

138 FERC ¶ 61,091
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 Company

Docket Nos. EL00-95-219

v.

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

EL00-98-204

ORDER DENYING REHEARING

(Issued February 3, 2012)

1. In this order, we deny the requests for rehearing by the California Parties¹ and Net Creditors² of a Commission order issued on November 20, 2008,³ which denied in part and granted in part rehearing of a Commission order vacating the Commission's

¹ The California Parties are Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the People of the State of California *ex rel.* Kamala D. Harris, Attorney General, and the California Public Utilities Commission.

² The Net Creditors are Aquila Merchant Services, Inc. and Shell Energy North America, L.P.

³ See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs. Into Markets Operated by the California Indep. Sys.*, 125 FERC ¶ 61,214 (2008) (Bonneville Remand Rehearing Order).

California refund orders to the extent that they subject governmental entities and other non-public utilities who participated in the California Independent System Operator Corporation (CAISO) and California Power Exchange Corporation (CalPX) markets for the period of October 2, 2000 to June 20, 2001 to the Commission's refund authority under section 206⁴ of the Federal Power Act (FPA).⁵

I. Background

2. The Bonneville Remand Order contains a detailed description of the background and history of this proceeding.⁶ In brief, the Commission ordered certain governmental entities and other non-public utilities that participated in the centralized single clearing price auction markets operated by the CAISO and the CalPX to make refunds for the period of October 2, 2000 to June 20, 2001 (Refund Period).⁷ The United States Court of Appeals for the Ninth Circuit (Ninth Circuit) subsequently held that Federal Power Act (FPA) section 206 did not grant the Commission refund authority over wholesale electric energy sales made by such entities during the relevant period.⁸ Accordingly, the Commission issued the Bonneville Remand Order vacating its prior orders to the extent that they subjected governmental entities and other non-public utilities to the Commission's refund authority. In the Bonneville Remand Order, the Commission also directed CAISO and CalPX to complete their refund calculations including all entities that participated in the CAISO and CalPX markets for the period of October 2, 2000 to June 20, 2001.⁹

3. The Commission also found that the total amount of refunds that otherwise would have been paid by governmental entities and other non-public utilities for their sales into the CAISO and CalPX spot markets during the Refund Period must be reflected in

⁴ 16 U.S.C. § 824e (2006).

⁵ See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs. Into Markets Operated by one California Indep. Sys. Operator and the California Power Exchange*, 121 FERC ¶ 61,067 (2007) (Bonneville Remand Order).

⁶ See *Bonneville Remand Order*, 121 FERC ¶ 61,067 at P 4-16 .

⁷ See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs. Into Markets Operated by the California Indep. Sys. Operator Corp. and the California Power Exchange*, 96 FERC ¶ 61,120, at 61,499, *order on reh'g*, 97 FERC ¶ 61,275 (2001).

⁸ *Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005) (*Bonneville*).

⁹ *Bonneville Remand Order*, 121 FERC ¶ 61,067 at P 2, 38.

reduced refund amounts that buyers will receive.¹⁰ The Commission agreed with CAISO that a reasonable approach to allocate this shortfall was to implement a simplified financial clearing in which refund recipients receive a *pro rata* reduction in their refunds.¹¹ The Commission found that the *pro rata* reduction to refund recipients based on their final net refund position in relation to total net refunds was a closer approximation to their exposure to the CAISO and CalPX spot markets.¹² Under this approach, all net refund recipients, both public utilities and non-public utility entities,¹³ would receive an allocation of the shortfall in proportion to their refunds.¹⁴

4. On November 20, 2008, the Commission issued an order addressing the requests for rehearing and a motion for clarification of the Bonneville Remand Order. Among other things, the Commission found that sales and purchases should be netted over the same period as applicable when the obligations were incurred under the CAISO Open Access Transmission Tariff (CAISO Tariff). The Commission determined that when the relevant sales and purchases were made, CAISO netted its sales and purchases over hourly intervals.¹⁵

5. In the Bonneville Remand Rehearing Order, the Commission declined to address the issues raised by the California Parties regarding emissions offsets, fuel cost allowances and the soft cap adjustment.¹⁶ The Commission clarified that it would not direct the disbursement of unpaid amounts owed to governmental entities and other non-public utilities for sales they made in the CAISO and CalPX spot markets during the Refund Period until the Commission approves compliance filings submitted by CAISO and CalPX that reflect preparatory rerun adjustments, including dispute resolution matters, and rules on the filings by those entities that seek a designation as a non-public utility.¹⁷ However, the Commission declined to apply these same conditions to the release of the governmental entities' collateral, conditioning the release of that collateral

¹⁰ *Id.* P 39.

