

112 FERC ¶ 61, 323
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company,
Complainant,

Docket Nos. EL00-95-045
EL00-95-074
EL00-95-125
EL00-95-127

v.

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

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

Docket Nos. EL00-98-081
EL00-98-112
EL00-98-114

ORDER ON COMPLIANCE AND INFORMATIONAL FILINGS,
AND PROCEDURAL MOTIONS

(Issued September 20, 2005)

1. In this order, we find that the City of Pasadena, California's and the Los Angeles Department of Water and Power's (LADWP)¹ filings are in compliance with the

¹ On September 6, 2005, the Ninth Circuit Court of Appeals issued an opinion holding "that FERC does not have refund authority over wholesale sales made by governmental entities and non-public utilities." *Bonneville Power Administration v. FERC*, No. 02-70262, slip op. at 12271 (9th Cir. Sept. 6, 2005). The instant order does not address that opinion, as any party may file a petition for rehearing of the Court's opinion within 45 days of its issuance, Fed. R. App. P 40(a)(1), and the Court's mandate will not issue until seven calendar days after the time to file a petition for rehearing expires, or seven calendar days after entry of an order denying a timely petition for rehearing, whichever is later, Fed. R. App. P 40(b).

Commission's prior orders.² Accordingly, we accept for filing the compliance filings submitted by Pasadena and LADWP that detail their emissions costs incurred during the period from October 2, 2000 through June 20, 2001 (Refund Period).

2. In this order, we also acknowledge the receipt of an informational filing by Reliant Energy Services, Inc. (Reliant), detailing a *pro rata* allocation of emissions costs among mitigated and non-mitigated intervals. In addition, we deny procedural motions filed by the California Parties³ and Reliant.

Background

3. In a July 25, 2001 Order establishing the refund calculation methodology,⁴ the Commission found it appropriate to allow full recovery by the generators of all of their demonstrable emissions costs incurred during the Refund Period. Specifically, during a hearing established by the July 25 Order, the Commission directed all sellers to submit their emissions costs incurred during the Refund Period for subtraction from their respective refund liabilities.⁵

4. The initial decision resulting from the hearing was issued on December 12, 2002.⁶ The Administrative Law Judge (ALJ) accepted emissions costs offsets calculations submitted by certain parties,⁷ rejected the City of Burbank's emissions costs offset claim and found that: (1) Reliant should be required to recalculate its demonstrated emissions costs on a *pro rata* basis among its bilateral sales and sales to the California Power Exchange (PX) consistent with the California Generators' *pro rata* allocation exhibit; (2) Pasadena's RECLAIM Trading Credits (RTCs) should be allocated *pro rata* to all

² *San Diego Gas and Electric Company*, 102 FERC ¶ 61,317 (March 26 Order), *order on reh'g*, 105 FERC ¶ 61,066 (2003) (October 16 Order), (collectively, *Refund Orders*).

³ The California Parties are the People of the State of California, *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas and Electric Company, and Southern California Edison Company.

⁴ *San Diego Gas and Electric Company*, 96 FERC ¶ 61,120 (2001) (July 25 Order).

⁵ *Id.* at 61,519.

⁶ *See San Diego Gas and Electric Company*, 101 FERC ¶ 63,026 (2002) (*Initial Decision*).

⁷ These parties are Duke Energy, Dynegy Power Marketing, Inc., Williams Energy Marketing and Trading Company. *See id.* at P 31.

non-native load sales, not just CAISO sales; and (3) LADWP's zero-cost RTCs that were retained in the years 2000 and 2001 and not used for native load customers, should be factored into the per-unit costs applied in its emission cost analysis.⁸ Subsequently, the Commission affirmed the ALJ's findings on the issue of emissions costs offsets in the March 26 Order.⁹ In regard to Reliant, the Commission clarified that Reliant may use the existing *pro rata* allocation exhibit and would not be required to refile the same information. In response, on July 29, 2005, Reliant submitted an informational filing, which reflects Reliant's *pro rata* allocation of emissions costs offsets among mitigated and non-mitigated intervals.

