

136 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services	Docket Nos. EL00-95-244 EL00-95-000 EL00-95-245
Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange	EL00-98-000 EL00-98-228 EL00-98-229
California Independent System Operator Corporation	ER03-746-000 ER03-746-025

ORDER ACCEPTING COMPLIANCE FILINGS
AND PROVIDING GUIDANCE

(Issued July 15, 2011)

1. In this order, the Commission accepts the preparatory rerun compliance filings submitted by the California Independent System Operator Corporation (CAISO) and California Power Exchange Corporation (CalPX). In addition, the order responds to a request by CalPX for Commission guidance on several issues related to the finalization of refund calculations.

I. Background

2. On March 26, 2003, the Commission issued an order in the California refund proceeding clarifying the method for calculating refunds for purchases made in the CAISO and CalPX spot markets during the period from October 2, 2000 through June 20, 2001 (Refund Period).¹ In that order, the Commission directed CAISO and CalPX to make certain adjustments to their respective refund calculations and to

¹ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 102 FERC ¶ 61,317 (2003) (March 26, 2003 Order).

commence a final rerun of their settlements and billing systems in order to apply the Commission-mandated refund methodology. In order to comply with the directives of the March 26, 2003 Order, CAISO filed the proposed Amendment No. 51 to its tariff, which would facilitate the performance of a number of preparatory reruns and adjustments prior to the final rerun of its settlements and billing system.² The purpose of the preparatory rerun adjustments is to establish the baseline pre-mitigation amounts that are necessary for the refund reruns that calculate the results of applying the refund methodology. Preparatory adjustments addressed by Amendment No. 51 included, among other things, correcting under-reported meter data, implementing the effect of settlements, implementing corrections related to energy exchange transactions entered into with other control areas during the Refund Period, and “walling off” the invoicing and settlement process for the preparatory rerun from the process that is used to clear the current CAISO markets.³ The Commission accepted Amendment No. 51 in an order issued November 14, 2003.⁴ On rehearing of the November 14, 2003 Order, the Commission required CAISO to report on the status of the preparatory rerun on a monthly basis.⁵

3. On October 6, 2004, CAISO filed a preparatory rerun with the Commission in which CAISO explained the process for making the preparatory rerun adjustments and the interactions it had with market participants during the process, including the process for resolving disputes and verifying results of the preparatory rerun. In addition, CAISO described several other adjustments it made as part of the preparatory rerun process that were not part of the Amendment No. 51 filing. CAISO requested that the Commission treat the report as informational only, and defer ruling on the preparatory rerun until the Commission ruled on CAISO’s final refund rerun compliance filing, so that the Commission would have a complete picture of all the adjustments made and to enable CAISO to make any required modifications as whole, rather than piecemeal.⁶

² CAISO April 15, 2003 Filing in Docket No. ER03-746-000.

³ *Id.* at 2-3.

⁴ *Cal. Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,203 (2003) (November 14, 2003 Order).

⁵ *Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,099 (2004).

⁶ CAISO April 16, 2010 Compliance Report in Docket No. EL00-94-245, *et al.*, at 8-9 (CAISO Compliance Filing); *see also* CAISO October 6, 2004 Compliance Report in Docket No. ER03-746-000 at 3-4.

4. In a separate, but related, refund proceeding, upon remand from the decision of the Court of Appeals for the Ninth Circuit in *Bonneville Power Admin. v. FERC*,⁷ the Commission found that it could not require governmental entities to pay refunds and concluded that non-jurisdictional entities should receive the remaining past due amounts related to sales they made during the Refund Period.⁸ However, the Commission noted that any disbursement of unpaid amounts had to be adjusted based on preparatory rerun data and directed CAISO and CalPX to complete their respective refund calculations including all entities that participated in the CAISO/CalPX markets during the refund period.⁹ On rehearing the Commission clarified that it would not direct the disbursement of unpaid amounts owed to non-public utilities until the Commission: (1) approved compliance filings submitted by CAISO and CalPX that reflect preparatory rerun adjustments, including dispute resolution matters; and (2) ruled on filings by entities seeking designation as a non-public utility.¹⁰

5. On April 16, 2010, CAISO filed its updated compliance report concerning preparatory rerun activity. CAISO states that it filed its compliance report to allow the Commission to proceed with the disbursement it directed in those orders.¹¹ CalPX submitted its compliance filing on May 4, 2010. CalPX states that it submits its report in compliance with the October 19, 2007 and November 20, 2008 Orders, but also requests additional Commission guidance concerning the payment of past due principal amounts to non-public utilities.¹² On October 6, 2010, CalPX submitted a supplemental compliance filing.¹³

⁷ 422 F.3d 908 (9th Cir. 2005) (*Bonneville*).

⁸ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 121 FERC ¶ 61,067, at P 42, 57-59 (2007) (*Bonneville Remand Order*).

⁹ *Id.* P 57.

¹⁰ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 125 FERC ¶ 61,214, at P 27 (2008) (*Bonneville Remand Rehearing Order*). The Commission issued its order regarding which entities are non-public utilities for purposes of sales made in the CAISO and PX markets during the Refund Period on December 18, 2008, 125 FERC ¶ 61,297 (2008).

¹¹ CAISO Compliance Filing at 9.

¹² CalPX May 4, 2010 Filing in Docket Nos. EL00-95-224 and EL00-98-228 at 1-2 (CalPX Compliance Filing).

¹³ On March 11, 2011, Commissioner Cheryl A. LaFleur issued a memorandum to
(continued)

II. Notice and Responsive Pleadings

6. Notice of the CalPX filing was published in the *Federal Register*, 75 Fed. Reg. 27338 (2010), with comments due on or before May 25, 2010. On April 30, 2010, Indicated Public Entities filed a motion to establish a shortened period for the CAISO Compliance Filing, requesting a comment date of May 7, 2010. On May 7, 2010, the California Parties (Cal Parties)¹⁴ filed a motion requesting a June 18, 2010 comment date for both the CAISO and CalPX filings. On May 11, 2010, Indicated Public Entities¹⁵ filed an answer opposing Cal Parties' request for a June 18, 2010 comment date and urged the Commission to establish a May 25, 2010 comment date for both compliance filings. On May 13, 2010, Cal Parties submitted a request for an expedited ruling on its motion for a June 18, 2010 comment date. That same day, the Commission issued a notice granting Cal Parties' motion and establishing a June 18, 2010 comment date for both the CAISO and CalPX preparatory rerun compliance filings. Timely comments on the CAISO and CalPX compliance filings were submitted by: (1) Cal Parties; (2) Indicated Public Entities; and (3) jointly by Avista Energy, Inc., MPS Merchant Services, Inc.,¹⁶ and Shell Energy North America (US) L.P. (collectively, Avista). Indicated Public Entities and CAISO submitted reply comments.