¹¹ *Id.*

¹² *Id.*

¹³ Non-public utility entities include governmental entities and other non-public utilities.

¹⁴ Bonneville Remand Order, 121 FERC ¶ 61,067 at P 39.

¹⁵ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 16-19.

¹⁶ *Id.* P 22, 24.

¹⁷ *Id.* P 27.

only upon the Commission's ruling on the filings by those entities that seek a designation as a non-public utility.¹⁸

6. The Commission further found that CalPX is not liable for the refunds that would have been owed by governmental entities and other non-public utilities in the absence of the *Bonneville* decision.¹⁹ The Commission also determined that payments by CalPX should be disbursed from the Pacific Gas and Electric Company's (PG&E) Bankruptcy Escrow Account for those purchases made by or attributable to PG&E to the extent use of that account is permitted under the PG&E settlement and the bankruptcy court's orders and that for any sales that do not meet these criteria, payments should be made from the CalPX Settlement Clearing Account.²⁰ Finally, the Commission rejected objections to the cost offset methodology and the refund shortfall methodology.²¹

7. On December 22, 2008, requests for rehearing of the Bonneville Remand Rehearing Order were filed by the Net Creditors and the California Parties. On January 6, 2009, the Indicated Parties²² filed a motion for leave to file an answer and answer to the California Parties' request for rehearing. On January 9, 2009, CalPX filed an untimely request for clarification.

II. Discussion

A. Procedural Matters

8. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2011), prohibits answers to requests for rehearing. Accordingly, we reject the Indicated Parties' answer to the California Parties' rehearing request.

9. We dismiss CalPX's untimely request for clarification because it is, in essence, an untimely request for rehearing. The courts have repeatedly recognized that the time period within which a party may file a petition for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the FPA²³ and that the Commission

¹⁸ *Id.* P 28.

¹⁹ *Id.* P 37.

²⁰ *Id.* P 46.

²¹ *Id.* P 62.

²² The Indicated Parties are the Sacramento Municipal Utility District, the Northern California Power Agency, the City of Pasadena, California and the City of Glendale, California.

²³ 16 U.S.C § 8251 (2006).

has no discretion to extend that deadline.²⁴ Accordingly, the Commission has long held that it lacks the authority to consider requests for rehearing filed more than 30 days after issuance of a Commission order.²⁵

B. California Parties Rehearing Request

1. Calculation of Refund – Netting Issue

10. In the Bonneville Remand Rehearing Order, the Commission agreed with the California Parties that energy sales and purchases should be netted before calculating each party's refund amount. However, the Commission found that netting these sales and purchases over the entire Refund Period was contrary to the CAISO Tariff and could have the indirect effect of requiring governmental entities and other non-public utilities to pay refunds. Therefore, the Commission determined that the netting should be done over the same period as applicable when the obligations were incurred under the CAISO Tariff.²⁶

11. The Commission concluded that requiring CAISO to net pursuant to the interval period was consistent with how CAISO markets were settled, as well as market participants' expectations. The Commission noted that under the CAISO tariff, a settlement period²⁷ was defined in terms of hourly intervals and, thus, when the relevant

²⁴ See, e.g., *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (“The 30-day time requirement of [the FPA] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing.”).

