

127 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, and Philip D. Moeller.

California Independent System Operator Corporation Docket Nos. ER03-746-000

San Diego Gas & Electric Company EL00-95-074

EL00-95-081

v.

EL00-95-086

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

Investigation of Practices of the California Independent
System Operator Corporation and the California Power
Exchange Corporation

EL00-98-062

EL00-98-069

EL00-98-073

ORDER GRANTING MOTION FOR CLARIFICATION

(Issued May 27, 2009)

1. In this order, we grant a motion for clarification by the California Independent System Operator Corporation (CAISO) regarding the CAISO's calculation of refunds related to transactions in the markets operated by the CAISO and the California Power Exchange Corporation (PX) during the period October 2, 2000 through June 20, 2001 (the California Refund Proceeding). Specifically, we clarify that the CAISO appropriately included interest on adjustments made as part of the preparatory rerun that affected transactions during the period from October 2, 2000 through June 20, 2001 (the Refund Period). Finally, consistent with the Commission's decision that the fuel cost allowance should not result in generators being paid more than the market clearing price (MCP),¹ we also clarify that a seller cannot recover more than its MCP during settlement intervals in the Refund Period as a result of its fuel cost allowance.

¹ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 107 FERC ¶ 61,166, at P 55 (2004) (*Fuel Cost Order*). The MCP is determined by the actual supply

(continued ...)

Background

2. The background of this long and complex proceeding has been described in previous orders.² Thus, only the relevant background details are described briefly here.

3. On July 25, 2001, the Commission issued an order that established the scope and methodology for calculating refunds related to transactions in the markets operated by the CAISO and the PX during the Refund Period.³ The *July 25 Order* also initiated formal evidentiary proceedings to further develop the record with regard to the implementation of the mitigated market clearing price (MMCP) methodology and a determination of what refunds were owed.⁴ The Commission directed the CAISO and PX to rerun their settlement billing processes (preparatory rerun), which consisted of performing a number of adjustments in order to create an accurate set of baseline data regarding Refund Period transactions.⁵

4. Since the issuance of the *July 25 Order*, the Commission has been developing and refining the procedure for calculating the refunds. On March 26, 2003, the Commission issued an order which, among other things, changed the methodology for calculating the

and demand bids into the CAISO and PX markets during the Refund Period. *See, e.g., San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 101 FERC ¶ 63,026, at 65,190 (2002).

² *See, e.g., San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 96 FERC ¶ 61,120 (*July 25 Order*), *order on clarification and reh'g*, 97 FERC ¶ 61,275 (2001); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 102 FERC ¶ 61,317 (*March 2003 Order*), *order on reh'g*, 105 FERC ¶ 61,066 (2003); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 109 FERC ¶ 61,218 (2004); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 103 FERC ¶ 61,078 (2003).

³ *July 25 Order*, 96 FERC ¶ 61,120 at 61,516-61,519, *order on clarification and reh'g*, 97 FERC ¶ 61,275 (2001).

⁴ *Id.* at 61,519-20.

⁵ *Id.*

MMCP for the Refund Period.⁶ In recognition of the fact that the revised methodology would tend to reduce the MMCP and could potentially reduce it below sellers' actual fuel costs, the Commission provided sellers with the opportunity to submit claims for a fuel cost allowance to recover the difference between their actual fuel costs for mitigated sales and the proxy for gas prices used in calculating the MMCP. The March 2003 Order also provided guidance as to how to assign actual fuel costs to the mitigated transactions.

5. On May 12, 2004, the Commission issued an order further clarifying the method for calculating refunds. In that order, the Commission approved the CAISO's method of assessing interest.⁷ Specifically, the CAISO stated that it would assess interest on all unpaid amounts and on all overcharges, then net all interest amounts owed and owing to arrive at a final amount of interest that is either owed to or by a Scheduling Coordinator.⁸ The Commission allowed the CAISO's to utilize its proposed interest calculation process, modified to allocate interest mismatches *pro rata* between debtors and creditors.⁹

6. Also on May 12, 2004, the Commission issued an order addressing fuel cost allowance issues.¹⁰ One of the issues addressed was whether the fuel cost allowance would be available during all intervals in which a unit is mitigated, including the soft cap period. Specifically, a party sought clarification that excess fuel costs are recoverable during all instances in which a unit is mitigated, even if the MMCP is greater than the MCP.¹¹ The party pointed out that, due to the existence of soft-caps in the CAISO markets, there are intervals in which a unit will be mitigated even though the MCP was lower than the MMCP.¹² In response, the California Parties requested a condition be included that clarified that for all intervals of the Refund Period, regardless of whether there was a soft cap in effect, the fuel cost allowance should not result in generators

⁶ *March 2003 Order*, 102 FERC ¶ 61,317, *order on reh'g*, 105 FERC ¶ 61,066 (2003).

⁷ *San Diego Gas & Elec. Co.*, 107 FERC ¶ 61,165 (2004) (*Refund Calculation Order*).

⁸ *Id.* P 28.

⁹ *Id.* P 31.

¹⁰ *Fuel Cost Order*, 107 FERC ¶ 61,166 (2004).

¹¹ *Id.* P 57.

¹² *Id.*

recovering more than the MCP.¹³ The Commission granted the proposed clarification and also agreed to impose the condition requested by the California Parties.¹⁴

7. On November 13, 2008, the CAISO filed its motion for clarification, requesting that the Commission clarify that the CAISO properly 1) included interest on adjustments made as part of the preparatory rerun that affected transactions during the Refund Period, and 2) excluded from fuel cost offset allocations those fuel costs that exceeded a claimant's MCP.¹⁵ On November 26, 2008, the California Parties¹⁶ filed an answer in support of the CAISO's motion for clarification. No other answers were filed.