5. In the October 16 Order, the Commission supplemented its findings in the March 26 Order by determining that the emissions costs offset should be treated the same way as fuel cost allowance for non-mitigated intervals; that is, the recovery of emissions costs was allowed only during mitigated intervals.¹⁰

6. After the issuance of a series of guidance orders pertaining to the refund process,¹¹ Pasadena and LADWP submitted compliance filings updating their previously submitted emissions costs offset claims. Specifically, Pasadena's March 12, 2004 filing, as supplemented on February 11, 2005, details the allocation of out-of-pocket emissions costs among CAISO and non-CAISO sales for resale. LADWP's March 21, 2005 filing, as supplemented on June 21, 2005, contains recalculation of its emissions costs offset to be included in the CAISO's financial reruns.

Pasadena's Compliance Filing

7. Pasadena's March 12, 2004 filing details the allocation of out-of-pocket costs for the purchase of emissions credits, as required by the *Refund Orders*. According to Pasadena, the evidence presented at the hearing established by the July 25 Order showed that Pasadena spent \$900,965 to purchase emissions credits to cover generation during the Refund Period. Pasadena explains that the *Refund Orders* required it to submit a compliance filing with the Commission showing Pasadena's \$900,965 of emissions costs allocated among CAISO sales and non-CAISO sales.¹²

⁸ *See id.* at P 736-760.

⁹ *See* March 26 Order at P 111-113.

¹⁰ *See* October 16 Order at P 153.

¹¹ *See San Diego Gas and Electric Company*, 107 FERC ¶ 61,165 (2004) (May 12 Order) and *San Diego Gas and Electric Company*, 109 FERC ¶ 61,218 at P 9 (2004) (November 23 Order).

¹² *See* Pasadena's March 12, 2004 filing at 4, *citing* March 26 Order at P 113.

8. In its filing, Pasadena demonstrates that it first determined the generation allocable to native load, to the CAISO, and to other sales at wholesale, respectively, and then allocated the out-of-pocket cost *pro rata* among the sales to the CAISO and the third-party sales at wholesale, with no costs allocated to generation to native load. As a result, Pasadena contends that \$723,608 of its out-of-pocket costs for purchase of RTCs should be allocated to the CAISO.

9. In its February 11, 2005 supplemental filing, Pasadena explains that its filing was necessitated by the need to recalculate and reduce the emissions costs in accordance with the Commission's determination to allow recovery of emissions costs only for mitigated sales. Pasadena's supplemental filing offers two modifications to its initial compliance filing. First, updated load data from the CAISO modified the emissions credits purchases allocated to the CAISO. The resulting correction reduced Pasadena's offset amount allocated to the CAISO to \$721,880. Second, Pasadena then allocated the \$721,880 between mitigated intervals and non-mitigated intervals which reduced its claim to \$593,536.

LADWP's Compliance Filing

10. On March 21, 2005, LADWP submitted its compliance filing containing recalculations of its emissions costs offset. LADWP states that, pursuant to the *Refund Orders*, it was required to factor into its per-unit costs applied in its emissions cost analysis its zero-cost trading credits that were not used for native load customers. LADWP also states that it is eligible to offset against its refund liability the costs of purchasing RTCs and the civil penalty assessed to LADWP by the South Coast Air Quality Management District (SCAQMD).

11. According to LADWP, calculating its zero-cost RTC purchases into its analysis and applying the resulting amount to mitigated hours only, reduces LADWP's emissions costs offset for sales to the CAISO and the PX to \$1,194,059. This amount pertains to the portion of the Refund Period from October through December 31, 2000. LADWP further states that it had sufficient zero-cost RTCs remaining in 2001 after meeting its native load demand to cover all of its wholesale sales to the CAISO and PX during the month of January 2001 and therefore its emissions costs offset claim no longer includes any emissions costs associated with RTC purchases for CAISO and PX sales after December 31, 2000.

