

122 FERC ¶ 61,274
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company

Docket Nos. EL00-95-000,
EL00-95-045, EL00-95-187

v.

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

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

Docket Nos. EL00-98-000,
EL00-98-069, EL00-98-172

ORDER ADDRESSING REQUESTS FOR REHEARING AND CLARIFICATION,
AND REMAINING REFUND PROCESS DISPUTE

(Issued March 25, 2008)

1. In this order, we deny requests for rehearing and grant clarification of a Commission order dated August 23, 2006,¹ in which we addressed disputes filed by market participants in regard to refund reruns and various offsets to refunds. In this order, we also address an outstanding dispute filed by Puget Sound Energy (Puget) pursuant to the procedure established in the August 2006 Order.

¹ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 116 FERC ¶ 61,167 (2006) (August 2006 Order).

Background

2. The August 2006 Order addressed outstanding disputes filed by market participants pursuant to a Commission order dated August 8, 2005.² The August 2005 Order established a December 1, 2005 deadline for parties to file any disputes with the CAISO, the California Power Exchange's (Cal PX), and/or the Automated Power Exchange's (APX) refund calculation processes and refund offsets, including fuel cost allowance (FCA) claims, cost-and-revenue study offsets, and emissions cost offsets.³

3. The August 2006 Order resolved issues raised by parties in their dispute filings and provided further guidance on outstanding concerns with regard to refund calculation and allocation processes. The August 2006 Order also directed the CAISO to work with Puget on data discrepancies and file progress reports. The Commission stated that if the dispute between the CAISO and Puget was not resolved by the parties on their own, the Commission would offer resolution.⁴

4. On October 10, 2006, Puget and the CAISO, in their third status report, noted that they had resolved all but one of Puget's disputed issues. On October 16, 2006, both Puget and the CAISO submitted their briefs regarding Puget's final data dispute.⁵

5. The following parties filed timely requests for rehearing: the City of Redding, California (Redding) and Western Area Power Administration (WAPA), APX, Powerex Corp. (Powerex), Northern California Power Agency (NCPA), and California Parties.⁶

² *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 112 FERC ¶ 61,176 (2005) (August 2005 Order).

³ *See id.* at P 116.

⁴ August 2006 Order, 116 FERC ¶ 61,167 at P 27.

⁵ Puget submitted an initial brief and subsequently submitted a corrected brief.

⁶ California Parties include the People of the State of California *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison Company.

I. Rehearing Requests

A. California Parties' Requests for Rehearing and Clarification

1. Auditor Review Process

6. On rehearing, California Parties argue that the Commission erred in rejecting California Parties' contention that it lacked access to Ernst and Young (E&Y) working papers as a collateral attack on the Commission's prior order.⁷ In California Parties' opinion, the Commission's uncritical acceptance of the results of the E&Y audit is an improper delegation of the Commission's statutory authority. California Parties further contend that that Commission decision is akin to getting out of the business of trying rate cases, and instead require that those filing rates first submit them to an unreviewable audit by E&Y. California Parties, therefore, seek rehearing of the Commission's decision preventing California Parties from being able to review working papers necessary to establish the existence, *vel non*, of disputes with the E&Y audit.

7. California Parties further state that they were not provided with E&Y's audit report by the City of Anaheim (Anaheim) due to the lack of the formal filing process, and thus did not have an opportunity to review it and to state the relief they were seeking in their dispute filing. In California Parties' opinion, this situation illustrates the Commission's failure to adequately adjudicated FCA claims.

Commission Determination

8. We reiterate here that California Parties' contentions regarding the lack of access to E&Y's working papers and the Commission's allegedly improper delegation of its statutory duties to E&Y constitute a collateral attack on the Commission's prior order. In a September 24, 2004 order, the Commission explained why use of an independent

⁷ In a May 12, 2004 Order, in order to resolve the FCA proceeding in an efficient and equitable manner, the Commission directed that all FCA claims be independently reviewed by an outside auditor, and that a responsible company official attest to the independent auditor's findings. *See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 107 FERC ¶ 61,166, at P 74 (2004) (May 2004 Order). Specifically, the Commission held that the independent auditor was to review and verify that the source data used in fuel cost calculations are correct and comprehensive. *Id.* The Commission also directed that the auditor-verified FCA calculations be submitted directly to the CAISO. *Id.* P 77.

auditor to verify data under parameters carefully circumscribed by the Commission is consistent with the Federal Power Act (FPA).⁸ As we stated in a March 18, 2005 order, if California Parties believed that the procedures for challenges to audit reports and Commission review of unresolved audit disputes, as established in the September 2004 Order, failed to satisfy the FPA or due process, California Parties should have raised this issue on rehearing of the September 2004 Order.⁹ The California Parties did not do so.¹⁰ Having failed to raise timely the issue on rehearing of the September 2004 Order, California Parties are procedurally barred from raising this argument in this proceeding.

9. In their dispute filing, California Parties did not explain whether they requested a copy of Anaheim's report and what Anaheim's response was, nor did they request any specific Commission action to facilitate the delivery of that audit report to California Parties. On rehearing, California Parties again do not explain why they were unable to obtain Anaheim's audit report, nor do they request specific relief to ensure that they receive the audit report. Instead, California Parties again challenge the Commission's established procedure for verifying and processing FCA claims.

10. California Parties are correct in stating that E&Y audit reports were not required to be filed with the Commission but instead they were to be submitted directly to the CAISO for processing.¹¹ However, California Parties are incorrect that they lack an opportunity to review and contest FCA claims. The Commission established procedures allowing parties to raise concerns regarding the verified FCA claims. Contrary to California Parties' assertion, by not requiring that audit reports be filed with the Commission, the Commission did not fail to adjudicate FCA claims. E&Y was charged with a ministerial function of verifying the accuracy and completeness of data and confirming that all calculations are in conformance with the Commission's directives.

⁸ For a complete discussion of this issue *see San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 108 FERC ¶ 61,311, at P 92-94 (2004) (September 2004 Order).

⁹ *See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 110 FERC ¶ 61,293, at P 71 (2005) (March 2005 Order).