7. Notice of CalPX's supplemental compliance filing was published in the *Federal Register*, 75 Fed. Reg. 63167 (2010), with comments due on or before October 27, 2010. Cal Parties submitted timely comments on this filing.

the file in sixty dockets, including Docket No. EL00-95, documenting her decision, based on a memorandum from the Office of General Counsel's General and Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

¹⁴ The California Parties are the People of the State of California *ex rel.* Edmund G. Brown Jr., Attorney General, the California Public Utilities Commission, Pacific Gas and Electric Company (PG&E), and Southern California Edison Company (SoCal Edison).

¹⁵ Indicated Public Entities are the Cities of Burbank, Glendale, Pasadena and Santa Clara, California; the Modesto Irrigation District; the Sacramento Municipal Utility District; Turlock Irrigation District; and Arizona Electric Power Cooperative, Inc.

¹⁶ MPS Merchant Services, Inc. notes that it was formerly known as Aquila Power Corporation.

III. Discussion

A. Compliance Filings

1. CAISO Compliance Filing

8. In its compliance filing, CAISO explains that the process used for making adjustments during the preparatory rerun can be found on its website and has been attached to the instant filing. CAISO states that subsequent to the filing of its original preparatory rerun compliance filing on July 16, 2004, it has resolved several disputes which required adjustments to balances due, and corrected several errors or omissions detected in the rerun data distributed to market participants. CAISO states that it has provided the revised settlement statements and associated settlement detail files directly to market participants. CAISO notes, however, that because of the detailed nature of this data, consisting literally of millions of individual transaction records, it has provided the Commission with a spreadsheet that displays the financial impact of the preparatory rerun for each scheduling coordinator, rather than including individual settlement records.¹⁷

9. CAISO explains in detail the interaction it had with market participants during the rerun process to ensure an open and transparent process. Specifically, CAISO discusses the various tools it used to communicate and coordinate with market participants during the preparatory rerun process, including market notices, the provision of settlement statements and settlement detail files, the posting of process manuals on its website, maintaining a calendar of important preparatory rerun dates, conference calls with market participants, regular status reports to the Commission, participating in other conferences regarding the preparatory rerun process, and engaging in dispute processing and resolution.¹⁸ CAISO provides additional details regarding its dispute resolution process and internal verification procedures.¹⁹

10. CAISO asserts that during the preparatory rerun process, it became necessary to make adjustments related to issues that had not been previously contemplated and were not included in the Amendment No. 51 proceeding. Specifically, these adjustments address the following issues: (1) a \$177,000 settlement with the California Department of Water Resources (CDWR) for trade date December 8, 2000; (2) the settlement of

¹⁷ CAISO Compliance Filing at 10-12. These spreadsheets show the net adjustment to each scheduling coordinator's invoice amount for each month covered by the preparatory rerun. *See* Exhibits CPX-A, B and C.

¹⁸ *Id.* at 12-16.

¹⁹ *Id.* at 16-17.

instructed energy relating to certain out-of-market dispatches that were originally paid incorrectly; (3) the correction of overpayments relating to certain out-of-market or out-of-sequence transactions; (4) the correction of certain out-of-market and reliability-must-run records; and (5) corrections for certain energy exchange transactions that were settled improperly. CAISO states that most of these adjustments were made to implement the resolution of disputes brought under CAISO's alternative dispute resolution process and that all of the foregoing adjustments were included in its July 16, 2004 compliance report.²⁰ CAISO also maintains that these items have been described by the CAISO in its status updates to the Commission and have all been validated pursuant to procedures set forth in the CAISO tariff by including them on preliminary settlement statements issued to market participants. CAISO asserts that because there are no pending disputes regarding these adjustments, it is appropriate to treat all of these adjustments as binding on market participants. CAISO contends that without these adjustments, the baseline used to determine market participants' final refund positions would not be accurate.

11. Additionally, CAISO discusses three adjustments that were not included in its July 16, 2004 filing, but were necessary to account for the subsequent resolution of disputes. The first such adjustment involves a dispute filed by CDWR in July 2004 relating to charges associated with out-of-market purchases made by CDWR in January 2001. CAISO states that the dispute was resolved through settlement and adjustments to implement the settlement were made in 2007.²¹ The next dispute involves ancillary service costs that CAISO billed to PG&E based on schedules PG&E submitted for transactions over the California-Oregon Transmission Project. According to CAISO, PG&E prevailed in arbitration on its claim that it was not responsible for those charges, which was upheld by the Commission.²² CAISO explains that although these adjustments were not included on preliminary settlement statements issued to market participants, CAISO supplied affected market participants with the data for review in March 2010. CAISO states that it received no substantive disagreements or disputes. Thus, CAISO asserts that the Commission should find that these adjustments have been effectively validated as if they had appeared on a preliminary settlement statement, consistent with the relevant CAISO tariff provisions.²³ Finally, CAISO states that it has

²⁰ *Id.* at 18-21.

²¹ *Id.* at 22.

²² *Id.*

²³ *Id.* at 22-23. CAISO states that section 11.7.2 of the previously effective tariff and section 11.29.8.3 of the tariff provide that a scheduling coordinator "shall be deemed to have validated" the charges on a preliminary settlement statement "unless it has raised a dispute or reported an exception," within the time provided in the tariff.

incorporated adjustments related to a dispute brought by PG&E over changes for start-up, emissions and minimum load costs which PG&E claimed it was improperly allocated. CAISO states that PG&E prevailed in arbitration and the Commission affirmed the arbitrator's decision.²⁴ CAISO states that it invoiced adjustments to implement these decisions in October 2008, except for amounts due in May and June 2001. CAISO states that because these amounts were charged during the preparatory rerun period, it included adjustments to re-allocate them as part of the preparatory rerun.²⁵

2. CalPX Compliance Filing

12. CalPX submits the instant compliance filing that sets forth the current balances for all market participants after the application of all necessary adjustments. The first exhibit provided by CalPX shows the beginning balance for each CalPX participant and each adjustment to that balance to account for: (1) the preparatory rerun; (2) the good faith negotiations; (3) the preparatory rerun surplus allocation; and (4) the breakpoint reversal.²⁶ CalPX explains that that the breakpoint adjustment for the non-public utilities is not reversed because while the non-public utilities are subject to the breakpoint adjustment, they are not subject to refund calculations. The second exhibit sets forth the monthly adjustment detail to the beginning cash balance for each participant. The third exhibit reflects the summary results solely for the non-public utilities in CalPX's markets.²⁷

13. In addition, CalPX seeks Commission guidance on a number of issues. First, CalPX raises several questions related to the payment of past due principal amounts to the governmental entities, which can occur upon the Commission's acceptance of the CAISO and CalPX preparatory rerun compliance filings.²⁸ CalPX requests additional guidance on several issues that do not relate directly to the compliance filings, but which nevertheless impact the final refund calculations.²⁹

²⁴ *Id.* at 23 (citing *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,166 (2008)).