12. With regard to LADWP's SCAQMD civil penalty costs, LADWP states that the amount of the civil penalty associated with mitigated CAISO and PX sales from October 2 through December 31, 2000, totals \$6,660,055. The SCAQMD civil penalty associated with mitigated CAISO sales is \$5,259,166. The civil penalty amount for mitigated sales to the PX totals \$1,400,890.

13. In its June 21, 2005 supplemental filing, LADWP submits three corrections to its emissions costs offset calculations. First, LADWP notes the correct effective date of the SCAQMD settlement agreement, thus adjusting its calculations for the number of days in the Refund Period during which the civil penalty applied to the emissions costs offset claim. Second, it corrected minor discrepancies with the settlement data provided by the PX. Third, LADWP states that it incorrectly assigned emissions costs to purchased power that was sold to the CAISO. With regard to LADWP's third correction, it contends that it erroneously assigned emissions costs to certain purchased power transactions.¹³

14. According to LADWP, its revised refund liability offset now totals \$8,630,834; that is, \$1,944,232 for RTC purchases and \$6,686,602 related to the civil penalty from the SCAQMD settlement.

Responsive Pleadings

A. The California Parties' Responsive Pleadings

15. On March 29, 2004, the California Parties filed a motion to strike Pasadena's March 12, 2004 compliance filing. The California Parties assert that Pasadena's filing is an attempt to introduce calculations based upon new evidence not presented in the hearing. According to the California Parties, neither Commission orders nor the ALJ's findings permit such a filing by Pasadena. California Parties also assert that Pasadena has failed to utilize the appropriate mechanisms provided by the Commission to make such a filing.

16. Specifically, the California Parties argue that Pasadena: (1) chose not to present the calculations presented in the March 21 filing at the hearing; (2) has not sought clarification from either the Commission or the ALJ regarding how the calculations might be properly introduced into the record; and (3) has not requested a motion to reopen the record in order to introduce the new evidence into the proceeding. Accordingly, the California Parties request that the filing be stricken from the record as inappropriately introduced. They further state that, if the Commission is inclined to allow Pasadena's filing, the Commission should require Pasadena to follow an appropriate and organized method of requesting a process for the proper introduction and evaluation of new evidence.

17. On March 4, 2005, the California Parties also filed comments in response to Pasadena's February 11 supplemental filing. California Parties request that the Commission direct the CAISO to develop a common template for emissions costs

¹³ See LADWP June 21, 2005 Revisions to Compliance Filing at page 3.

calculations which will be required for all sellers when making compliance filings, and provide guidance as to the completion and review of such compliance filings. They further state that parties should have an opportunity to review compliance filings on a rolling basis, or, at the very least, the California Parties request that the Commission establish dates for dealing with issues arising from compliance filings so that all parties can proceed in an organized fashion in reviewing the filings.

18. California Parties also contend that Pasadena's filing incorrectly treats uninstructed deviations as part of calculated total sales to the CAISO. California Parties state that as part of calculating total sales to the CAISO, Pasadena derives positive uninstructed deviations by summing positive uninstructed energy by generating unit, by interval. According to the California Parties, this method is inconsistent with the way uninstructed deviations are handled by the CAISO in settlements. According to the California Parties, uninstructed deviations are calculated over all units and in each interval. California Parties further contend that summing positive uninstructed energy by unit, by interval will result in an inflated calculation of positive uninstructed energy and thus an inflated calculation of sales to the CAISO.

19. On April 14, 2005, California Parties filed comments in response to LADWP's compliance filing. California Parties reiterate their comments filed in response to Pasadena's compliance filing. Specifically, they stress the need for the Commission-established schedule and process for all market participants, which will put parties on notice to have their experts ready to analyze the data included in compliance filings during an explicitly defined period of time.