¹⁰ *See California Parties' Request for Rehearing of September 2004 Order Denying California Parties' Third Supplemental Motion to Lodge Commodity Futures Trading Commission Orders Relating to Gas Price Misreporting Investigations*, Docket Nos. EL00-95-114 and EL00-98-101 (Oct. 22, 2004).

¹¹ May 2004 Order, 107 FERC ¶ 61,166 at P 80.

All decision-making authority in regard to disputes arising out of FCA claims verified by E&Y rests with the Commission. For these reasons, we deny California Parties' request for rehearing of this issue.

2. Evidentiary Hearing to Address the Relationship Between FCA and Cost Offsets

11. California Parties further contend that the Commission failed to address and fully evaluate California Parties' request to establish an evidentiary hearing regarding the relationship between the FCA and cost filing claims. According to California Parties, the Commission misinterpreted their position. California Parties explain that they requested an evidentiary hearing not only to address those claimants with both cost filing and FCA claims, but also to address the interrelationships of the cost filings and FCA claims of different sellers that could create daisy-chained or overlapping transactions. California Parties explain that they are concerned that a supplier who received substantial unmitigated profits for its sale through a marketer would claim an FCA, while the marketer would use the same unmitigated sale to justify an offset to refunds.

Commission Determination

12. We reiterate here that there are only two parties who have claimed both an FCA and submitted a cost filing. These parties are Sempra Energy Trading Corporation (Sempra) and Puget.¹² Both Sempra and Puget reflected their expected FCA as a revenue item in their accounting of revenues for their cost filings.¹³ This ensures that the same transactions will not be duplicated in FCA claims and cost filings. We also note that if California Parties have a general concern with the cost-and-revenue filing methodology, they should have raised this issue in the proceeding where the Commission established the methodology and guidelines for calculating cost-and-revenue offsets. Accordingly, we deny California Parties' request for rehearing on this matter.

3. Dismissal of Mirant Corporation's FCA Claim

13. California Parties further argue that the Commission erred in summarily dismissing the FCA claim by Mirant Corporation (Mirant) on the sole basis that it was

¹² August 2006 Order, 116 FERC ¶ 61,167 at P 72.

¹³ See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 114 FERC ¶ 61,070, P 312 and 336 (2006).

not adequately verified by E&Y. In California Parties' opinion, the Commission erroneously relied on the conclusions of E&Y, a non-party to the proceeding, instead of considering the fact that no disputes were filed in regard to Mirant's FCA claim. California Parties, therefore, conclude that the Commission failed to review Mirant's FCA claim in a manner consistent with due process and the Commission's responsibilities.

Commission Determination

14. In the August 2006 Order, the Commission rejected Mirant's FCA claim as deficient.¹⁴ In its decision, the Commission relied on findings by E&Y that Mirant's FCA claim was based on unverifiable data.¹⁵ We again reiterate here that E&Y's task was to verify the accuracy of the source data used to claim an FCA. The Commission reviewed E&Y's audit report on Mirant's FCA claim carefully¹⁶ and found E&Y's findings reliable. Accordingly, the Commission rejected Mirant's FCA claim.

15. California Parties are correct in stating that Mirant's FCA claim was not disputed by other parties to the proceeding. The absence of filings disputing Mirant's FCA claim does not preclude the Commission from acting on Mirant's FCA, nor does it suggest that other parties in fact supported Mirant's claim or that Mirant's FCA claim was reasonable. The Commission, therefore, denies California Parties' request for rehearing on this matter.

4. Hedging

16. California Parties argue that the Commission erred in rejecting disputes raised by California Parties alleging that E&Y misapplied a test for determining whether hedges had been appropriately reflected in FCA submissions, particularly in the FCA claim by Sempra. California Parties explain that some entities in the gas market acquired gas

¹⁴ August 2006 Order, 116 FERC ¶ 61,167 at P 74-76.

¹⁵ *See id.* for details explaining which data used by Mirant to calculate its FCA had no documentary support.

¹⁶ Mirant's October 10, 2005 Supplemental Accountants' Report was submitted to the Commission by the CAISO in its Motion for Clarification Concerning the Processing of Fuel Cost Allowance Claims, Attachment A, Claim of Mirant Corporation, Docket Nos. EL00-95-045 and EL00-98-069 (Nov. 22, 2005).

through daily acquisitions at the daily spot price, but that they had in place longer-term “fixed for floating” contracts for differences that reimbursed the entity for the daily spot price of gas, substituting a fixed longer-term (typically monthly) payment. According to California Parties, the Commission agreed in its prior orders that companies with such hedges should reflect the impact of such hedges in their calculation of the actual cost of gas.¹⁷ California Parties further argue that based on the descriptions in its reports, E&Y misunderstood or simply ignored this issue and did not apply a credible test to determine if such hedges existed, so that daily purchasing at spot prices should instead be reflected as longer-term fixed price purchases where there was a contract for differences.

17. California Parties also add that they have not been given any opportunity to examine the underlying data or analysis on this issue, and are left to blindly hope that E&Y performed the appropriate check. California Parties conclude that the Commission simply endorsed the method employed by E&Y that the Commission itself never evaluated in any substantive way because it did not examine E&Y’s working papers.

Commission Determination

18. On rehearing, California Parties make the same argument for the third time in this proceeding, contending that all hedging should be assigned or allocated to all gas purchases irrespective of term.¹⁸ The Commission rejected this proposition in the May 2004 Order, stating that:

despite the presence of a spot market price as part of the transaction, the hedge itself is longer term and has no direct relationship to the purchase of daily spot gas for spot electricity sales.¹⁹

The Commission, however, found that:

...in order to properly account for such transactions, and consistent with assigning short-term gas supplies to spot power sales and proceeding

¹⁷ In support of this contention California Parties cite to *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 114 FERC ¶ 61,223, at P14 (2006) (February 2006 Order), *citing* May 12 Order, 107 FERC ¶ 61,166 at P 27-30.

¹⁸ *See, e.g.*, May 2004 Order, 107 FERC ¶ 61,166 at P 27.