²⁵ *Id.*

²⁶ The "breakpoint reversal" refers to the treatment of the \$150/MWh breakpoint for January 2001 transactions, as directed by the March 26, 2003 Order, 102 FERC ¶ 61,317 at P 97.

²⁷ CalPX Compliance Filing at 2, Exhs. CPX-A, B and C.

²⁸ *See* Bonneville Remand Order, 121 FERC ¶ 61,067 at P 57; Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 27.

²⁹ CalPX Compliance Filing at 5-11. CalPX's requests for Commission guidance
(continued)

14. In its supplemental compliance filing,³⁰ CalPX notes that CAISO and CalPX reported different amounts for the adjustments resulting from the resolution of good faith negotiations.³¹ CalPX states that a detailed report on the results of its joint investigation with CAISO into the source of the discrepancy was filed with the Commission on July 20, 2010. CalPX explains that the investigation revealed that CAISO had initially assessed charges to CalPX relating to resolution of one of the CAISO good faith negotiations, but later reversed these charges. However, CalPX states that it did not receive the reversal and therefore did not incorporate the reversal into its preparatory rerun calculations. CalPX avers that, with one exception,³² it has reconciled all of the data provided in its supplemental compliance filing with the data reported by CAISO. CalPX requests that, based on the resolution of the good faith negotiation discrepancy, the Commission accept its supplemental compliance filing.³³

3. Comments

15. Cal Parties assert that the Commission must address and resolve a number of issues prior to any release of funds to non-settled governmental entities. Cal Parties contend that release of the funds prior to resolution of all the identified issues would create a situation where excessive payments are made to the governmental entities in violation of the relevant tariffs and Commission orders and to the detriment of other market participants. In particular, Cal Parties point out that CAISO and CalPX incorporated different adjustment amounts for settlements reached through good-faith negotiations pursuant to the alternative dispute resolution provisions of the CAISO tariff.

regarding principal payments and final refund calculations will be addressed in sections B and C of this order, respectively.

³⁰ CalPX October 6, 2010 Supplemental Compliance Filing in Docket Nos. EL00-95-000 and EL00-98-000 (CalPX Supplemental Compliance Filing).

³¹ The issue of this discrepancy was first raised by Cal Parties in their comments on the CalPX Compliance Filing, as noted below in section III.A.3., leading CAISO and CalPX to engage in the joint investigation.

³² According to CalPX, there remains a difference of \$16,348.37 between the CalPX and CAISO representations of the good faith negotiation adjustments. CalPX states that this difference reflects a good faith negotiation settlement statement CalPX received from CAISO, which CAISO instructed CalPX not to reverse. CalPX asserts that CAISO continues to research its accounting of this issue. CalPX Supplemental Compliance Filing at 2, n.1.

³³ *Id.* at 1-3.

Cal Parties maintain that these amounts should be the same for CAISO and CalPX. Cal Parties request that the Commission require CAISO and CalPX to reconcile their good-faith negotiation adjustments so that the accounts balance before any funds are released.³⁴

16. Regarding the CalPX Compliance Filing, Cal Parties assert that the Commission should confirm that CalPX has adopted the proper approach to the \$150 soft cap adjustment, or “breakpoint,” in its compliance filing. According to Cal Parties, CalPX correctly recognizes that the soft cap adjustment was a prospective price correction, and not part of the refunds. Thus, Cal Parties submit that the Commission should confirm CalPX’s conclusion that the breakpoint adjustment applies to (and should not be reversed for) governmental entities that have not entered into a global settlement.³⁵

17. Regarding the CAISO Compliance Filing, Cal Parties note that PG&E’s motion challenging CAISO’s treatment of certain power sales by a governmental entity (City of Santa Clara, dba Silicon Valley Power) remains unresolved before the Commission. Cal Parties contend that CAISO has incorrectly characterized those transactions as sales by PG&E. Cal Parties assert that the accounting of those transactions directly affects the preparatory rerun and states that funds should not be allowed to flow before CAISO makes the necessary corrections.³⁶

18. In contrast, Indicated Public Entities urge the Commission to summarily approve the preparatory rerun compliance filings. Indicated Public Entities assert that CalPX, by its own admission, now has sufficient funds to pay any principal amounts due to Indicated Public Entities, and that resolution of the various issues raised by CalPX is either straightforward and susceptible to speedy resolution or is irrelevant to disbursement of the monies due to Indicated Public Entities. Thus, Indicated Public Entities request that the Commission promptly provide guidance on any of the questions raised by CalPX in order to permit the CalPX to proceed with its preparatory refund rerun.³⁷

19. Avista urges the Commission to expeditiously approve the compliance filings submitted by the CAISO and CalPX. Additionally, Avista asks that the Commission rule

³⁴ Cal Parties June 18, 2010 Comments in Docket Nos. EL00-95-000, *et al.*, at 23-24 (Cal Parties Comments).

³⁵ *Id.* at 12-13.

³⁶ *Id.* at 23.