20. On May 9, 2005, California Parties submitted supplemental comments to its April 14 comments. California Parties provide extensive discussion regarding certain issues presented by LADWP's filing. First, California Parties contend that LADWP's filing contains errors that should be corrected. Specifically, the California Parties argue that LADWP's allocation of RTC costs and the SCAQMD penalty amount to mitigated and non-mitigated sales and wholesale sales outside of the CAISO and the PX may be incorrect. According to the California Parties, LADWP's wholesale data used in the calculations appear different from data used in a previous filing in response to the Commission Staff's data request in fact-finding investigation on manipulation in short-term electricity and gas prices in the western region of the United States,¹⁴ through the exclusion of purchased power volumes. California Parties contend that all wholesale sales should be assumed served in part by purchased power, and in part with LADWP generation. According to the California Parties, this will result in allocation of fewer emissions costs to the CAISO and PX sales.

¹⁴ See Docket No. PA02-2-000; *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 98 FERC ¶ 61,165 (2002).

21. California Parties also recommend that the Commission direct the CAISO and the parties to develop a common template, in order to enable all sellers to avoid uncertainty in how the data should be calculated and evaluated. They reiterate their request that the Commission: (1) establish a clear process for compliance filings related to emissions costs, including a schedule whereby such filings should be made and evaluated; and (2) issue a directive to the CAISO to develop a common template for sellers to prepare their emissions calculations.

B. Answers to California Parties' Pleadings

22. On April 5 and April 7, 2004, Pasadena and LADWP, respectively, filed answers to California Parties' March 29, 2004 motion. Pasadena contends that contrary to the California Parties' arguments, the Commission's orders are clear that Pasadena is entitled to an offset for its out-of-pocket costs to purchase emissions credits, as allocated between generation for sales to the CAISO and other wholesale customers. Pasadena states that the only unresolved question is the calculation of the allocation to determine the precise dollar amount of that offset.

23. Pasadena further asserts that its March 12 filing is appropriate and that the California Parties' motion should be denied. According to Pasadena, the Commission's orders in these proceedings required that Pasadena make changes to its emissions costs offset showing made at the hearing. Pasadena, as instructed, eliminated all opportunity costs and reflected only out-of-pocket costs for RTCs and allocated them among ISO and non-ISO sales. Pasadena asserts that the Commission has clearly signaled its intentions to proceed further on a compliance filing basis without more on-the-record hearings. .

24. In the alternative, Pasadena states that, if the Commission wishes to permit an interactive dispute process regarding Pasadena's calculations, it suggests that this process take place informally pursuant to the CAISO's informal procedures previously required for the refund rerun process. Pasadena notes that the CAISO could simply facilitate informal discussions between Pasadena and the California Parties and then make a decision as to the ultimate amount of the offset based on the substance of those discussions and the exchange of information.

25. LADWP echoes Pasadena's comments and requests that the Commission deny the California Parties' motion. LADWP contends that it could not have submitted its recalculated emissions costs before the hearing record was closed, at which time the ALJ issued its decision. LADWP further points out that neither the ALJ's proposed findings nor the Commission orders address when the required recalculated emissions costs offsets should be submitted. Thus, LADWP concludes, it has not missed any prescribed filing dates. LADWP further states that the emissions costs offsets cannot be determined until the final mitigated market clearing prices (MMCP) are determined by the CAISO.

Accordingly, generators' emissions costs offsets could not be determined until the CAISO had issued final MMCPs, thus allowing the identification of a generator's mitigated sales intervals and the allocation of its emissions costs offsets to those intervals. Finally, LADWP asserts that the Commission's orders cannot be construed to require the record in the proceedings to be reopened and hearing reinstated to consider recalculated emissions costs offsets, as suggested by the California Parties, and that if they have concerns with LADWP's filing, the California Parties may use the CAISO's iterative dispute process.

26. On April 13, 2004, the CAISO filed an answer to the California Parties' motion to strike and comments on the answers of Pasadena and LADWP. The CAISO notes that, while good intentioned, the suggestion to have the CAISO responsible for overseeing discussion between the parties on these issues and then making a determination as to the correctness of a party's emissions calculations is not reasonable. The CAISO notes that there is nothing in any of the Commission's orders in this proceeding that suggests that the CAISO, as part of its process to help market participants better understand the adjustments that it intends to make, face the responsibility for acting as a mediator and decision-maker with respect to emissions calculations. In addition, the CAISO has no authority, under its tariff, to perform such functions; nor can the Commission delegate this responsibility to the CAISO.