¹⁹ *Id.* at P 30.

sequentially to the next shortest term supply, we direct generators to allocate gas purchases by the term associated with the underlying hedge.²⁰

19. Accordingly, we reiterate our previous finding that the test employed by E&Y to evaluate whether Sempra's hedging or other financial transactions are relevant to the gas purchases reflected in its FCA claim is reasonable. As we found in the August 2006 Order, E&Y correctly ascertained whether a specific hedge was associated with a specific gas purchase.²¹ Having found no correlation of hedges to gas purchases reflected in Sempra's FCA claim, E&Y correctly concluded that none of Sempra's hedges or financial transactions are relevant to the gas purchases reflected in its FCA data.²² For these reasons, we deny California Parties' request for rehearing on this issue.

5. Uninstructed Energy

20. California Parties challenge the Commission's rejection of the disputes related to Uninstructed Energy (UE) transactions reflected in the FCA claims. Specifically, California Parties contend that allocation of the FCA amounts associated with UE sales should be computed on a net basis, rather than on a gross UE basis and that the Commission approved a method that would allow sellers to overrecover FCA claims associated with UE sales.

Commission Determination

21. In the August 2006 Order, we rejected the California Parties' challenge of the method used by FCA claimants to account for UE sales when calculating FCA amounts.²³ Specifically, the Commission explained that:

...net portfolio-wide UE sales do not necessarily reflect exclusively transactions from FCA-eligible units; net UE sales may include sales from other units as well. In order to ensure that FCA is claimed only for UE sales made from FCA-eligible units, sellers conducted a comparison of gross UE sales from FCA-eligible units to overall net UE sales in each

²⁰ *See id.*

²¹ August 2006 Order, 116 FERC ¶ 61,167 at P 79.

²² *Id.*

²³ *Id.* at P 81-83.

interval. If the net UE sales volume was greater than the total gross number of UE sales from FCA-eligible units, sellers used the gross UE sales volume to calculate FCA amounts because a greater net UE sales volume indicates the presence of UE sales from units that are not eligible for FCA. If, however, the gross UE sales volume was greater than the net UE sales, sellers based their FCA claims on the net UE sales volume.²⁴

Accordingly, the Commission concluded that the methodology used did not overstate FCA claims because it was intended to separate out in FCA calculations UE sales from FCA-eligible units from other UE sales.²⁵ We reiterate here that the methodology in question is reasonable and consistent with our previous directives. California Parties' request for rehearing on this issue is hereby rejected.

6. APX-Related FCA Claims

22. On rehearing, California Parties argue that the Commission should clarify that an individual APX participant should not be able to seek an FCA associated with APX transactions in those intervals, where the overall APX has no refund liability. In addition, California Parties note that there may be only one APX seller still seeking an FCA for APX transactions; that is Midway Sunset Cogeneration Company (Midway Sunset).

Commission Determination

23. California Parties are correct in noting that Midway Sunset is the only APX participant that has claimed an FCA and whose FCA claim was addressed in the August 2006 Order.²⁶ We agree with California Parties that Midway Sunset should be allowed to claim an FCA only for an interval for which a refund is being asserted against APX. E&Y verified by reviewing the refund schedule from the CAISO that Midway Sunset was asserting an FCA only for those intervals in which it was mitigated.²⁷ The Commission, therefore, accepted Midway Sunset's FCA claim for processing by the

²⁴ *Id.* at P 82.

²⁵ *Id.* at P 83.

²⁶ *Id.* at 84.

²⁷ *Id.* at P 63.

CAISO.²⁸ Given that this matter has been already dealt with, California Parties' request for clarification is hereby denied.

7. Heat Rate Data

24. California Parties challenge the Commission's decision in regard to FCA claims submitted by LADWP, Nevada Power, Puget, and Sempra for which CAISO heat rate data were not available. California Parties argue that the Commission erroneously found a review of seller heat rate data by E&Y to be sufficient to validate the claimed heat rates even though E&Y's review was not based on objective third-party evidence. In addition, California Parties request that the Commission establish an evidentiary hearing to address the issue of heat rate data.

Commission Determination

25. As the Commission explained in the August 2006 Order, because LADWP's, Nevada Power's, Puget's, and Sempra's heat rate data were not on file with the CAISO, the heat rate data used by these sellers in their FCA calculations had to be verified by E&Y in accordance with the March 2005 Order directives.²⁹ In the March 2005 Order, the Commission allowed sellers whose heat rates were not on file with the CAISO to use their own actual and verifiable incremental heat rate data to calculate their FCA claims.³⁰ We reiterate that E&Y performed verification of source documentation of heat rate data provided by the sellers in question and concluded that the source data were correct and comprehensible and that heat rate calculations appeared reasonable and were performed with professional care. California Parties are correct that E&Y noted in its reports that the data provided were not based on objective third-party evidence. This, however, was done to simply acknowledge the fact that no heat rate data were kept on file with the CAISO.

26. In the August 2006 Order, the Commission explained that:

to address the lack of heat rate data on file with the CAISO, the Commission permitted sellers to use in their FCA calculations actual heat

²⁸ *Id.* at P 84.

²⁹ *Id.* at P 86.

³⁰ March 2005 Order, 110 FERC ¶ 61,293 at P 21.

rate data as long as the data are verified by E&Y. It was the March 18 Order's intention to allow, in the absence of the CAISO's records, verification of the heat rate data through corroborative business records and other evidence. As E&Y reports, it reviewed the source documentation for heat rates used by each of the sellers at issue and examined the heat rate calculations, and found them acceptable. E&Y and the FCA claimants at issue complied with the March 18 Order directives and no further validation of their heat rate data is necessary.³¹

For these reasons, we deny California Parties' request for rehearing and their request for an evidentiary hearing of the heat rate issue.

8. Gas Costs

27. California Parties argue that the Commission erred in attributing their dispute regarding a possible double-counting of gas costs to LADWP and Nevada, while California Parties dispute addressed gas sales that Puget made to Reliant that in turn may have been reflected in Reliant's FCA filing. According to California Parties, because this issue raises the potential that the same high-cost gas may have been reflected in both Puget's and Reliant's FCA claims, it raises a material issue of fact not addressed by the August 2006 Order and that has not been rejected by the Commission's rulings on the treatment of gas sales. Accordingly, California Parties seek rehearing of the Commission's determination.

