

112 FERC ¶ 61,344

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

San Diego Gas & Electric Company,
Complainant,

Docket No. EL00-95-000

v.

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

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

Docket No. EL00-98-000

ORDER GRANTING MOTION TO COMPEL AND ESTABLISHING SCHEDULE
FOR FILING COMMENTS ON COST ALLOCATION METHODOLOGY

(Issued September 28, 2005)

1. On August 8, 2005, the Federal Energy Regulatory Commission (Commission) issued the Order on Cost Recovery, Revising Procedural Schedule for Refunds, and Establishing Technical Conference.¹ Commission staff subsequently convened a technical conference on August 25, 2005, to finalize the template for cost filing submissions. This order: (1) grants a motion to compel production of cost filing data in native format, as was filed with the Commission; and (2) establishes a schedule for filing comments on the appropriate allocation methodology for offsetting approved costs from refunds.

¹ San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, 112 FERC ¶ 61,176 (2005).

Motion to Compel Production of Data in Native Format

2. On September 23, 2005, the California Parties² filed a Motion to Compel Coral Power L.L.C. (Coral) to Provide Cost Filing Data in Native Format and Request for Expedited Treatment. Specifically, California Parties asks the Commission to direct Coral to provide immediately to California Parties in native (manipulable) format all data supporting Coral's cost filing that have not yet been provided in native format, especially 117,500 rows of data in Tables V-XI of Coral's filing. California Parties state that, while they have received such information as scanned documents in Adobe Portable Document Format (PDF), they need all data supporting Coral's cost filing in native format to review effectively Coral's claimed \$18 million cost offset by the October 11, 2005 deadline for filing comments on cost filings. California Parties assert that Coral filed its data with the Commission in native format on September 14, 2005, but, despite California Parties' requests, Coral has refused to give California Parties the same data in native format. In addition, given the impending comment deadline and the need to have data in native format for evaluation purposes, California Parties ask the Commission to expedite treatment of the motion and act without waiting to receive answers. On September 23, 2005, Coral filed a Notice of Intent to file an answer to California Parties' motion. On September 26, 2005, Coral answered California Parties' motion, stating that: Coral is not obligated to provide its work papers to California Parties in native format; Coral is in full compliance with the August 8 Order; California Parties fail to justify why they need the data in native format; the request is an improper attempt to conduct discovery on Coral's cost filing; and the Commission should reject the motion as an out-of-time rehearing request. On September 27, 2005, California Parties replied to Coral's answer.

3. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept California Parties' answer and will, therefore, reject it.

4. We grant California Parties' motion to compel, and direct Coral to provide California Parties with all data supporting Coral's cost filing in native format as soon as practicable; in any event, by Friday, September 30, 2005. Coral provided the Commission with data in both manipulable as well as PDF format, and the Commission's service rule entitles each party to receive a copy of whatever was filed with the Commission, unless there are confidentiality concerns, which are not applicable here. 18 C.F.R. § 385.2010 (2005). In addition, we note that California Parties' motion to

² The California Parties are the People of the State of California, *ex rel.* Bill Lockyer, Attorney General; the California Electricity Oversight Board; the California Public Utilities Commission; Pacific Gas & Electric Company; and Southern California Edison Company.

compel cannot be considered an improper discovery request concerning Coral's cost filing. California Parties seek no data beyond that which the August 8 Order required Coral to submit in connection with its cost filing, and which Coral did, in fact, submit to the Commission, in native as well as PDF format.

Procedural Schedule for Submission of Comments on Cost Allocation Issues

5. On August 19, 2005, the California Parties filed a Motion for Expedited Clarification Related to Cost Filings and Request for Shortened Answer Period. Among other requests, California Parties ask the Commission to set a procedural schedule to allow comments on the proper methodology for allocating the cost offsets from refunds, for those costs that the Commission determines, upon evaluation of the cost filings, merit recovery. California Parties also submit their proposed timetable for submission of comments. On August 24, 2005, the California Independent System Operator (CAISO) filed a Request for Clarification and Motion for Adoption of Procedures of the California Independent System Operator, proposing an alternative timetable for comments on the cost allocation issue. On August 31, 2005, in response to the CAISO's proposed timetable, the California Parties revised their initial proposal, asking the Commission to make cost allocation comments due on October 20, 2005, with reply comments due November 1, 2005. On September 6, 2005, the Competitive Supplier Group (CSG)³ filed an answer to the CAISO's motion, addressing both the CAISO's and California Parties' proposed timetables for the submission of comments on cost allocation issues. CSG states that it opposes both the CAISO's proposed timetable and the California Parties' revised timetable. CSG supports the California Parties' initial proposal, which would require submission of cost allocation comments by September 28, 2005. In the alternative, CSG requests the Commission to make initial comments due October 31, 2005, and reply comments due November 7, 2005, so that sellers have sufficient time after submitting reply comments on cost filings to prepare cost allocation comments.

6. The Commission will grant the request to establish a schedule for filing comments on the appropriate methodology for allocating any approved cost offsets from refunds. We recognize that any allocation methodology will impact refunds, and that these allocations may have become increasingly complicated due to the Ninth Circuit's recent decision in *Bonneville Power Administration v. Federal Energy Regulatory Commission*, No. 02-7062, *et al.*, Slip Op. at 12271 (9th Cir. September 6, 2005) (holding that the Commission lacks refund authority over wholesale electric energy sales made by governmental entities). Balancing the need for parties to have sufficient time to prepare

³ CSG is comprised of: Constellation Energy Commodities Group, Inc.; Coral Power, L.L.C.; IDACORP Energy LP; Public Service Company of New Mexico; TransAlta Energy Marketing (CA) Inc. and TransAlta Energy Marketing (US) Inc.; Portland General Electric Company; Avista Energy, Inc.; and Puget Sound Energy, Inc.

meaningful comments on this issue with the Commission's task of completing the refund proceeding as expeditiously as possible, we will adopt the following comment schedule: Comments are due October 31, 2005; Reply comments are due November 7, 2005.

The Commission orders:

(A) California Parties' motion to compel production of data in native format is granted. Coral must provide the outstanding data as soon as practicable, by September 30, 2005, at the latest.

(B) Comments on the appropriate methodology for allocating approved cost offsets from refunds are due October 31, 2005, and reply comments are due November 7, 2005.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.