²⁵ See, e.g., *Arkansas Power & Light Co.*, 19 FERC ¶ 61,115, at 61,217-18, *reh'g denied*, 20 FERC ¶ 61,013, at 61,034 (1982). See also *Public Serv. Co. of New Hampshire*, 56 FERC ¶ 61,105, at 61,403 (1991); *CMS Midland, Inc., Midland Cogeneration Venture Limited Partnership*, 56 FERC ¶ 61,177, at 61,623 (1991). We note that the issue CalPX raises in its request for clarification has been addressed in a different proceeding. CalPX requests clarification as to whether it should net purchases and sales over hourly intervals, as the Commission has previously directed CAISO to do. In addressing CAISO's and PX's preparatory rerun compliance filings, the Commission stated that the hourly netting for CAISO apply “with equal force to CalPX.” *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 136 FERC ¶ 61,036, at P 39 (2011) (Preparatory Rerun Order).

²⁶ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 16.

²⁷ The CAISO Master Tariff defines “Settlement Period” by stating that “for all [CAISO] transactions the period beginning at the start of the hour, and ending at the end of the hour. There are twenty-four Settlement Periods in each Trading Day, with the exception of a Trading Day in which there is a change to or from daylight savings time.”

sales and purchases were made, CAISO netted its sales and purchases over hourly intervals.²⁸ Furthermore, the Commission found that using the netting methodology established by the CAISO Tariff was fair and consistent with the Ninth Circuit's decision. Therefore, the Commission directed CAISO to calculate refund amounts using the billing and payment procedures set forth in the CAISO Tariff.²⁹

12. On Rehearing, the California Parties claim that the Bonneville Remand Rehearing Order adopts an entirely new method of computing refunds that is contrary to the net approach ordered by the Commission. According to the California Parties, the Commission previously ordered that refunds be computed over the entire refund period on a net basis.³⁰ For instance, the California Parties note that, in a May 12, 2006 order, the Commission held that cost offset allocation should be period-wide and market wide, and stated that this procedure was premised on the refund calculation.³¹

13. The California Parties claim that the Commission's rationale for adopting the netting approach detailed in the Bonneville Remand Rehearing Order was that the CAISO Tariff only permits netting on an hourly basis.³² The California Parties argue that the Commission wrongly concluded that netting within periods of less than an hour is barred by the CAISO Tariff.³³ The California Parties cite to certain provisions of the CAISO Tariff which it claims support netting on a ten-minute interval.³⁴ The California Parties note that the CAISO Tariff calls for continuous netting of the charge types for which market participants are responsible, starting with ten-minute intervals for the primary energy charge types and progressing through daily and monthly netting until the monthly bill is rendered on a fully net basis.³⁵ The California Parties also note that certain charge types, such as the Grid Management Charge, are settled on a monthly

²⁸ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 18.

²⁹ *Id.* P 19.

³⁰ California Parties December 22, 2008 Request for Rehearing at 2 (California Parties Rehearing Request).

³¹ *Id.* at 20 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 115 FERC ¶ 61,171, at P 45 (2006) (May 12, 2006 Order)).

³² *Id.* at 14.

³³ *Id.* at 15 (citing Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 18 n.37).

³⁴ *Id.* (citing CAISO Tariff, Sections 3.2.1, 11.2.4.1 and Appendix A).

³⁵ *Id.*

basis.³⁶ Finally, the California Parties contend that the netting accomplished under the CAISO Tariff is cumulative until the time the bill is rendered on a monthly basis. More specifically, the California Parties argue that for each charge type, initial netting is done on the smallest temporal interval applicable to the charge type in question and then these figures are netted to produce a daily figure and then a monthly figure.³⁷ According to the California Parties, the fact that the CAISO Tariff provides for netting at intervals other than an hour means that the Commission's conclusion that hour netting should be applied to purchases and sales in order to determine refunds is unsupported.³⁸

14. The California Parties further claim that the Commission's concern that netting over the entire refund period would have the indirect effect of requiring governmental entities to pay refunds is misplaced. According to the California Parties, netting over the Refund Period will only effect the internal computation and thus will simply apply the refund methodology in a non-discriminatory way.³⁹ The California Parties argue that it would be irrational to calculate the refunds for governmental entities in a way that is different from the way refunds are calculated for every other market participant and that is inconsistent with the way in which the markets operated.⁴⁰