³⁷ Indicated Public Entities June 18, 2010 Comments in Docket Nos. EL00-95-244 and EL00-98-000 at 1-5 (Indicated Public Entities Comments).

on the outstanding issues that the CalPX has identified and establish milestones for the next steps regarding the final refund rerun compliance filings to be made by the CAISO and CalPX. In support of its request for setting milestones, Avista explains that further delay in the refund proceedings is not in the public benefit because interest continues to accrue on the amounts held in the escrow accounts. As a result, Avista suggests that the Commission require the CAISO and CalPX to make a first cut on any issues presented, so as not to delay completion of the final compliance filing.³⁸

20. In their reply comments, Indicated Public Entities argue that Cal Parties have not identified any issues that prevent the Commission from promptly approving the preparatory rerun compliance filings and ordering CalPX to make principal payments to the governmental entities for the governmental entities' sales. Indicated Public Entities contend that Cal Parties' central argument relies on the flawed premise that refunds owed to customers are somehow related to the principal payments withheld from governmental entities. Thus, Indicated Public Entities request that the Commission first approve the CAISO and CalPX compliance filings and then take any actions necessary to address unresolved questions regarding the final refund rerun.³⁹

21. Regarding the CAISO compliance filing, Indicated Public Entities challenge Cal Parties attempt to raise the issue of CAISO's treatment of the transactions involving PG&E and the City of Santa Clara. First, Indicated Public Entities assert that Cal Parties' challenge is either an impermissible collateral attack on prior Commission orders or an untimely request for rehearing of the Commission's 2006 determination that the sales at issue were sales made by PG&E to CAISO. Further, Indicated Public Entities note that even if Cal Parties were correct, the result would be an increase to the principal balance owed to Santa Clara, which presents no reason to delay principal payments. Finally, Indicated Public Entities point out that the Commission has twice rejected Cal Parties' arguments on this issue. Accordingly, Indicated Public Entities request that the Commission not allow this issue to delay the release of principal to governmental entities.⁴⁰

22. In addition, Indicated Public Entities contend that any discrepancy between the CalPX and CAISO compliance filings regarding the good faith negotiation adjustments has no impact on CalPX's ability to pay principal amounts owed to governmental entities. Indicated Public Entities insist that it is undisputed that CalPX has sufficient funds to

³⁸ Avista June 18, 2010 Comments in Docket Nos. EL00-95-000, *et al.*, at 3.

³⁹ Indicated Public Entities July 6, 2010 Reply Comments in Docket Nos. EL00-95-000, *et al.* (Indicated Public Entities Reply).

⁴⁰ *Id.* at 11-14.

make the principal payments and assert that the question of whether reconciliation may be required with respect to these adjustments is irrelevant and provides no rational basis for delaying payment of amounts owed.⁴¹

23. In its reply comments, CAISO agrees that the good faith negotiation discrepancy must be reconciled and notes that it is working with CalPX to resolve the issue. CAISO also contends that the Commission should deny the outstanding PG&E motion regarding the Santa Clara transactions and find that CAISO has properly accounted for the transactions in its preparatory rerun. Finally, CAISO reiterates that no party has objected to CAISO's inclusion in its preparatory rerun of certain adjustments that were not included in Amendment No. 51 and requests that the Commission expressly rule that CAISO appropriately included the adjustments in its preparatory rerun calculations and that the adjustments are effectively validated. CAISO also agrees with Avista that the expedient completion of the final compliance filings is desirable. Thus, CAISO provides that in furtherance of this goal, CAISO will include, in its next status report, a progress report on its efforts along with information regarding the dates by which it anticipates completing any outstanding steps. However, CAISO asserts that because not all of the steps necessary to finalize its compliance filing can be completed without input from other parties and the Commission, CAISO cannot provide an absolute date certain for doing so.⁴²

24. Cal Parties state that they have not identified any concerns with the specific revisions in CalPX's supplemental compliance filing, but contend that the good faith negotiation discrepancy was only one of the issues raised by Cal Parties in their June 18, 2010 comments. Cal Parties maintain that the remaining issues raised by Cal Parties in those comments require Commission resolution prior to implementation of the preparatory rerun compliance filings of CalPX and CAISO.⁴³

4. Commission Determination

25. The Commission accepts the CAISO compliance filing. We find that CAISO properly adjusted its preparatory rerun calculations to account for disputes that were resolved after its July 16, 2004 compliance filing and find that all of its adjustments were effectively validated, consistent with the applicable tariff provisions. Regarding the issue of the PG&E/Santa Clara transactions, we note that the Commission has already

⁴¹ *Id.* at 14.

⁴² CAISO July 6, 2010 Reply Comments in Docket Nos. EL00-95-164 and EL00-98-184.

⁴³ Cal Parties October 27, 2010 Comments in Docket Nos. EL00-95-000, *et al.*

addressed this issue in an order issued October 5, 2010.⁴⁴ In that order, the Commission denied PG&E's request and declined to direct CAISO to remove the energy sales involving the City of Santa Clara from PG&E's settlement statements and invoices. Due to the need for the finality and repose that are essential to administrative efficiency, we will not revisit this issue here.⁴⁵ Consistent with the October 5, 2010 Order, we find that CAISO has properly accounted for these sales in its preparatory rerun compliance filing and will not further address the issue in this proceeding. Accordingly, we direct CAISO to prepare and submit to the Commission its final refund rerun compliance filing.

26. The Commission also accepts the CalPX compliance filing. We find that CAISO and CalPX have adequately resolved the discrepancy related to the good faith negotiation adjustments, as reflected in CalPX's revised compliance filing. In addition, now that the relevant preconditions have been satisfied, we direct CalPX to pay the past due principal amounts to the governmental entities, consistent with the guidance offered in section B of this order. Finally, we confirm that CalPX properly applied the breakpoint adjustment in its compliance filing.

27. With regard to the guidance sought by CalPX, we note that the parties here agree unanimously on a number of the issues. First, regarding payment of the past due principal amounts to governmental entities, the parties agree unanimously on the following issues: (1) CalPX should pay the amounts due from the \$700 million it now has in its settlement clearing account; (2) CalPX should make payments only to those governmental entities who were not paid their receivables as part of a global settlement; and (3) CalPX should net across CAISO and CalPX markets. Regarding final refund calculations, the parties also agree that upon application of all relevant global settlement data at the end of the refund process, CalPX should clear cash on a combined basis with CAISO. The Commission agrees that these proposals are just and reasonable and represent the most efficient method of achieving the goal of bringing final resolution to refund process. Thus, we accept these proposals and will focus solely on the contested guidance issues in the remainder of this order. We direct CalPX to prepare and submit its final refund rerun compliance filing, consistent with the guidance provided in this order.

⁴⁴ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 133 FERC ¶ 61,014 (2010) (October 5, 2010 Order).

⁴⁵ See, e.g., *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,222 (2010); *NSTAR Electric Co.*, 120 FERC ¶ 61,261 (2007); *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co. of New York, Inc.*, 112 FERC ¶ 61,117, at P 12 (2005) (explaining the principle that relitigation of applicable precedent is strongly discouraged, especially by parties that were active in the earlier case).