Commission Determination

28. While the Commission agrees with California Parties that it erroneously made a determination in regard to the FCA claims of the wrong parties, this fact does not change the substance of our determination. The August 2006 Order summarizes California Parties' position on this issue and Puget's response in paragraphs 58 and 68 of that order, respectively. In this order, we, therefore, clarify that paragraph 87 of the August 2006 Order addresses California Parties' dispute in regard to a potential double-counting of gas sales made by Puget, not LAWDP and Nevada.

29. We also reiterate that the Commission had already addressed the issue of double-counting of gas costs in its prior orders prior to California Parties' filing of their dispute. Specifically, in the September 2004 Order, the Commission stated that:

³¹ August 2006 Order, 116 FERC ¶ 61,167 at P 86.

California Parties incorrectly assume that the gas provided in a spot sale must be the same gas that was originally obtained from a spot purchase. Consistent with our principle of marginal purchase, however, gas from a spot purchase is not the same gas that was sold in the spot market to the extent that the spot gas purchased was needed to make a mitigated electricity sale to the ISO or PX.³²

Consistent with the above quoted determination in the September 2004 Order, we reject California Parties' contention related to potential double-counting of gas costs in different FCA claims. Accordingly, we deny California Parties' request for rehearing on this issue.

9. Affiliate Transactions

30. California Parties challenge the Commission's rejection of their request for evidentiary hearings to examine whether any of Sempra's affiliates conducted gas transactions used to serve generation that Sempra then sold into California. Specifically, California Parties take issue with the Commission's conclusion that because the California Parties did not identify specific transactions, and because the FCA claim was verified by E&Y and attested to by a Sempra company official, there were no grounds for establishing an evidentiary hearing. California Parties argue that without evidentiary hearings, or some way to obtain the preliminary data necessary to be able to ascertain whether there in fact were affiliate transactions, it is impossible to meet the burden established by the Commission, nor is it possible to ascertain whether E&Y ever in fact reviewed Sempra's claim to determine whether such transactions existed, or whether Sempra itself undertook this analysis. California Parties thus conclude that by uncritically accepting Sempra's FCA claim without providing an opportunity for discovery on this issue, the Commission has violated the California Parties' due process rights and potentially unjustly increased rates to consumers.

Commission Determination

31. In the August 2006 Order, the Commission rejected California Parties' request for an evidentiary hearing to examine whether any of Sempra's affiliates conducted gas transactions used to serve generation that was then sold by Sempra into California.³³ The

³² See September 2004 Order, 108 FERC ¶ 61,311 at P 32.

³³ August 2006 Order, 116 FERC ¶ 61,167 at P 71.

Commission concluded that California Parties failed to provide grounds for their allegations that some of the gas purchases included in Sempra's FCA calculations were affiliate transactions. On rehearing, California Parties again do not explain why they believe that there are certain affiliate transactions that were allegedly overlooked by E&Y. For this reason, we find California Parties' suspicions speculative and do not warrant a hearing. We continue to find that California Parties have failed to provide support for their request to establish an evidentiary hearing. We reiterate here that E&Y is an independent auditor bound by professional accounting standards; it was appointed by the Commission to perform ministerial functions of reviewing and verifying that the source data used in FCA calculations are correct and comprehensive and that the calculations performed to determine an FCA conform to the Commission's directives. The Commission set explicit guidelines for E&Y to follow and has no reason to suspect that those guidelines were not observed by E&Y. For these reasons, we deny California Parties' request for rehearing on this matter.³⁴

10. Commission Rejection of Disputes Related to Emissions Costs Offsets and Cost Offsets

32. California Parties raise issues with the Commission's rejection of their disputes relating to emissions costs offsets and cost offsets on the basis that these disputes incorporated by reference arguments made in other filings relating to those offsets. California Parties argue that the filings incorporated by reference were pending in the Refund Proceeding in the same lead docket as disputes and that California Parties allegedly were not given sufficient time and opportunity to restate the same arguments in their disputes to meet the December 1, 2005 deadline for filing disputes. California Parties claim that some of the outstanding issues pertaining to cost offsets were still pending resolution on December 1, 2005. In connection with this, California Parties inquire whether their disputes were rejected on the merits or on the procedural grounds. In California Parties' opinion, the rejection of their disputes on the merits violates their due process rights.

Commission Determination

33. In the August 2006 Order, the Commission rejected California Parties' disputes in regard to the emissions costs offsets and cost offsets because California Parties failed to state their concerns with those filings and instead stated that they incorporated by

³⁴ We also note that California Parties' contention in regard to the lack of access to E&Y's working papers is addressed at length above.

reference the arguments made in their comments submitted in the cost filing proceeding and their rehearing request of the Commission's order addressing the emissions costs offset claims.³⁵ We reiterate here that the Commission does not address arguments incorporated by reference from filings submitted in other proceedings. As the August 2006 Order states,

[s]uch an incorporation of arguments by reference places the Commission in the untenable position of determining which arguments are still relevant following the issuance of a Commission order on the issues. Further orders were issued in both the emissions costs offset proceeding and cost filing proceeding, which means that the California Parties' arguments have been addressed in those proceedings. For these reasons, we will not consider the arguments the California Parties seek to incorporate by reference here.³⁶ (*Footnote omitted*).

34. Accordingly, we deny California Parties' request for rehearing of this issue. We also note that California Parties' disputes in regard to emissions costs offsets and cost offsets were rejected with prejudice in this proceeding for failure to state what exactly California Parties were disputing.

11. Other Disputes

35. In addition, California Parties request clarification that to the extent the Commission did not address issues identified by California Parties in their dispute filings, they may continue to assert disputes with regard to such issues. California Parties allege that the Commission failed to address various specific issues relating to FCA claims, such as issues related to LADWP's pumped-storage facilities and its contractual relationship with Reliant (including the treatment of settlement proceeds). California Parties also seek clarification that they have the right to dispute any issue in the future to the extent that issues relating to the refund rerun process or offsets have not yet sufficiently crystallized to determine whether or not there is a dispute at this time. According to California Parties, examples of such items include claims by market participants or calculations by the CalPX or CAISO that have not yet been made.

³⁵ August 2006 Order, 116 FERC ¶ 61,167 at P 89.

³⁶ *Id.*, citing *City of Santa Clara v. Enron Power Mkt'g, Inc.*, 112 FERC ¶ 61,280, n.4 (2005).