15. While *Bonneville* held that the Commission may not require governmental entities to pay refunds, the California Parties contend that the court did not address the issue of how the refunds due to be paid to governmental entities should be calculated. Thus, the California Parties assert that *Bonneville* did not entitle governmental entities to receive additional refunds. The California Parties contend that the Commission's new approach will produce an enormous additional refund shortfall because governmental entities that are net sellers and thus have no additional entitlement to receive refunds will get "tens of millions of dollars of refunds at the expense of net buyers."⁴¹

16. Finally, the California Parties contend that the Commission's decision regarding the netting issues will require a rerun of the CAISO settlements. The California Parties claim that the implementation of the Commission's hourly netting approach will require

³⁶ *Id.* at 16 (citing CAISO Tariff, Section 8.3).

³⁷ *Id.*

³⁸ *Id.* at 18.

³⁹ *Id.* at 22.

⁴⁰ *Id.* at 23.

⁴¹ *Id.* at 13.

significant changes to the existing refund calculation process, which will further delay completion of the refund computations.⁴²

Commission Determination

17. We deny the California Parties' request for rehearing on this issue. First, contrary to the California Parties' contention, we did not find in the Bonneville Remand Rehearing Order that the CAISO tariff *only* permitted netting on an hourly basis. Rather, we determined that hourly interval netting should be used because when the relevant sales and purchases were made, CAISO netted its sales and purchases over hourly intervals, as required under its Tariff.⁴³ We found that the relevant CAISO Tariff during the Refund Period, the CAISO Settlement and Billing Protocols Tariff (SABP Tariff), provided that CAISO "will calculate for each charge the amounts payable by the relevant [s]cheduling [c]oordinator . . . for *each Settlement Period* of the trading day, and the amounts payable to that [s]cheduling [c]oordinator for each charge *for each Settlement Period* of that trading day and shall arrive at a net amount payable for each charge by or to that [s]cheduling [c]oordinator for each charge for that trading day."⁴⁴ Moreover, we also noted that, under the CAISO Tariff, "settlement period" is defined as beginning at the start of an hour and ending at the end of the hour.⁴⁵ Thus, we found that the hourly netting process is consistent with how the CAISO markets were settled at the time under the SABP Tariff and thus is consistent with market participants' expectations.⁴⁶ The California Parties have provided no evidence refuting this conclusion.

18. Additionally, the CAISO Tariff provisions relied upon by the California Parties do not support the concept of netting over the entire refund period, a nine-month interval. The fact that the CAISO Tariff provides for netting in certain situations over an interval shorter than an hour or that charges are first netted for the hour and are later summed over the day and over the entire month to generate the monthly invoice offers no support for the California Parties' contention that the netting interval period should be nine months long. Regardless of how charges netted on an hourly basis are subsequently

⁴² *Id.* at 25 (citing Declaration of Dr. Carolyn A. Berry, Appendix 2, at p 4-7).

⁴³ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 16-19.

⁴⁴ CAISO SABP Tariff, section 3.2.1 (emphasis added).

⁴⁵ The CAISO Master Tariff defines "Settlement Period" by stating that "for all [CAISO] transactions the period beginning at the start of the hour, and ending at the end of the hour. There are twenty-four Settlement Periods in each Trading Day, with the exception of a Trading Day in which there is a change to or from daylight savings time."

⁴⁶ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 19.

rolled into a monthly invoice, as indicated above, CAISO netted its sales and purchases over hourly intervals during the refund period, consistent with its relevant SABP Tariff at the time. We find that California Parties fail to cite any specific tariff provisions which would support their proposition that netting should take place over the entire nine-month refund period.

19. We further find that the California Parties' contention that the Commission previously ordered refunds to be computed over the entire refund period on a net basis also is incorrect. The California Parties misinterpret the May 12, 2006 Order. In that order, we noted that the refunds were "calculated on a net dollar basis, netting each market participant's refund obligation (amount of energy sold at prices above the [mitigated market clearing price methodology] MMCP) with its refund receipt (amount of energy purchased at prices above the MMCP)." ⁴⁷ The May 12, 2006 Order simply does not address the time period over which the refunds should be netted. Thus, the California Parties' argument that the Bonneville Remand Rehearing Order is inconsistent with previous refund orders misreads those orders.

