

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company	Docket Nos. EL00-95-000, 139, 140, 141, 142, 143, 144, 146, 147, 148, 149, 150, 152, 153, 154, 156, 157, 158, 159, 160, 161, and 162
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v.

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

Investigation of Practices of the California Independent System Operator and the California Power Exchange	Docket Nos. EL00-98-000, 125, 126, 128,129, 130, 131, 132, 133, 134, 135, 136, 137, 139, 140, 141, 143, 144, 145, 146, 147, 148, and 149
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ORDER APPROVING MOTION TO COMPEL RELEASE OF DATA

(Issued September 14, 2006)

1. On March 29, 2006, the California Parties¹ filed a Motion to Compel APX, Inc. to Provide Data (Motion), requesting that the Commission direct APX, Inc. (APX) to provide the California Parties with the complete set of APX settlement data for the

¹ For purposes of this motion, 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, Southern California Edison Company, and the Pacific Gas & Electric Company.

October 2, 2000 through June 20, 2001 Refund Period (APX Settlement Data).² The California Parties state that they need the APX Settlement Data to adequately analyze APX market participants'³ modified cost filings claiming cost-based offsets to refunds.

2. In this order, we grant the California Parties' Motion and order APX to release the specified data within five (5) business days of the date this order is issued.

Notice and Responsive Pleadings

3. On April 3, 2006, APX filed an answer in response to the California Parties' Motion requesting the Commission to order APX to provide the California Parties with the APX Settlement Data.

The California Parties' Motion

4. In their Motion, the California Parties state that APX's refusal to provide them with the full set of APX Settlement Data prevents the California Parties from adequately analyzing the APX market participants' modified cost filings claiming cost-based offsets to refunds. The California Parties contend that, on February 27, 2006, pursuant to the Commission's January 26, 2006 Order on Cost Filings⁴, APX provided the requested data to the APX market participants, and informally submitted the data to the Commission with a request for privileged treatment. The California Parties assert that APX market participants submitted modified cost filings based on the received data. After attempting to obtain the requested data informally through APX's counsel, the California Parties state that APX refused to provide them with the full set of APX Settlement Data in the absence of a Commission order so requiring. Pointing to the Commission's *January 26 Order* in which, according to the California Parties, the Commission recognized the APX Settlement Data as essential to analyses of APX market participant cost filings, the California Parties request the Commission to order the release of the complete set of APX settlement data for the October 2, 2000 through June 20, 2001 Refund Period.

² On August 2, 2006, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) issued its decision concerning the scope of refunds in this proceeding. *Pub. Utils. Comm'n of California v. FERC*, 2006 U.S. App. LEXIS 19476 (9th Cir. Aug. 2, 2006) (*CPUC*).

³ APX market participants include Avista Energy, Inc. (Avista), Tractebel Energy Marketing, Inc. (Tractebel), and TransAlta Energy Marketing, Inc. (TransAlta).

⁴ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 114 FERC ¶ 61,070 at P 389 (2006), *reh'g pending* (*January 26 Order*).

Confidentiality Issues

5. The California Parties state that their agreement to treat the APX Settlement Data as “protected materials” subject to the Protective Order⁵ in these proceedings should adequately address APX’s concerns about publicly releasing data protected under the confidentiality clauses of contracts with their market participants. The California Parties contend that the Protective Order is sufficient to provide APX with protection from public disclosure and that the Commission should direct APX to release the APX Settlement Data to the California Parties subject to the Protective Order adopted in these proceedings.

Answers

6. APX does not object to the Commission requiring it to release the data specified by the California Parties and will comply with a Commission order directing it to provide to the California Parties a copy of the APX Settlement Data tendered to the Commission Staff on February 27, 2006, provided that each party receiving the data is bound by the Protective Order in these Proceedings.

Commission Determination

7. We find that the specified data is necessary to allow the California Parties to analyze APX market participants’ cost filings. As the information has already been compiled and provided to APX market participants, and informally to the Commission, the Commission finds that requiring APX to provide the APX Settlement Data to the California Parties will impose no undue burden on APX. We therefore order APX to release the specified data within five (5) business days of the date this order is issued.

8. We also find persuasive the parties’ discussions regarding placing confidentiality protections on the released data. Therefore, the data released shall be subject to the following restriction: the APX Settlement Data shall be made available only to those parties who have signed the Protective Order applicable to this proceeding, and the released data shall remain subject to that Protective Order until further notice by this Commission.

⁵ *Order Concerning APX Discovery Concern and Procedures for Discovery Controversies*, Docket Nos. EL00-95-045 & EL00-98-042 (July 23, 2002) (Birchman, J.) (Birchman Order).

The Commission orders:

(A) The California Parties' motion for release of APX Settlement Data is granted, as discussed in this order.

(B) APX shall release the specified data, as discussed in this order, within five (5) business days of the date this order is issued and subject to the restriction set forth herein.

By the Commission. Commissioner Spitzer not participating.

(S E A L)

Magalie R. Salas,
Secretary.