27. The CAISO also contends that it does not have the particular expertise on emissions issues such that it would even be qualified to perform such a role. CAISO concludes that it is more appropriate to resolve the emissions costs calculation issues prior to the filing of its final compliance filing in the refund proceeding, rather than incorporating into that filing offset figures that may be subject to dispute. As a result, it suggests that the Commission institute whatever process it feels is appropriate to deal with emissions costs calculation issues, and then issue a decision defining the emissions costs the CAISO should offset against the refund liability of the parties in this proceeding.

C. Reliant's Motion and Responsive Pleadings

28. On June 28, 2005, in the instant proceeding, Reliant filed a motion for adoption of its proposed template for submissions by the parties to the CAISO of the emissions costs offset data. In support, Reliant argues that consistent with the Commission's decision that emissions costs should be subject to offset in the same manner as the fuel cost allowance, the proposed template is based on the template accepted by the parties for use in the fuel cost allowance proceeding.

29. Pasadena and LADWP oppose Reliant's motion. Pasadena and LADWP argue that Reliant's motion is an untimely protest to their filings because Reliant failed to comment on the filings within the Commission-established comment period. Pasadena also states that the CAISO, which is responsible for performing the emissions costs offset

calculations, did not make any objections to Pasadena's filing and that the proposed template is appropriate for Reliant's use only and not workable for Pasadena. In addition, LADWP states that Reliant provides no justification for the proposed template.

30. The CAISO generally supports the idea of requiring a uniform template that will expedite the resolution of the instant proceeding. It reiterates that from a pure calculation perspective it needs a final number for emissions costs allowances approved by the Commission applicable to mitigated intervals.

Procedural Matters

31. Notice of Pasadena's filing, as supplemented, was published in the Federal Register, 70 Fed. Reg. 9,635 (2005), with interventions, comments and protests due on or before March 4, 2005. Notice of LADWP's filing, as supplemented, was published in the Federal Register, 70 Fed. Reg. 19,748 and 38,126 (2005), with interventions, comments and protests due on or before July 12, 2005.

32. The CAISO filed an answer to Pasadena's and LADWP's answers to the California Parties' motion to strike the compliance filings. Pasadena filed an answer to the California Parties' filing protesting Pasadena's supplemental filing. LADWP filed an answer to the California Parties' filing protesting LADWP's supplemental filing. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We will accept the CAISO's answer to Pasadena's and LADWP's answers, and Pasadena's and LADWP's answers to the California Parties' protests only to the extent they provide information that has assisted us in our decision-making process.

Commission Determination

33. We find, as discussed below, that the compliance filings submitted by Pasadena and LADWP are in compliance with the directives of the *Refund Orders* and, accordingly, accept them for filing. We note that some of the issues raised by the California Parties in regard to the initial compliance filings by Pasadena and LAWDP have been resolved in their supplemental filings. For example, in its March 10, 2005 filing, Pasadena corrected its initial calculations to include unaccounted for energy, as was suggested by California Parties. Specifically, Pasadena revised calculations to reflect emissions costs allocated to the CAISO and PX sales in the amount of \$721,826. Of that amount, Pasadena allocated \$593,459 to the mitigated intervals. We find that the revised calculation accurately reflects the CAISO's settlement charges. Accordingly, we agree with this correction and find that the revised emissions costs offset is reasonable and direct the CAISO to use it in its refund calculations.

34. We also accept LADWP's emissions costs offset, as modified in its June 21, 2005 supplemental filing. In that filing, LADWP acknowledges that certain errors were made in its calculations with regard to the number of days accounted for in the SCAQMD settlement, and corrects data discrepancies with the settlement data provided by the PX. LADWP also corrects the inadvertent assignment of emissions costs to purchased power transactions that were sold to the CAISO. We find LADWP's emissions costs of \$8,630,834 to be appropriately calculated in compliance with the Commission's orders. We, therefore, direct the CAISO to use this number in its calculations of refunds.