20. Finally, while the California Parties argue that netting on an hourly basis, rather than over the entire refund period, would result in enormous additional refund shortfall because governmental entities will get "tens of millions of dollars of refunds at the expense of net buyers," we find that the California Parties have failed to provide support or documentation to substantiate such assertion. Moreover, our decision to require hourly netting was based on a straight-forward interpretation of the CAISO's and CALPX's then-applicable tariff. The California Parties have failed to raise any argument which refutes this interpretation. Therefore, the California Parties request that we rehear this issue is denied.

21. The California Parties also contend that the hourly netting approach will further delay completion of the refund calculation process. We find such arguments to be speculative since neither CAISO nor CalPX, who are the entities responsible for calculating the refunds, have raised this concern with the Commission. Moreover, we note that the Commission will not adopt an inappropriate calculation process merely because that process might be more expedient.

2. Emissions Offsets and Fuel Cost Allowances

22. In the Bonneville Remand Order, the Commission determined that, because it was vacating each of the Commission's California refund orders to the extent that they make non-public utility entities liable for refunds, it would not require those entities to make cost filings. ⁴⁸ The Commission explained that the purpose of cost filings was to prevent

⁴⁷May 12, 2006 Order, 115 FERC ¶ 61,171 at P 34.

⁴⁸ Bonneville Remand Order, 121 FERC ¶ 61,067 at P 43.

a confiscatory result for sellers required to make refunds.⁴⁹ The Commission further explained that, because non-public utility entities do not have FPA section 206 refund liability, there is no need for them to make cost filings.⁵⁰ After the issuance of the Bonneville Remand Order, the California Parties sought clarification that none of the emission offsets and fuel cost allowances claimed by governmental entities would be charged to the market. In the Bonneville Remand Rehearing Order, the Commission denied the California Parties request for clarification, finding that the issue was addressed by the Commission in the Bonneville Remand Order.⁵¹

23. The California Parties seek rehearing on the Commission's denial of its request for clarification concerning fuel or emission offsets. According to the California Parties, the Bonneville Remand Rehearing Order conflates cost offsets, which were not filed by governmental entities, with fuel and emissions offsets, which were filed by governmental entities and approved by the Commission.⁵² According to the California Parties, these fuel and emissions offsets are charged to the market to offset refunds that are charged to the governmental entities. However, since governmental entities do not pay refunds, the California Parties seek clarification that none of the emission offsets and fuel cost allowances claimed by governmental entities will be charged to the market.⁵³

Commission Determination

24. We deny the California Parties' request for rehearing on this issue. The Commission has already indicated that there would be no offsets for governmental entities as they are not paying refunds and as such there is no need for further clarification. In the Bonneville Remand Rehearing Order, the Commission stated that the purpose of cost offsets was to prevent a confiscatory result for sellers required to make refunds.⁵⁴ The Commission noted that only sellers with refund liability could receive offsets and fuel cost allowances that were to be justified in their cost filings.⁵⁵ While the Commission referenced cost filings in previous orders in this proceeding, it is intuitive that the same rationale applies to all offsets, i.e., it would be confiscatory and

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 22.

⁵² California Parties Rehearing Request at 29.

⁵³ *Id.* at 29-30.

⁵⁴ Bonneville Remand Order, 121 FERC ¶ 61,067 at P 43.

⁵⁵ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 22.

inappropriate to require sellers to make refunds without considering all justified offsets. Additionally, no governmental party in this proceeding has requested it be considered for offsets for emission or fuel costs absent an obligation for refunds.