B. CalPX Request for Guidance Regarding Payment of Principal to Non-Public Utilities

28. CalPX states that it is unclear whether the non-public utilities that have not entered into global settlements, and still owe money to the CalPX markets, should pay the amounts owed when CalPX pays the principal amounts owed to the other non-public utilities, or at some other time.⁴⁶

1. Comments

29. Cal Parties argue that the Commission should require the governmental entities to pay all of their outstanding balances when funds flow to the governmental entities so that the CAISO and CalPX markets can be financially cleared as one.⁴⁷ In their reply comments, Indicated Public Entities disagree with Cal Parties that establishing such a requirement justifies a further delay of the release of the principal amounts. Indicated Public Entities point out that there does not appear to be any disagreement over whether amounts owed and owing should be netted across markets. According to Indicated Public Entities, if the result of this netting is an amount owed to the markets, it should be cleared consistent with the CAISO tariff.⁴⁸

2. Commission Determination

30. The Commission finds that in the event netting across the CAISO and CalPX markets results in an amount owed to CalPX, any such balance must be paid when the principal funds are released to the governmental entities so that the CAISO and CalPX markets can be financially cleared together. The Commission finds that this procedural step will benefit market participants because it simultaneously settles a market participant's net overall position in both markets prior to any release of funds to the governmental entities.

C. CalPX Request for Guidance Regarding Final Refund Calculations

31. CalPX states that the exhibits provided in its compliance filing do not include a number of adjustments that are required to determine final "who owes what to whom" amounts, including the day-ahead, day-of refunds, CAISO real time refund calculations and offsets and interest at the Commission interest rate. CalPX contends that a number of

⁴⁶ CalPX Compliance Filing at 6-7.

⁴⁷ Cal Parties Comments at 14.

⁴⁸ Indicated Public Entities Reply at 7.

other issues require Commission guidance in order for CalPX to finalize the refund calculations.⁴⁹

1. Hourly Netting and Shortfall Allocation

32. CalPX requests clarification as to whether it should net purchases and sales over hourly intervals, as the Commission has previously directed CAISO to do.⁵⁰ Further, CalPX notes that the final balance of the non-public utilities could change after eliminating offsets that are no longer applicable and after allocation of the CalPX interest shortfall. CalPX requests guidance on whether it should net any balance owing against the interest due to the non-public utility. CalPX also requests Commission direction on when in the process the interest shortfall allocation should be applied.⁵¹

a. Comments

33. Cal Parties submit that netting should be applied period-wide across both the CAISO and CalPX market. Cal Parties contend that hourly netting would be inconsistent with the CAISO and CalPX tariffs and Commission precedent. Cal Parties further allege that hourly netting would create a multi-million dollar shortfall to be borne by the victims of the energy crisis of 2000-2001.⁵² On the other hand, Indicated Public Entities argue that the rationale that led the Commission to order the netting of purchases and sales over hourly intervals in the CAISO markets justifies hourly netting for CalPX and urge the Commission to direct CalPX accordingly.⁵³

34. Regarding the issue of shortfall allocations, Cal Parties assert that the Commission should establish security and provide guidance regarding the treatment of shortfalls properly allocated to governmental entities before payments are made. Cal Parties contend that this issue is much broader than the specific question posed by CalPX, which was whether shortfalls that might arise in relation to governmental entities can be netted

⁴⁹ CalPX Compliance Filing at 7.

⁵⁰ *See* Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 16-19 (finding that netting across hourly intervals was consistent with CAISO tariff provisions). CalPX notes that it has previously requested clarification on this issue (CalPX January 9, 2009 Request for Clarification of the Commission's November 20, 2008 Order in Docket No. EL00-95-219) and states that it is still awaiting a Commission determination.

⁵¹ CalPX Compliance Filing at 8.

⁵² Cal Parties Comments at 24-26.

⁵³ Indicated Public Entities Comments at 6-7.

against the withheld interest that is being retained in the CalPX after the flow of pre-mitigation principal amounts. Cal Parties note that because a number of scheduling coordinators have declared bankruptcy and because other bankruptcies could still occur, the Commission should develop a process to estimate these shortfalls and establish a mechanism to ensure that the correct amounts may be recovered from the non-public utilities. Cal Parties argue that the Commission's prior holdings establishing that only net amounts should flow to participants should apply to the potential shortfalls related to the non-public utilities.⁵⁴ Thus, to guard against the risk of shortfalls, Cal Parties assert that the Commission should ascertain the appropriate security to be retained by each governmental entity before pre-mitigation funds are released. Cal Parties submit that parties should be permitted to comment on the Commission's determination of security amounts.⁵⁵

35. In reference to CalPX's request for Commission guidance on when CalPX should calculate interest shortfalls for non-public utilities, Cal Parties maintain that the Commission has already answered this question. According to Cal Parties, the Commission has concluded that payment of interest to governmental entities must be postponed pending the determination of interest shortfalls for all parties and must be allocated on a *pro rata* basis among all market participants.⁵⁶ Thus, Cal Parties contend that interest and interest shortfalls for governmental entities should be calculated at the same time as for all other market participants.⁵⁷

36. Indicated Public Entities assert that questions regarding offsets and shortfalls are part of the calculation to determine the final amount of refunds available to buyers, but have no bearing on the amount of principal owed to non-public utility sellers. Thus, Indicated Public Entities argue that further guidance on this issue is not necessary and should not delay the release of principal.⁵⁸

37. In their reply comments, Indicated Public Entities note their agreement with Cal Parties that credit and debit balances should be netted across CAISO and CalPX markets,

⁵⁴ Cal Parties Comments at 19-20 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 105 FERC ¶ 61,066, at P 180 (2003)).

⁵⁵ *Id.* at 20.

⁵⁶ *Id.* at 27 (citing Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 58).

⁵⁷ *Id.*

⁵⁸ Indicated Public Entities Comments at 7-8.

but disagree with Cal Parties opposition to netting over hourly intervals. However, Indicated Public Entities assert that disagreement over the appropriate interval does not impact the release of principal amounts.⁵⁹ On the issue of the treatment of shortfalls, Indicated Public Entities argue that the concerns raised by Cal Parties are not valid reasons for further delay and argue that Cal Parties' claims regarding potential financial impacts in the CAISO and CalPX markets is "wholly speculative and completely irrelevant."⁶⁰

38. Indicated Public Entities maintain that the Commission must order the release of principal due to governmental entities in order to satisfy the Ninth Circuit's mandate in *Bonneville*. Indicated Public Entities add that all issues relating to future balances and shortfalls that affect pre-mitigation amounts have been resolved in the preparatory rerun adjustments and that any attempt by Cal Parties to use such issues to further delay principal payments amounts to a collateral attack on the Commission's decision in the *Bonneville Remand Order* to release funds owed to the governmental entities.⁶¹ Finally, Indicated Public Entities argue that because principal amounts were unlawfully withheld from the governmental entities, the interest, which reflects the time value of that money, should be paid first, before interest is paid on refunds due to buyers.⁶²

b. Commission Determination

39. As a threshold matter, we reject Cal Parties' requests to further delay payment of principal amounts to the governmental entities pending resolution of all issues related to final refund calculations. While we will provide the guidance requested by CalPX, we note that, with the exception of the Enron bankruptcy settlement issue,⁶³ these issues have no bearing on the propriety of accepting the CAISO and CalPX preparatory rerun calculations or directing the release of principal amounts owed to the governmental entities for their sales.