Commission Determination

36. We disagree with California Parties' assertions that the August 2006 Order failed to address the two issues identified by California Parties. In their dispute, California Parties requested access to the data from LADWP's pumped storage facility and, to that end, they urged the Commission to establish an evidentiary hearing with the opportunity for discovery.³⁷ The Commission addressed that general argument by California Parties in regard to the access to E&Y working papers and the necessity of an evidentiary hearing in paragraph 47 of the August 2006 Order, as well as in this order, above.

37. The LADWP-Reliant contractual relationships were also addressed in the August 2006 Order; specifically, in paragraph 57, the Commission stated that:

California Parties argue that LADWP should be required to explain why the revenues received from gas sales to Reliant, which are reflected in the Reliant FCA submission, are not included in LADWP's submission. The California Parties, however, acknowledge that the Commission "has ruled (over the California Parties objections) that the profits from gas sales should not be used to offset the FCA."³⁸ The California Parties also state that LADWP's FCA claim fails to recognize litigation in which LADWP has sought relief against Reliant for allegedly manipulating gas prices ultimately charged by Reliant to LADWP during the Refund Period. In a footnote, however, the California Parties acknowledge that LADWP's claim against Reliant has been dismissed.³⁹

38. California Parties also mention that there might be some other issues that were brought to the Commission's attention in their disputes filings but were not addressed in the August 2006 Order. If California Parties believe that the Commission overlooked certain arguments and issues and failed to address them in the August 2006 Order, the rehearing proceeding is the right forum to bring this to the Commission's attention and request resolution of the omitted issues. However, California Parties fail to identify specifically which issues were raised but not addressed by the Commission in the August

³⁷ See California Parties' Dec. 1, 2005 Dispute, Docket No. EL00-95, *et al.*, at 19.

³⁸ See California Parties' Dispute Relating to Cost Offsets and Refund Re-Runs, Docket No. EL00-95-000, at 19 (Dec. 1, 2005).

³⁹ *Id.* at 18 n.32.

2006 Order, except for the two discussed above. Accordingly, California Parties are barred from raising these issues in subsequent filings and proceedings, as it would constitute a collateral attack on the August 2006 Order.

39. As for the issues that allegedly have not yet been “crystallized” and might arise in the future, such issues should be addressed in appropriate proceedings. We will not hold the disputes proceeding open to entertain issues that are currently non-existent and might never arise. For these reasons, we deny California Parties’ request for clarification.

B. Powerex’s Request for Rehearing

40. Powerex argues that the Commission erred in rejecting its disputes concerning the CAISO’s proposed methodology for mitigating energy import transactions in the refund rerun process as a collateral attack on the Commission’s prior orders. According to Powerex, those issues were timely raised in a motion for expedited clarification filed March 4, 2005 and in a letter to the Commission filed December 1, 2005.

41. Specifically, Powerex explains that it agrees that the Commission’s determination in a March 26, 2003 Order⁴⁰ and an October 16, 2003 Order⁴¹ that the CAISO should apply an hourly mitigated market clearing price (MMCP) to imports. However, according to Powerex, the Commission never addressed the critical and necessary second issue of whether the hourly average MMCPs are to be applied to historical hourly or interval import prices. Thus, Powerex concludes, its attempt to seek a clear and final ruling on these specific questions in its March 4, 2005 motion and subsequent filings should not have been dismissed as an impermissible collateral attack.

42. Further, Powerex argues that the Commission failed to consider whether it was improper for the CAISO to mitigate only a subset of import transactions by applying hourly MMCPs to the Instructed Energy (IE) portions of import transactions within a given hour. In Powerex’s opinion, by ignoring that a portion of the import may be compensated as UE at a lower price, the CAISO’s methodology would overstate the actual price paid for the imported energy. Powerex state that the possibility that the CAISO would treat imports this way did not arise until the CAISO filed its refund rerun

⁴⁰ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 102 FERC ¶ 61,317 (March 2003 Order).

⁴¹ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 105 FERC ¶ 61,066 (2003) (October 2003 Order).

status report in February 2005. According to Powerex, prior to that time, the CAISO's various filings had indicated that the CAISO would be applying refund calculations to imports of both IE and UE. Powerex, therefore concludes that it properly raised this issue for the first time in its March 4, 2005 motion for clarification, but did not obtain a Commission ruling on the issue prior to the August 2006 Order.

Commission Determination

43. In the March 2003 Order, the Commission adopted the presiding judge's finding that the CAISO improperly mitigated imported energy based on 10-minute intervals when it should have used hourly average MMCPs.⁴² In the October 2003 Order, the Commission reconfirmed its earlier finding stating that:

. . . there is no basis to treat Energy Imports differently from other types of energy. Under the CAISO's rules and procedures, the only difference in how Energy Imports are treated involves accommodation in the CAISO's dispatch process of the fact that Energy Imports must be dispatched for a minimum of one hour under [Western States Coordinating Council] rules. However, beyond pre-dispatching an accepted Energy Import bid for each interval in the pertinent hour, the Energy Import receives no special treatment. Its eligibility to set the BEEP Interval Price in each interval, and the Hourly Ex Post Price if the next resource is not dispatched, is no different from the price-setting rights of any dispatched resource. Accordingly, our adoption of the presiding judge's finding on this issue simply reflected that Energy Imports should be mitigated just like all other types of energy. No further clarification is needed and the alternate request for rehearing is denied.⁴³

44. The above clarification was provided by the Commission in response to the request for clarification filed by the Competitive Supplier Group which included Powerex.⁴⁴ Specifically, the Competitive Supplier Group requested clarification that the hourly average MMCP will be used to mitigate the hourly average price of the imported

⁴² March 2003 Order, 102 FERC ¶ 61,317 at P 79.

⁴³ *See* October 2003 Order, 105 FERC ¶ 61,066 at P 54.

⁴⁴ *Id.* n.6.

energy and not each ten-minute price of that energy during the hour.⁴⁵ Accordingly, the Commission concludes that contrary to Powerex's assertion in its request for rehearing of the August 2006 Order, this specific issue has already been raised by Powerex and addressed by the Commission. We thus reiterate here our finding in the August 2006 Order⁴⁶ that Powerex's dispute represents a collateral attack on prior Commission orders, and thus should be dismissed.