25. With regard to emissions costs, the Commission determined that these costs should be recovered as an adder to mitigated prices.⁵⁶ The Commission determined that a seller's demonstrable emissions costs should be subtracted from its respective and discrete refund liability.⁵⁷ Thus, the Commission directed all sellers to submit their emissions costs incurred during the refund period for subtraction from their respective refund liabilities.⁵⁸

26. For the fuel cost allowance, the Commission permitted generators that justified actual fuel costs in excess of amounts otherwise collected through the MMCP to recover those costs in an offset to the refunds that they owe.⁵⁹ In an order issued on September 24, 2004,⁶⁰ the Commission found that the fuel cost allowance was not an assessment of costs to customers, but instead was an offset to refunds available.⁶¹ Thus, the fuel cost allowance amount was expressly limited so that the final purchase price after mitigation is not greater than the original market clearing price.⁶²

27. The above discussion demonstrates that the purpose of the emissions offsets and the fuel cost allowance was to prevent a confiscatory result for sellers required to make refunds. Since governmental entities ultimately have no refund liability, they correspondingly have no refund liability to offset.⁶³ Because we previously vacated each

⁵⁶ *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 95 FERC ¶ 61,418, at 62,562 (2001) (emphasis added).

⁵⁷ *San Diego Gas and Electric Company v. Sellers of Energy and Ancillary Services*, 96 FERC at 61,519 (emphasis added).

⁵⁸ *Id.*

⁵⁹ *See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 127 FERC ¶ 61,250, at P 15 (2009) (emphasis added).

⁶⁰ *See San Diego Gas & Electric Co v. Sellers of Energy and Ancillary Services.*, 108 FERC ¶ 61,311 (2004).

⁶¹ *Id.* P 16.

⁶² *San Diego Gas & Electric Co v. Sellers of Energy and Ancillary Services*, 109 FERC ¶ 61,297, at P 40 (2004).

⁶³ *San Diego Gas & Electric Co v. Sellers of Energy and Ancillary Services*, 116 FERC ¶ 61,167, at P 77 n. 45 (2006).

of the Commission's California refund orders to the extent that they make non-public utility entities liable for refunds, those entities will receive the market clearing price for sales they made during the Refund Period. Thus, any previous discussions regarding the non-public entities ability to "offset" their refund liability and the amounts available for that offset are moot.

3. Soft Cap Adjustment

28. In the Bonneville Remand Rehearing Order, the Commission rejected the California Parties request that the Commission clarify that the Bonneville Remand Order does not affect the Commission's December 2000 decision to prospectively cap market-clearing prices in the CalPX and CAISO by implementing the \$150 soft cap or breakpoint. The Commission found that the California Parties had failed to explain why the differentiation between the soft cap and MMCP was pertinent to the proceeding. Moreover, the California Parties also failed to point to any language in the Bonneville Remand Order, which did not mention the \$150 soft cap, which required clarification or rehearing.⁶⁴

29. On rehearing, the California Parties claim that the Commission erred in refusing to clarify that past due amounts owed to governmental entities should reflect the soft cap correction. According to the California Parties, the Bonneville Remand Order was ambiguous regarding the soft cap issue because the Commission failed to distinguish between prior orders affecting past due amounts related to the imposition of the MMCP and prior orders affecting past due amounts related to the \$150 soft cap.

30. The California Parties contend that the prior orders requiring reductions in payments to sellers related to the \$150 soft cap are corrections to reflect the tariffs in affect at the time of the transactions and are therefore distinct from the prior orders imposing MMCP refunds. The California Parties argue that the soft cap is not a refund at all; it simply reflects a pricing rule ordered on December 15, 2000, prior to the transactions at issue in January 2001.⁶⁵ The California Parties contend that compliance with the soft cap is just a matter of using the price that was in effect at the time of the transactions based on orders that were issued prior to the transactions. According to the California Parties, nothing in *Bonneville* suggests that governmental entities should receive a price higher than the price that was actually in effect at the time of the transaction.⁶⁶ Therefore, the California Parties seek clarification that neither the

⁶⁴ Bonneville Remand Rehearing Order, 125 FERC ¶ 61,214 at P 24.

⁶⁵ *Id.* at 27.

⁶⁶ *Id.*

Bonneville Remand Order nor the Bonneville Remand Rehearing Order reverses the application of the soft cap.