40. First, regarding the appropriate interval for netting sales and purchases, we find that the reasons supporting the Commission's determination to require hourly netting for the CAISO apply with equal force to CalPX. In the *Bonneville Remand Rehearing*

⁵⁹ Indicated Public Entities Reply at 5.

⁶⁰ Indicated Public Entities Reply at 9.

⁶¹ Indicated Public Entities Reply at 9 (citing *Bonneville Remand Order*, 121 FERC ¶ 61,067 at P 42, 57-59).

⁶² Indicated Public Entities at 10.

⁶³ See discussion *infra* at section III.C.3.

Order, the Commission explained that, “[r]equiring the CAISO to net pursuant to the interval period is consistent with how the CAISO markets were settled and thus is consistent with market participants’ expectations,” and therefore directed CAISO to “calculate refund amounts using the billing and payment procedures set forth in the CAISO tariff.”⁶⁴ The Commission noted that under the CAISO tariff, a settlement period was defined in terms of hourly intervals and therefore directed CAISO to net over hourly intervals to ensure consistency with its tariff requirements.⁶⁵ Applying this same rationale to CalPX, whose tariff also specified hourly settlement intervals,⁶⁶ we direct CalPX to perform its final refund calculations netting purchases and sales over hourly intervals to reflect the period during which the obligation was incurred.

41. Regarding the issue of interest shortfalls, the Commission has already made clear that interest shortfalls should be applied at the end of the refund process. As the Commission explained in the Bonneville Remand Order, because the interest shortfalls will be allocated on a *pro rata* basis, it would be difficult to determine the governmental entities’ *pro rata* share of the interest shortfalls prior to completion of the refund calculations and disbursement. Thus, we directed CalPX to retain any potential interest payments on past due principal amounts to the governmental entities until the end of the refund process when CAISO and CalPX have completed refund and interest shortfall calculations.⁶⁷ Consistent with our prior directives on this issue, we remind CalPX that the interest shortfall allocations are to be applied at the end of the refund process.

42. As a result, we reject Cal Parties’ request to establish a mechanism for estimating potential shortfalls relating to the governmental entities prior to releasing the past due principal amounts. We find that the potential need for future adjustments is not a legitimate basis for further delaying the payments of funds owed for sales made by the governmental entities.

43. Similarly, we reject Cal Parties’ request to require additional security to guard against potential shortfalls that may arise in relation to the governmental entities. When the Commission directed the release of past due principal amounts to the governmental

⁶⁴ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 19.

⁶⁵ *Id.* P 18.

⁶⁶ CalPX Tariff § 6.7.2 (“The billing and payment process for Energy and Ancillary services traded in the Hour-Ahead Market and the Day-Ahead Market shall be based on the issuance of Preliminary and Final Settlement Statements for each hourly Settlement Period in each Trading Day.”).

⁶⁷ Bonneville Remand Order, 121 FERC ¶ 61,067 at P 58.

entities, it set only two preconditions,⁶⁸ and upon acceptance in this order of the CAISO and CalPX preparatory rerun compliance filings, those conditions will have been satisfied. In fact, when the Commission set those conditions and directed the release of the principal amounts, it denied Cal Parties' requests that the Commission direct CAISO and CalPX to retain the collateral of governmental entities until the refund calculations were complete.⁶⁹ Cal Parties have not presented any arguments in this proceeding that have not already been considered thoroughly by the Commission in its many orders addressing the refund methodology. We find that netting any future shortfalls or balances owed by the governmental entities against the interest owed at the end of the refund process is an efficient method for achieving a final dollar amount, rather than requiring a series of payments back and forth between the governmental entities and the CalPX.

44. We deny Indicated Public Entities' request to receive interest on principal before the buyers receive interest due on refunds. The Commission has previously denied a request for the expedited release of the interest associated with the past due principal amounts and directed CalPX to "retain any potential interest on past due amounts to the governmental entities until the refund calculations are complete and the CAISO/PX can calculate the *pro rata* allocation of the interest shortfalls."⁷⁰ Thus, the Commission has already considered and resolved the question of whether to release interest along with the principal payments to the governmental entities. Indicated Public Entities have not persuaded us to reconsider our prior direction on this issue.

2. Cash Clearing

45. CalPX states that many of its original credit contacts at the participant companies have changed over the years since its markets were active. Thus, to ensure that any cash payments are correctly directed to participants, CalPX requests that the Commission

⁶⁸ The pre-conditions to directing the disbursement of unpaid amounts owed to non-public utilities are: (1) a Commission ruling on filings by entities seeking designation as non-public entities; and (2) approval of the CAISO and CalPX preparatory rerun compliance filings. Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 27. As noted above, the Commission issued an order determining which entities are non-public utilities in December 2008.

⁶⁹ Bonneville Remand Order, 121 FERC ¶ 61,067 at P 68; *aff'd on reh'g*, Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 28.

⁷⁰ Bonneville Remand Order, 121 FERC ¶ 61,067 at 58.

require all market participants that are final cash recipients to provide bank wiring information that is signed by a corporate officer and notarized.⁷¹

a. Comments

46. Indicated Public Entities contend that the concerns raised by CalPX regarding bank wiring information are inapplicable to governmental entities. Further, Indicated Public Entities state that, to the extent necessary, updated information can be readily addressed between CalPX and the entity in question. Further, Indicated Public Entities insist that any record updates ordered by the Commission should not delay the disbursal of funds.⁷² Indicated Public Entities reiterate this position in their reply comments.⁷³

b. Commission Determination

47. To help facilitate accurate cash payments, we direct market participants to timely provide CalPX with updated bank wiring information, as necessary. To the extent CalPX does not receive updated information, it must attempt to make the payments using the information it currently has on file. If CalPX finds that it is unable to complete a payment due to a lack of current bank wiring information, it should alert the affected party of the issue, attempt to resolve it with that party and, if the issue persists, notify the Commission by way of an informational filing in this docket.⁷⁴

3. Enron Global Settlement

48. CalPX requests guidance on an outstanding issue related specifically to the Enron global settlement overlay. CalPX states that, pursuant to the terms of the Enron settlement,⁷⁵ CalPX assigned all of its rights and interests in its claim filed in the Enron bankruptcy to market participants that did not opt into the Enron global settlement (the non-settling parties). CalPX explains that it intends to apply any recovery by the individual non-settling parties on CalPX's assigned claim in the Enron bankruptcy as a

⁷¹ CalPX Compliance Filing at 9.