45. Now we turn to Powerex's contention in regard to separate mitigation of the IE portions of imports and UE portions of imports. Contrary to Powerex's assertion, this is not a new issue which arose following the issuance of the March 2003 Order and the October 2003 Order. It is just a different way for Powerex to express its positions that refund calculations for imports should not be based on the actual 10-minute Market Clearing Prices (MCPs) paid for imports of instructed and uninstructed energy, but on a specially constructed average hourly transaction price (which would include both instructed and uninstructed energy sales). We have rejected this approach in the March 2003 and October 2003 Orders, as well as the August 2006 Order, as discussed above. Moreover, we find that the Powerex-proposed approach to treating imports would be inconsistent with the CAISO's settlement procedures for UE and would result in disruption of the calculation of refunds. For these reasons, we deny Powerex's request for rehearing.

C. NCPA's Request for Rehearing

46. On rehearing, NCPA argues that the Commission, by denying NCPA's dispute regarding its sales to the CAISO, is attempting to indirectly assert refund jurisdiction over the sales of a non-jurisdictional entity. NCPA challenges the Commission's finding in the August 2006 Order that all transactions with the CAISO on behalf of NCPA were conducted by PG&E, as a Scheduling Coordinator. According to NCPA, PG&E was not involved in the transactions between NCPA and the CAISO.

47. In the alternative, NCPA argues that even viewing its sales as sales by PG&E, on behalf of NCPA, to the CAISO, those sales should be recognized as sales by a non-jurisdictional entity to the CAISO because to hold otherwise would conflict with precedent holding that where an entity takes no title to power, but acts as a broker, its

⁴⁵ *Id.* at P 53.

⁴⁶ *See* August 2006 Order, 116 FERC ¶ 61,167 at P 27.

actions are not jurisdictional sales.⁴⁷

Commission Determination

48. As NCPA explained in its dispute filing, the sales at issue on rehearing were made from NCPA's units which were not subject to the Participating Generator Agreement with the CAISO and which were located in the wholesale portfolio used by PG&E to implement its Existing Contracts.⁴⁸ Moreover, according to NCPA, payment for the sales from those units was made to PG&E rather than to NCPA.⁴⁹ Accordingly, these sales were reflected in the CAISO's records as transaction with PG&E, as a Scheduling Coordinator.⁵⁰

49. Apart from allegations and statements made by PG&E in its private correspondence with NCPA, NCPA failed to present factual evidence demonstrating that the sales in question were in fact transactions between the CAISO and NCPA. NCPA acknowledged that it did not have an agreement with the CAISO covering the sales in question, nor did it receive the payment for these transactions directly from the CAISO. Moreover, the CAISO's records indicate that these transactions were settled with PG&E as the Scheduling Coordinator. For these reasons, we reiterate here that because the refund liability in this proceeding attaches to the Scheduling Coordinator, the dispute made by NCPA as to refund liability for sales made by PG&E to the CAISO is beyond the scope of this proceeding and therefore rejected.⁵¹

50. In addition, we also find that NCPA's contention that the refund liability should not attach to PG&E because it took no title to the energy sold is a collateral attack on the Commission's prior orders in this proceeding. The Commission has generally held that refund liability in this proceeding attaches to the Scheduling Coordinator of the transaction.⁵²

⁴⁷ NCPA cites to *Citizens Energy Corp.*, 35 FERC ¶ 61,198 (1986); *UtiliCorp United, Inc.*, 70 FERC ¶ 61,021 (1995).

⁴⁸ See NCPA's Dec. 1, 2005 Dispute Filing, at 3.

⁴⁹ *Id.*

⁵⁰ August 2006 Order, 116 FERC ¶ 61,167 at P 42.

⁵¹ *Id.* at 46.

⁵² See, e.g., May 2004 Order, 107 FERC ¶ 61,166 at P 18.

D. APX's Request for Clarification and Rehearing

51. On rehearing, APX alleges that the August 2006 Order misstates the Commission's prior holdings regarding the apportionment of refunds among the APX participants. APX, however, notes that it is not asking the Commission to reconsider the merits of these issues on rehearing. According to APX, the October 2003 Order referenced in the August 2006 Order established two different apportionment methodologies for APX transactions scheduled in the CAISO market and CalPX-pass-through transactions. APX contends that in accordance with the October 2003 Order's finding, the *pro rata* apportionment of the refund liability is applicable to CalPX-pass-through transactions, while the joint and several liability for refunds is imposed in relation to transactions scheduled by APX in the CAISO market when it is impossible to determine individual refund liability based on the transactions data. APX argues that the August 2006 Order inadvertently fails to recognize these two distinct methods of apportionment when describing the October 2003 Order. APX therefore requests that the Commission clarify this understanding on rehearing, affirming that paragraph 15 of the August 2006 Order was not intended to modify either of the two apportionment methodologies established in the October 2003 Order.

52. APX further argues that the Commission should provide further guidance regarding the steps required to correct the "billing error" identified in paragraph 14 of the August 2006 Order. According to APX, paragraph 14 suggests that "APX's calculations are not consistent with its operating practices," and that "APX appears to have applied the \$150 breakpoint inconsistently with its billing practices when collecting funds from the net pool of bids in the PX pass-through market;" however, it is not clear what operating practices or billing practices are being referred to or what inconsistencies exist.

53. In connection with this, APX offers its own interpretation of the billing error noted in the August 2006 Order. Specifically, APX states that when APX apportioned refund liability among the APX participants, it did not make any adjustments based on specific bid prices above the \$150 breakpoint for sales made in January 2001 for specific intervals but rather simply took the total refund owed by the APX participants and apportioned that liability among the APX participants on a *pro rata* basis according to the volumes they sold for the respective interval. APX thus offers a more granular apportionment for eligible sales that exceeded the \$150 breakpoint. Specifically, APX proposes to essentially carve out those few January 2001 sales at bid prices that exceeded the \$150 breakpoint during specific intervals and apportion refund liability separately to these eligible sales. In APX's opinion, this will allow for a more direct apportionment to those APX participants that submitted and were awarded bids to sell power in excess of the

\$150 breakpoint. APX believes that the methodology would also ensure that eligible sales above the breakpoint that were effectively paid as-bid prices, are capped at the mitigated market clearing price, as if they had directly transacted with the CalPX.