Commission Determination

31. We deny the California Parties' request for clarification or rehearing on this issue. Once again, the California Parties have failed to point to language in the Bonneville Remand Order, which did not mention the \$150 soft cap, that requires clarification or rehearing. The general purpose of a petition for rehearing is to enable the agency to correct any errors in a specific order. The procedure was not created to enable parties to request that the agency expound on any issue or topic about which a party has concerns.⁶⁷ However, we note that this issue may be moot since the Commission recently clarified that CalPX properly applied the breakpoint (\$150 soft cap) adjustment for non-public entities in its preparatory rerun compliance filing.

C. Net Creditors Rehearing Request

32. In the Bonneville Rehearing Order, the Commission determined that payments by CalPX should be disbursed from the PG&E Bankruptcy Escrow Account for those purchases made by or attributable to PG&E to the extent use of that account is permitted under the PG&E settlement and the bankruptcy court's orders and that for any sales that do not meet these criteria, payments should be made from the CalPX Settlement Clearing Account.⁶⁸ Additionally, the Commission noted that, to the extent that "there is a refund shortfall, parties can seek redress in state and federal courts."⁶⁹

33. The Net Creditors seek rehearing of paragraph 46 of the Bonneville Remand Rehearing Order, requesting that we vacate the next to the last sentence in that paragraph, which noted that parties can seek redress for certain refund shortfall in state and federal courts.⁷⁰ The Net Creditors interpret this sentence as requiring non-settling parties to seek redress in state and federal courts for any unresolved shortfall owed them at the end of this proceeding, rather than have the Commission provide that redress through the Commission's implementation and compliance processes. The Net Creditors claim that this "ruling" is a departure from the Commission's previous rulings and impermissibly delegates the Commission's responsibility for ensuring just and reasonable rates to the

⁶⁷ Preparatory Rerun Order, 136 FERC ¶ 61,036 at P 12, 16, 26.

⁶⁸ *Id.* P 46.

⁶⁹ *Id.*

⁷⁰ Net Creditors Rehearing Request at 7.

judiciary.⁷¹ The Net Creditors also argue that this determination imposes an unfair burden on non-settling parties that is not imposed on other parties and therefore is discriminatory.⁷²

Commission Determination

34. We deny the Net Creditors rehearing request. The Net Creditors have misread our statement. In 2005, the *Bonneville* Court found that the Commission lacked the authority to order governmental and other non-public utilities to pay refunds, but noted that a remedy may lie in a contract claim rather than a refund proceeding.⁷³ The Commission reiterated this same principle in several orders, i.e., once parties have exhausted their rights before the Commission, they may have a contract claim for those refund amounts alleged to be owed by governmental entities and other non-public utilities,⁷⁴ who are beyond the Commission's jurisdiction.⁷⁵ The statement which the Net Creditors object to is simply another reiteration of this principle.

The Commission orders:

(A) The California Parties' request for clarification and rehearing is denied, as discussed in the body of this order.

⁷¹ Net Creditors Rehearing Request at 7-8 (citing *United States Telecommunications Assoc. v. FCC*, 359 F.3d 554, 566 (D.C. Cir. 2004)).

⁷² *Id.* at 9.

⁷³ *Bonneville*, 422 F.3d 908 at 920, 925 (citations omitted).

⁷⁴ Previously, the Commission directed that the shortfall in refunds and interest should be allocated among refund recipients as a *pro rata* reduction in their refunds. See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 110 FERC ¶ 61,336, at P 41, 56, *reh'g denied*, 112 FERC ¶ 61,226 (2005); *Bonneville Remand Order*, 121 FERC ¶ 61,067 at P 39. Thus, any contract claim could include both the refund shortfall and the interest shortfall which was deducted from the refund recipient's total refund.

⁷⁵ See, e.g., *Bonneville Remand Order*, 121 FERC ¶ 61,067 at P 3, 37 (noting that the Commission's inability to order non-public utility entities to pay refunds under FPA section 206 does not preclude such parties from seeking a remedy in state/federal courts).

(B) The Net Creditors' request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.