Motion for Clarification

1. Interest on Preparatory ReRun Adjustments

8. The CAISO concludes that it should assess interest on preparatory rerun adjustments that affect transactions entered into during the Refund Period. The CAISO explains that since the preparatory rerun adjustments were made over four years ago and it is still unknown when those amounts will be invoiced, entities that owe money to market participants as a result of the adjustments will have had the benefit of having those amounts for a substantial amount of time, while entities that are owed have been unable to utilize those amounts.

9. The CAISO states that the Commission's policy of requiring interest on both refunds and unpaid amounts suggests that the Commission intended that interest be assessed based on each party's overall position with respect to Refund Period

¹³ *Id.* P 58.

¹⁴ *Id.* P 59.

¹⁵ We note that while the CAISO had previously discussed the interest issue in a Status Report, those reports are only informational filings and the correct procedural method to present an issue to the Commission for formal consideration is in a motion that permits all parties to respond. Thus, the CAISO's motion for clarification is the appropriate procedural vehicle to allow us to consider this issue.

¹⁶ For purposes of the comments, the California Parties are, collectively, Pacific Gas and Electric Company, Southern California Edison Company, the People of the State of California *ex rel.* Edmund G. Brown, Jr., Attorney General, and the California Public Utilities Commission.

transactions, and that interest should be assessed on the preparatory rerun adjustments in order to be consistent with that approach.¹⁷

2. Exclusion of certain fuel costs

10. On October 16, 2003, the Commission issued the first of several orders addressing the allocation of the fuel cost allowance.¹⁸ The Commission has continued to clarify the refund calculation process.¹⁹ Since the issuance of the *July 25 Order*, the CAISO has performed numerous calculations to implement various aspects of the refund methodology, including calculations related to adjustments such as the fuel cost allowance.

11. In conjunction with its calculation of the fuel cost allowances, the CAISO requests that the Commission clarify that the CAISO properly excluded from fuel cost offset allocations those fuel costs that exceeded a seller's MCP. The CAISO states that in the *Fuel Cost Order*, the Commission accepted the California Parties' request for clarification that, regardless of whether there was a soft cap in effect during particular intervals in the Refund Period, the fuel cost allowance should not result in generators recovering more than the MCP.²⁰ The CAISO states that, based on this directive, it ran a check on its fuel cost data and determined that the fuel cost allowances for 10 claimants needed to be reduced by \$1.7 million in order to comply with the *Fuel Cost Order*.²¹ The CAISO requests that the Commission clarify that the CAISO acted appropriately in reducing fuel costs claims pursuant to Paragraph 55 of the *Fuel Cost Order*.

¹⁷ The CAISO cites to the *July 25 Order*, 96 FERC ¶ 61,120 at 61,519, *San Diego Gas & Elec. Co.*, 97 FERC ¶ 61,275, at 62,233 (2001) and *San Diego Gas & Elec. Co.*, 121 FERC ¶ 61,188 (2007).

¹⁸ *San Diego Gas & Elec. Co.*, 105 FERC ¶ 61,066 (2003).

¹⁹ See, e.g., *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 115 FERC ¶ 61,171 (2006).

²⁰ The CAISO cites to *Fuel Cost Order*, 107 FERC ¶ 61,166 at P 55.

²¹ The CAISO states that it explains the fuel cost allowance reduction in its 38th Status Report on Rerun Activity, Docket Nos. ER03-746-000, *et al.* (September 7, 2007); see also Answer to California Independent System Operator Corporation's Status Report of Williams Power Company, Inc., Docket Nos. ER03-746-000, *et al.* (November 27, 2007).

The California Parties' Response

12. On November 26, 2008, the California Parties filed comments in support of the CAISO's motion for clarification, stating that they agree with the inclusion of interest on adjustments arising from the preparatory rerun process and support the CAISO's proposed disposition of excess fuel cost adders. The California Parties also list a number of other outstanding issues that they claim the Commission must address before the refund proceeding can be resolved.

Discussion

13. We will grant the clarifications requested by CAISO. First, we clarify that the CAISO appropriately included interest on the preparatory rerun adjustments. We accept the CAISO's assertion that inclusion of interest on the preparatory rerun adjustments, where those adjustments affected transactions made during the Refund Period, is appropriate. We agree that the calculation of and dispute process for these preparatory adjustments have become entwined with the refund calculation process. Also, we note that the Commission has at each step in the refund process included interest on amounts owed. Therefore we agree that the CAISO's proposal to include interest on the preparatory rerun adjustments is consistent with our prior orders regarding the application of interest amounts.²² Finally, we note that no party opposes the CAISO's interest proposal.

14. We also clarify that the CAISO acted appropriately when it excluded from fuel cost offset allocations those fuel costs that exceeded a claimant's pre-mitigated amount. In the *Fuel Cost Order*, the Commission agreed that, for all intervals of the Refund Period, the fuel cost allowance should not result in generators recovering more than the pre-mitigated amount.²³

15. Finally, the California Parties raised a variety of issues which they claim the Commission still needs to resolve. The issues raised by the California Parties are outside the scope of the CAISO's original motion for clarification. Therefore, we will not address those issues in this order.

²² See, e.g., *July 25 Order*, 96 FERC ¶ 61,120 at 61,519 (the Commission directed the calculation of interest on both refunds and receivables past due).

²³ *Fuel Cost Order*, 107 FERC at ¶ 61,166 at P 58-59.

The Commission orders:

The CAISO's motion for clarification is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.