35. We disagree with the California Parties' contention that purchased power transactions should be included in the apportionment of emissions costs between CAISO sales and non-CAISO sales. The California Parties' proposal to include purchased power transactions in the apportionment would inappropriately assign emissions costs to transactions for which LADWP did not incur emissions costs. We find that assigning emissions costs by the ratio of CAISO sales to all non-native load sales made from LADWP's own generation resources corresponds to the emissions costs that were actually incurred by LADWP. Thus, it is inappropriate to include purchased power transactions in the allocation of emissions costs.

36. We also do not agree with the California Parties that the instant compliance filings are an inappropriate attempt to reopen the hearing record. In the *Initial Decision*, the ALJ accepted emissions costs offset claims submitted by certain parties and issued recommendations on inadequacies and omissions in emissions costs offset submissions by Pasadena and LADWP. The Commission affirmed the ALJ's findings and subsequently further refined the methodology for calculating emissions costs offsets. The purpose of the instant filings is to bring the previously submitted emissions costs offset claims in compliance with the Commission's directives issued subsequently to the completion of the hearing. We did not set any deadlines for submitting compliance filings because these filings are voluntary and it is up to the eligible parties to claim the offsets in time for the CAISO to include them in its refund calculations. Accordingly, we deny the California Parties' motion to strike the instant filings.

37. Furthermore, the CAISO argues that the Commission should devise a procedure for interested parties to review and comment on the submitted emissions costs offset claims. We do not think that a separate procedure is necessary. The emissions costs offset claims were the subject matter of the evidentiary hearing which is long completed. As for Pasadena's and LADWP's compliance filings, they were duly noticed in the Federal Register. All interested parties, including the California Parties, have had an opportunity to comment on the substance of the compliance filings.

38. We also will not require a uniform template for the emissions costs offset claims. Most of the claims have been accepted by the Commission and there are no grounds for vacating our prior determination on this matter. We have also reviewed the instant filings

and find, as discussed above, that they comply with our directives and provide adequate support for Pasadena's and LADWP's claims for emissions costs offsets.

39. We also note that Reliant's argument that the imposition of the uniform template for emissions costs offset submissions would be consistent with the Commission's prior determination that the fuel cost allowance and emissions costs offsets should be treated the same is misplaced. In the October 16 Order, the Commission clarified that similar to the fuel cost allowance, emissions costs offsets would not be applicable for intervals during which sales were not mitigated.¹⁵ However, the October 16 Order did not say that the Commission would handle the process for emissions costs in an identical manner as it handled the process for fuel cost allowance claims.. The allocation methodology for the fuel cost allowance required a type of information which made the use of a uniform template beneficial. We find that the use of a uniform template for calculating emissions costs offsets is unnecessary at this time because the process for these submissions is complete as of the issuance of this order.

40. In addition, we acknowledge the receipt of Reliant's informational filing detailing a *pro rata* allocation of its emissions costs offset among mitigated and non-mitigated intervals. In the March 26 Order, we required Reliant to recalculate its emissions costs on a *pro rata* basis.¹⁶ Reliant made the directed correction to its emissions costs offset calculations and submitted a filing detailing the revision although the Commission explicitly stated that Reliant was not required to submit a compliance filing.¹⁷ For this reason, we consider Reliant's filing to be for informational purposes only and hereby acknowledge its receipt.

The Commission orders:

(A) Pasadena's and LADWP's compliance filings are hereby accepted for filing, as discussed in the body of this order.

(B) The receipt of Reliant's informational filing is hereby acknowledged.

(C) The California Parties' motion to strike is hereby denied for the reasons stated in the body of this order.

¹⁵ See October 16 Order at P152-153.

¹⁶ See March 26 Order at P 112.

¹⁷ See *id.*

(D) Reliant's motion is hereby denied for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.