⁷² Indicated Public Entities Comments at 8-9.

⁷³ Indicated Public Entities Reply at 6.

⁷⁴ We note that this filing is for informational purposes only and does not require Commission action.

⁷⁵ The Enron settlement was approved in an order issued by the Commission on November 15, 2005. *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 113 FERC ¶ 61,171 (2005) (Enron Settlement Order).

credit in the refund proceeding. CalPX states that at least one non-settling party has objected to that methodology. Further, CalPX notes that although the Enron bankruptcy court approved a settlement agreement between Enron and the non-settling parties that provided for a distribution percentage for each non-settling party on the assigned CalPX claim, CalPX asserts that the total amount that has or will be paid out to each non-settling party on CalPX's assigned claim in the Enron bankruptcy proceeding has not been disclosed. According to CalPX, Enron has declined to provide this information. Therefore, CalPX requests: (1) a determination by the Commission that any recovery on CalPX's assigned claim should be applied as a credit in the refund proceeding and (2) that the Commission direct Enron Power Marketing, Inc. to provide CalPX with the total amount paid to each of the non-settling parties.⁷⁶

a. Comments

49. Cal Parties submit that the Commission should ensure that CalPX fully accounts for the Enron bankruptcy settlement's allocation of CalPX claims. Cal Parties state that they are supportive of CalPX's proposal to reflect payments to non-settling parties as reductions to those participants' accounts, but oppose any plan that debits only amounts actually paid to the non-settling parties. Cal Parties caution that amounts paid could be less than the amount of the allowed claims assigned and characterize any resulting shortfall as the risk of being a creditor to a bankrupt entity. Cal Parties contend that if only the amounts actually paid are credited to a particular participant's account, that participant will have shifted the risks of Enron's bankruptcy to other market participants that settled separately with Enron. Cal Parties assert that the settling parties should not have to subsidize the short recoveries of the non-settling parties. Thus, Cal Parties argue that all non-settling parties that were assigned allowed claims under the Enron settlement must have their accounts reduced to reflect those assignments.⁷⁷

50. Indicated Public Entities take no position on this issue, other than to note that it should not have any impact on CalPX's ability to disburse principal owed to governmental entities.⁷⁸

b. Commission Determination

51. We direct CalPX to reduce the amounts owed to those entities due a recovery through CalPX's assigned claims under the Enron bankruptcy settlement by the amounts

⁷⁶ CalPX Compliance Filing at 9.

⁷⁷ Cal Parties Comments at 15-18.

⁷⁸ Indicated Public Entities Comments at 9; Indicated Public Entities Reply at 8.

allowed under that settlement. The assigned claims are intended to satisfy amounts owed from CalPX to those entities, so these claims must be accounted for in order to prevent double recovery by the affected entities. We agree with Cal Parties that CalPX should credit the non-settling parties' accounts by the full amount of the allowed claims assigned, as set forth in section 1.3 of the July 7, 2008 bankruptcy settlement agreement between Enron and the non-settling parties.⁷⁹ Crediting only the amounts actually paid, rather than the full amount of the allowed claims, may create a shortfall that would ultimately be borne by other market participants as part of the refund shortfall allocation. We find that it would be unjust and unreasonable to shift the risk of short recovery to market participants that were not parties to the bankruptcy settlement at issue. Moreover, for those governmental entities that were also non-settling parties, we find that their accounts should be credited for the allowed claims prior to disbursement of the past due principal amounts to eliminate the need to additional true-up procedures to recover the credited amounts at the end of the refund process.

4. Allocation of Deficit and Surplus

52. CalPX requests Commission guidance regarding the allocation of certain deficits and surpluses. First, CalPX asserts that there is a \$5 million deficit in the CalPX settlement clearing account that resulted from a transfer of funds in March 2001. CalPX explains that the deficit arose out of a dispute over subscription fees that CalPX had invoiced to PG&E and SoCal Edison. CalPX states that the dispute ended in a settlement agreement, pursuant to which CalPX agreed to withdraw the invoices. CalPX contends that prior to resolution of the matter, unbeknownst to the current CalPX Board and staff, the \$5 million in dispute had already been transferred to the settlement clearing account based on the subscription fees that had been invoiced. CalPX provides that the \$5 million has already been used for operating expenses and suggests that one method for addressing the deficit would be an allocation in accordance with the going-forward cost allocation percentages approved by the Commission in CalPX's rate case settlement.⁸⁰ CalPX states that it will need Commission direction for any other method of allocating the \$5 million deficit.⁸¹

53. CalPX states that it also has a \$3.8 million surplus resulting from a credit in the CAISO markets related to block forward contracts that had been commandeered by the State of California. According to CalPX, because PG&E and SoCal Edison were unable

⁷⁹ See Cal Parties Comments at Attachment B.

⁸⁰ CalPX Compliance Filing at 11 (citing Enron Settlement Order, 113 FERC ¶ 61,017).