According to APX, these adjustments will result in fairly small shifts of refund liabilities and entitlements among the APX participants.⁵³

Commission Determination

54. We grant APX's request for clarification that the August 2006 Order was not intended to modify the October 2003 Order's findings in regard to the refund liability of APX participants. The October 2003 Order established two separate apportionment methodologies for transactions scheduled by APX on behalf of its participants in the CAISO's market and CalPX-pass-through transactions. APX acted as a Scheduling Coordinator on behalf of its participants in the CAISO market and was a participant in the CalPX market.⁵⁴ APX Participants relied on it to forward their schedules and energy bids to the CAISO and CalPX, respectively.⁵⁵ The *pro rata* allocation for CalPX-pass-through transactions was recommended by the presiding judge because APX did not have data showing the exact amount of volumes that each individual APX participant bought or sold in the CalPX spot market, since APX did not match specific buyers with specific sellers, but instead pre-matched buy and sell quantities.⁵⁶ Therefore, in the October 2003 Order, the Commission approved the *pro rata* allocation of refunds for "unmatched and

⁵³ APX states that only two APX participants made above-cap sales in January 2001, and such sales occurred in a relatively few number of eligible time intervals. According to APX, if refund liabilities are directly apportioned separately for these sales, it appears that one of these APX participants would see an increase in refund liability of about \$3,116, and the other a decrease of about \$35,844 with a corresponding adjustment of \$8,973 increase for transactions at bid prices below the \$150 breakpoint for the same intervals. APX states that a corresponding adjustment would be made to the remaining refund liabilities that are apportioned to other APX participants to reflect the change in refund pool due to the removal of the above-cap transactions.

⁵⁴San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv., 101 FERC ¶ 63,026, at P 832 (2002) (Initial Decision).

⁵⁵ October 2003 Order, 105 FERC ¶ 61,066 at P 160.

⁵⁶ *Initial Decision*, 101 FERC ¶ 63,026, at P 870.

net buy and sell transactions that were bid into and settled by the CalPX.”⁵⁷

55. In the October 2003 Order, the Commission also addressed the issue of the refund liability for transactions scheduled on behalf of APX participants in the CAISO market. The Commission held that where the refund liability cannot be apportioned based on specific transactions to an individual seller, APX participants will be held jointly and severally liable.⁵⁸ The Commission also noted that this apportionment method can work successfully in tandem with the *pro rata* allocation method adopted for the CalPX-pass-through transactions.⁵⁹

56. For these reasons, we find that although the August 2006 Order explicitly referred to the October 2003 Order as “the guiding precedent on the refund liability apportionment,”⁶⁰ we grant clarification, as described above.

57. In addition, we find reasonable APX’s proposal to correct the billing error involving inconsistent application of the \$150 breakpoint and therefore accept it.

E. Redding and WAPA’s Request for Rehearing

58. On rehearing, WAPA and Redding argue that the Commission erred in rejecting the FCA claim submitted by WAPA for Redding’s FCA. They explain that WAPA served as a Scheduling Coordinator for the delivery of emergency energy by Redding to the CAISO and that the Commission was mistaken in assuming that the FCA claim was submitted by Redding, not WAPA. They argue that WAPA is eligible to claim an FCA because the sales of emergency energy facilitated by WAPA can be traced to a specific generator.⁶¹ In addition, WAPA and Redding argue that the Commission’s rejection of Redding’s FCA claim is unduly discriminatory because the Commission has allowed claims by parties who used APX as their Scheduling Coordinator but rejected the claim of Redding who used WAPA as a Scheduling Coordinator.

⁵⁷ October 2003 Order, 105 FERC ¶ 61,066 at P 171.

⁵⁸ *Id.* at P 170.

⁵⁹ *Id.* at P 171.

⁶⁰ August 2006 Order, 116 FERC ¶ 61,167 at P 15.

⁶¹ WAPA and Redding cite to *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 97 FERC ¶ 61,275, at 62,193 (2001).

59. Further, WAPA and Redding argue that in its decision to disallow Redding's FCA claim, the Commission erroneously relied on the September 2004 Order, while ignoring the clarification of that order provided in the March 2005 Order, allowing generators who dealt with the CAISO directly to submit FCA claims regardless of a Scheduling Coordinator.⁶² WAPA and Redding further argue that the record clearly shows that the transactions in question were directly negotiated with the CAISO and that the Commission has held that Redding's transactions are subject to mitigation.⁶³ WAPA and Redding add that the Commission's rejection unjustly denies Redding recovery of costs incurred to provide emergency energy to the CAISO. WAPA and Redding, therefore, request reconsideration of the Commission's rejection of Redding's FCA claim.

Commission Determination

60. In the August 2006 Order, the Commission disallowed Redding's FCA claim *to the extent* that it was not a Scheduling Coordinator for itself in the CAISO and CalPX markets.⁶⁴ Accordingly, our holding in the August 2006 Order did not conflict with the Commission determination in the March 2005 Order, where the Commission explained that:

a generator may submit an FCA claim for a transaction for which the generator is directly liable for possible refunds as part of the Refund Proceeding and burned fuel to make a mitigated sale, regardless of the Scheduling Coordinator. For example, a generator that directly negotiated or acted as its own Scheduling Coordinator for some transactions with the CAISO/PX, and has refund liability for those transactions, may claim an FCA offset for those transactions, even though the generator used a separate Scheduling Coordinator for other transactions with the CAISO/PX during the Refund Period.⁶⁵ (*Footnote omitted*).

61. The August 2006 Order rejected Redding's FCA claim for the transactions

⁶² WAPA and Redding refer to March 2005 Order, 110 FERC ¶ 61,293 at P 51.

⁶³ *Initial Decision*, 101 FERC ¶ 63,026 at P 518-524 and March 2003 Order, 102 FERC ¶ 61,317 at P 5 (*summarily affirming the presiding judge's findings*).

⁶⁴ August 2006 Order, 116 FERC ¶ 61,167 at P 84.

