EU sales volume indicates the presence of UE sales from units that are not eligible for FCA. If, however, the gross UE sales volume was greater than the net UE sales, sellers based their FCA claims on the net UE sales volume.

83. We find that the methodology in question does not overstate FCA claims because it is intended to separate out in FCA calculations UE sales from FCA-eligible units from other UE sales. We therefore find that the methodology in question is reasonable and consistent with our previous directives.

84. We also reiterate that, with one exception discussed below, where parties were not their own Scheduling Coordinators in the CAISO and PX markets, an FCA may not be recovered.⁵⁰ Accordingly, the claims from Burbank and Redding, for example, are disallowed to the extent they were not Scheduling Coordinators for themselves in the CAISO and PX markets, and will not be processed by the CAISO.⁵¹ However, sellers who operated in APX and have joint and severable liability with regard to refunds owed

⁴⁸ March 18 Order at P 37.

⁴⁹ *Id.*

⁵⁰ September 24 Order at P 95. The Commission specifically noted that Burbank’s sales through its Scheduling Coordinator, Sempra, were not eligible for an FCA.

⁵¹ *Id.*

to the California markets are eligible to claim an FCA. APX sellers, unlike other sellers that were required to operate through Scheduling Coordinators, have a refund liability and thus should be afforded the same opportunity to demonstrate that their gas purchases were greater than what is received through the MMCP. Accordingly, Midway Sunset's FCA claim must be processed by the CAISO.

85. We also reject the California Parties' contention regarding the lack of heat rate data. In the March 18 Order, the Commission allowed sellers whose heat rates were not on file with the CAISO during the Refund Period to use their own actual and verifiable incremental heat rate data to calculate their FCA claims.⁵² However, we further required that incremental heat rate data not on file with the CAISO must be verified by the independent auditor.⁵³ We also stated that "[i]f such data cannot be verified, sellers must use heat rate data from a comparable unit on file with the CAISO."⁵⁴

86. LADWP's, Nevada Power's, Puget's, and Sempra's heat rate data were not on file with the CAISO. For this reason, the heat rate data used by these sellers in their FCA calculations had to be verified by E&Y in accordance with the March 18 Order directives. E&Y performed verification of source documentation of heat rate data provided by these sellers and concluded that the source data are correct and comprehensible and that heat rate calculations appear reasonable and were performed with professional care. E&Y, however, noted in its reports that the data provided were not based on objective third-party evidence, which simply acknowledges the fact that no heat rate data were kept on file with the CAISO. To address the lack of heat rate data on file with the CAISO, the Commission permitted sellers to use in their FCA calculations actual heat rate data as long as the data are verified by E&Y. It was the March 18 Order's intention to allow, in the absence of the CAISO's records, verification of the heat rate data through corroborative business records and other evidence. As E&Y reports, it reviewed the source documentation for heat rates used by each of the sellers at issue and examined the heat rate calculations, and found them acceptable. E&Y and the FCA claimants at issue complied with the March 18 Order directives and no further validation of their heat rate data is necessary.

87. We also reject the California Parties' objections to LADWP's and Nevada Power's FCA claims on the ground of a potential double-counting of gas costs. We agree with LADWP and Nevada Power that the California Parties have failed to provide any

⁵² March 18 Order at P 21.

⁵³ *Id.*

⁵⁴ *Id.*

support for its request that the Commission reverse its prior determination that gas sales should not be used to offset FCA. As we stated in the September 24 Order:

California Parties incorrectly assume that the gas provided in a spot sale must be the same gas that was originally obtained from a spot purchase. Consistent with our principle of marginal purchase, however, gas from a spot purchase is *not* the same gas that was sold in the spot market to the extent that the spot gas purchased was needed to make a mitigated electricity sale to the ISO or PX.⁵⁵

88. We also reject the California Parties' request for an evidentiary hearing to examine whether any of Sempra's affiliates conducted gas transactions used to serve generation that was then sold by Sempra into California. The California Parties appear to suggest that Sempra failed to mention that some of the gas purchases included in its FCA calculations were affiliate transactions. The California Parties, however, fail to identify the transactions which they find suspicious and do not provide grounds for their suspicions. Sempra's claim was verified by E&Y and attested to by Sempra's company official pursuant to our directives in the May 12 Order. We therefore find no grounds for establishing an evidentiary hearing to examine the omission of affiliate transaction from Sempra's FCA claim.

89. Finally, we reject the California Parties' disputes regarding the emission costs offsets and cost offsets. The California Parties state that they incorporate by reference the arguments made in their comments submitted in the cost filing proceeding and their rehearing request of the Commission's order addressing the emissions costs offset claims. We do not address arguments incorporated by reference from filings submitted in other proceedings. Such an incorporation of arguments by reference places the Commission in the untenable position of determining which arguments are still relevant following the issuance of a Commission order on the issues. Further orders were issued in both the emissions costs offset proceeding and cost filing proceeding, which means that the California Parties' arguments have been addressed in those proceedings.⁵⁶ For these

⁵⁵ See September 24 Order at 32.

⁵⁶ For example, the California Parties' objections to ML Commodities' cost filings has been rendered moot by our rejection of that cost filing in the January 26 Order. See January 26 Order at P 152.

reasons, we will not consider the arguments the California Parties seek to incorporate by reference here.⁵⁷

The Commission orders:

(A) APX and PX are hereby directed to correct certain errors in their refund calculations, as discussed in the body of this order.

(B) Calpine's dispute is hereby rejected as moot, as discussed in the body of this order.

(C) APX Sellers' dispute is hereby accepted in part and rejected in part for the reasons discussed in the body of this order.

(D) PG&E's dispute is hereby accepted for the reasons discussed in the body of this order.

(E) Powerex's dispute is hereby rejected for the reasons discussed in the body of this order.

(F) Commission action on Puget's dispute is hereby held in abeyance pending the outcome of Puget and the CAISO's discussions; Puget and the CAISO are hereby directed to file a progress report within 15 days of the date of issuance of this order and every 15 days thereafter. Puget and the CAISO are hereby directed to file their final positions on any remaining data issues no later than five days after the date of submission of the last progress report.

(G) Portland General's dispute is hereby rejected for the reasons discussed in the body of this order.

(H) NCPA's and SVP's disputes are hereby rejected for the reasons discussed in the body of this order.

(I) The California Parties' dispute is accepted in part and rejected in part, as discussed in the body of this order.

(J) The CAISO is hereby directed to continue processing FCA claims that have been submitted by governmental and municipal entities.

⁵⁷ *City of Santa Clara v. Enron Power Marketing*, 112 FERC ¶ 61,280, at n.4 (2005).

(K) Mirant's, Burbank's, and Redding's FCA claims are hereby rejected for the reasons discussed in the body of this order.

By the Commission. Commissioner Spitzer not participating.

(S E A L)

Magalie R. Salas,
Secretary.