⁸¹ *Id.* at 10-11.

to act as scheduling coordinators due to their non-payment in the CalPX and CAISO markets, CalPX was designated as the buyer in these schedules. CalPX estimates that after applying mitigation and accounting for the interest associated with these transactions, the difference between CalPX's credit in the CAISO markets and the amount due to the relevant sellers comes to approximately \$3.8 million. CalPX requests Commission guidance on how CalPX should account for this \$3.8 million gain. CalPX proposes that it could simply retain the \$3.8 million to increase the cash available in the CalPX settlement clearing account, or it could allocate it to market participants as the Commission directs.⁸²

a. Comments

54. Cal Parties argue that the Commission should collect additional information before responding to CalPX's request for guidance on the proper allocation of the CalPX's \$5 million accounting error. Cal Parties assert that without more details about how CalPX spent the funds, any assessment of the appropriate accounting treatment or allocation is speculation.⁸³

55. Similarly, Indicated Public Entities question why the issue of CalPX's \$5 million deficit has only recently been identified and assert that the Commission should investigate the accounts and invoices and confirm that PG&E and SoCal Edison are not responsible for payment of this charge. Indicated Public Entities contend that if CalPX's representation is confirmed, the \$5 million should be allocated according to the historical method established in the CalPX wind-up settlement because those amounts arose during the historical period. In either event, Indicated Public Entities stress that this is a wind-up issue, not a preparatory rerun issue, and has no effect on CalPX's ability to pay principal amounts owed to governmental entities.⁸⁴

56. Regarding the \$3.8 million surplus identified by CalPX, Cal Parties claim that these funds belong to PG&E and SoCal Edison. Cal Parties explain that the issue of ownership of these funds has already been addressed in a 2002 hearing, in which the judge found that CalPX must credit the money to PG&E and SoCal Edison.⁸⁵ Cal Parties

⁸² *Id.* at 11.

⁸³ Cal Parties Comments at 21-22.

⁸⁴ Indicated Public Entities Comments at 10-11.

⁸⁵ Cal Parties Comments at 29 (citing Initial Brief and Proposed Findings of Fact of the California Parties on Issues 2 and 3 in Docket No. EL00-95-045 at 43 (October 4, 2002)).

assert that the Commission affirmed the judge's findings on this issue.⁸⁶ Thus, Cal Parties argue that neither approach suggested by CalPX, i.e., retaining the funds in the CalPX clearinghouse or allocating them to market participants, is appropriate. Rather, Cal Parties assert that SoCal Edison has paid its obligations in the CalPX and is entitled to its share of the \$3.8 million and that PG&E is entitled to a credit against that amount that PG&E owes in the CalPX.⁸⁷

57. Indicated Public Entities assert that the Commission must verify that CalPX properly applied mitigation in calculating its claimed surplus of \$3.8 million. Once the proper amount of surplus is verified, Indicated Public Entities request that the Commission direct CalPX to use this amount either to offset wind-up expenses or reduce interest shortfall. Indicated Public Entities again emphasize that resolution of this issue should not delay the release of funds to governmental entities.⁸⁸

58. In its reply comments, Indicated Public Entities note their agreement with Cal Parties that the Commission should require CalPX to provide additional information regarding its \$5 million accounting error. However, Indicated Public Entities argue that this is a refund issue, not a preparatory rerun issue. Thus, Indicated Public Entities assert that it would be arbitrary and capricious, and inconsistent with *Bonneville*, to use this issue to further delay the release of principal to governmental entities.⁸⁹ Likewise, Indicated Public Entities reiterate that any disagreement regarding the allocation of the \$3.8 million surplus is a CalPX wind-up issue and does not impact CalPX's ability to release principal amounts to governmental entities.⁹⁰

b. Commission Determination

59. Regardless of how CalPX's \$5 million deficit occurred or how the funds were used, the fact remains that due to CalPX's error, a \$5 million shortfall now exists in the CalPX settlement clearing account. Given the delayed discovery of the erroneous transfer of the \$5 million from the settlement clearing account to the operating account, it appears unlikely that CalPX would be able to determine how, precisely, this \$5 million was used, separate and apart from other funds in the operating account during the same

⁸⁶ *Id.* (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 102 FERC ¶ 61,317 (2003)).

⁸⁷ *Id.* at 29-30.

⁸⁸ Indicated Public Entities Comments at 11.

⁸⁹ Indicated Public Entities Reply at 11.

⁹⁰ *Id.* at 6.

period. Without additional information about how the funds were used, we cannot make a determination about whether to allocate the loss as historical or going-forward costs, pursuant to the terms of the CalPX Rate Case Settlement.⁹¹ Thus, we find the most practicable and efficient alternative is to allocate the loss generally as part of the overall refund shortfall. On other occasions, when shortfalls have arisen due to CalPX's own actions, and were not primarily attributable to the buyers or sellers, the Commission has determined that the most equitable manner of addressing the shortfall was to allocate it on a *pro rata* basis among all market participants.⁹² The \$5 million deficit in this case appears to be clearly attributable an accounting error on the part of CalPX. Thus, based on the circumstances surrounding the shortfall and the Commission's previous treatment of similar issues, we find that it is reasonable to treat the \$5 million deficit like a refund shortfall and allocate the shortfall among all net refund recipients in proportion to their final refund positions.

60. Regarding the alleged \$3.8 million surplus, we find that CalPX cannot retain this amount to increase the cash available in its settlement clearing account. As the Commission has previously explained, CalPX is a non-profit entity, operated for a public purpose rather than for the benefit of its members.⁹³ The CalPX served as a market maker for energy transactions. While the CalPX tariff allowed the CalPX to step in for insolvent market participants, or for participants that failed to close their binding positions, the tariff does not appear to allow the CalPX to reap the benefits of the transactions. As such, we find that permitting CalPX to simply retain the \$3.8 million as a "gain" would result in an improper windfall. Instead, we direct CalPX to refund the money or apply it as a credit against any outstanding balance due, on a *pro rata* basis, to the parties who would have profited from the contracts at issue, pursuant to the default mitigation provisions of the CalPX Trading Services Tariff,⁹⁴ and to include documentation of how the funds were applied in its final refund rerun compliance filing.

⁹¹ See CalPX September 1, 2005 Joint Offer of Settlement in Docket Nos. ER05-167-000, *et al.*, approved at *Cal. Power Exchange Corp.*, 113 FERC ¶ 61,017 (2005).

⁹² *E.g.*, Bonneville Remand Order, 121 FERC ¶ 61,067 at P 39 (allocating refund shortfall based on net refund recipients' *pro rata* share of total net refunds); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 110 FERC ¶ 61,336, at P 25 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 105 FERC ¶ 61,066, at P 105 (2003) (allocating the interest shortfall based upon the final net interest position for each participant in relation to total amount of the interest shortfall).

⁹³ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 37.

⁹⁴ CalPX Trading Services Block-Forward Market Trading Rules § 6.7.6, CalPX Trading Services Block-Forward Market Rate Schedule FERC 1, Appendix 3 (1999).

The Commission orders:

(A) The preparatory rerun compliance filings of CAISO and CalPX are hereby accepted, as discussed in the body of this order.

(B) CAISO and CalPX are hereby directed to submit final refund rerun compliance filings, consistent with the guidance provided in this order, as discussed in the body of this order.

(C) CalPX is hereby directed to release the past due principal amounts to the governmental entities, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.