⁶⁵ March 2005 Order, 110 FERC ¶ 61,293 at P 51.

involving emergency sales to the CAISO to the extent it used a Scheduling Coordinator to facilitate those transactions. Redding would be eligible to claim an FCA on its own behalf only for the transactions entered into directly with the CAISO. However, since the time WAPA and Redding's request for rehearing was filed, the United States Court of Appeals for the Ninth Circuit issued the mandate in *Bonneville*.⁶⁶ Subsequently, the Commission issued an order vacating each of the Commission's orders in the California refund proceeding to the extent that they order non-public utility entities to pay refunds.⁶⁷ Accordingly, because both WAPA and Redding, as non-public, governmental entities, are not subject to the refund liability, they are also not eligible to receive an FCA for mitigated transactions. For this reason, we deny WAPA and Redding's request for rehearing as moot.

II. Dispute Between Puget and the CAISO

A. Puget's Dispute

62. Puget states that the issue with the CAISO is not a data dispute, but rather a disagreement over the appropriate method for mitigating bilaterally-negotiated, out-of-market (OOM) sales to the CAISO during the period when the \$250/MWh breakpoint was in effect in the CAISO markets. Puget contends that the CAISO has misapplied the Commission's orders with respect to mitigation of OOM sales.

63. Puget explains that during hour 2 of December 9, 2000, it sold to the CAISO 300 MWs of energy at a price of \$400/MWh in a bilateral transaction negotiated outside of the CAISO's organized market. Puget explains that because the sale was outside of the organized market, it was not subject to the MCP, nor did its bid set the MCP.

64. According to Puget, the CAISO has proposed to mitigate its sale as follows: (1) for intervals one and two during the hour in question, the CAISO mitigated Puget's sales to a price of \$0/MWh, which the CAISO asserts was the MCP in the CAISO's imbalance energy market during those intervals; and (2) for intervals three through six, the CAISO mitigated Puget's sale to \$101.13/MWh, the applicable MMCP.

⁶⁶ *Bonneville Power Administration v. FERC*, 422 F.3d 908 (9th Cir. 2005).

⁶⁷ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 121 FERC ¶ 61,067 (2007), *reh'g pending*.

65. Puget explains that the CAISO justifies this treatment on the grounds that the sale was made after the implementation of the \$250 breakpoint on December 8, 2000. Puget surmises that the CAISO reads the Commission's order to hold that a utility making a mitigated sale after the implementation of the \$250 breakpoint should receive the lesser of the MCP, the MMCP, or the sellers bid for the relevant interval.

66. Puget acknowledges that in a May 15, 2002 Order,⁶⁸ the Commission determined that sales made at a level above the \$250 breakpoint are to be mitigated at the lesser of the bid or the MMCP. Puget further argues that for each interval during the hour in question, it should receive the applicable MMCP of \$101.13/MWh.

B. CAISO Response

67. The CAISO responds that the essence of the dispute is what price the CAISO should have used to calculate the refund for intervals one and two of hour 2 on December 9, 2000. The CAISO states that it calculated the refund for those two intervals using the historical MCP of \$0/MWh.

68. The CAISO explains that it understands Puget's position to be that because Puget sold to the CAISO at a price above the \$250/MWh breakpoint then in effect, the CAISO should have mitigated Puget to the lower of the MMCP or the breakpoint; or \$101.13. The CAISO argues that Puget misunderstands the Commission's determination in the May 2002 Order. Specifically, the CAISO states that Puget's position fails to take into account that during the period in question, the \$250 breakpoint was not triggered. According to the CAISO, the market cleared, for intervals one and two on that date, at \$0/MWh. The CAISO further states that because Puget's sale was an OOM transaction, it was not eligible to set the historical MCP, and thus it did not trigger the application of the breakpoint in the CAISO's imbalance energy market.⁶⁹ Therefore, the CAISO contends, as provided for in the May 2002 Order, the mitigated transaction during those two intervals were mitigated using the lower of the single market clearing price or the MMCP or \$0/MWh. The CAISO contends that it correctly mitigated Puget's transaction, for the first two intervals of hour 2 on December 9, 2000 at \$0/MWh, rather than \$101.13/MWh.

⁶⁸ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 99 FERC ¶ 61,160 (2002) (May 2002 Order).

⁶⁹ CAISO brief at 5.

C. Commission Determination

69. We agree that the CAISO's calculation of Puget's transaction for the hour in question is correct. The CAISO correctly notes that Puget's transaction was not eligible to set the MCP, and thus cannot trigger the breakpoint. Puget's interpretation of the May 2002 Order that its transaction was a sale into the market thus triggering the \$250 breakpoint is misplaced.

70. In a prior order, the Commission found that OOM transactions *are not* dispatched through the CAISO market.⁷⁰ In the May 2002 Order, the Commission explained that the \$250 breakpoint was triggered when *bids* at or below the breakpoint were insufficient to clear the market.⁷¹ The CAISO's is correct that an OOM transaction is not a bid into the market, and therefore cannot trigger the breakpoint.

71. Accordingly, we find that Puget's sale, as an OOM transaction, is not a market bid which would trigger the breakpoint. Therefore, we agree that since the \$250 breakpoint was not triggered by a market bid, Puget's OOM transaction with the CAISO should be mitigated at the lower of MCP or MMCP; in this case, the MCP of \$0/MWh. Accordingly, we find that the CAISO has appropriately mitigated Puget's sale in intervals one and two of hour 2 on December 9, 2000. Thus, we reject Puget's dispute.

The Commission orders:

(A) California Parties' request for rehearing is hereby denied for the reasons stated in the body of this order.

(B) California Parties' request for clarification is hereby denied in part and granted in part, as discussed in the body of this order.

(C) Powerex's request for rehearing is hereby denied for the reasons stated in this order.

(D) APX's request for rehearing is hereby denied for the reasons stated in this order.

⁷⁰ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 102 FERC ¶ 61,317, at P 30-32 (2003).

⁷¹ May 2002 Order, 99 FERC ¶ 61,160 at 61,656.

(E) APX's request for clarification is hereby granted; the requested clarification is hereby provided, as discussed in the body of this order.

(F) NCPA's request for rehearing is here hereby denied for the reasons stated in this order.

(G) Redding and WAPA's request for rehearing is hereby denied as moot for the reasons stated in the body of this order.

(H) Puget's dispute is hereby rejected for the reasons stated in this order.

By the Commission. Commissioner Spitzer not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.