

125 FERC ¶ 61,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company

Docket Nos. EL00-95-164
EL00-95-200

v.

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

EL00-98-184

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

EL00-98-185

ORDER ON REHEARING AND MOTIONS FOR CLARIFICATION AND
ACCOUNTING

(Issued November 20, 2008)

1. In this order, we deny in part and grant in part rehearing of a Commission order issued on October 19, 2007, which vacated the Commission's 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 (PX) markets for the period of October 2, 2000 to June 20, 2001 to the Commission's refund authority under section 206¹ of the Federal Power Act (FPA).² We also grant in part and deny in part the PX's motion for clarification and deny the Indicated Parties'³ motion for accounting.

¹ 16 U.S.C. § 824e (2006).

² See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 121 FERC ¶ 61,067 (2007) (Remand Order).

³ Indicated Parties are Powerex Corp., Coral Power, L.L.C., Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., and Avista Energy, Inc.

Background

2. The Remand Order contains a detailed description of the background and history of this proceeding.⁴

3. 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 PX to make refunds for the period of October 2, 2000 to June 20, 2001 (Refund Period).⁵ However, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) subsequently held that FPA section 206 did not grant the Commission refund authority over wholesale electric energy sales made by such entities during the relevant period.⁶ Accordingly, the Commission issued the 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 Remand Order, the Commission also directed the CAISO/PX to complete their refund calculations including all entities that participated in the CAISO/PX markets for the period of October 2, 2000 to June 20, 2001.⁷

4. On October 25, 2007, the California Parties⁸ sought clarification of paragraph 36 of the Remand Order, which addressed the California Parties' claim that the Commission revised the pricing formulations contained in the "CAISO/PX tariffs." On November 19, 2007, the Commission granted the California Parties' motion for clarification.⁹

5. On November 19, 2007, the California Parties raised other objections to the Remand Order in a separate rehearing request. The City of Los Angeles Department of Water and Power (LADWP); Cities of Santa Clara (Santa Clara) and Redding, California and the Modesto Irrigation District (Modesto) jointly; the Cities of Anaheim, Azusa,

⁴ Remand Order, 121 FERC ¶ 61,067 at P 4-16.

⁵ *See San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 96 FERC ¶ 61,120, at 61,499, *order on reh'g*, 97 FERC ¶ 61,275 (2001).

⁶ *Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005) (*Bonneville*).

⁷ Remand Order, 121 FERC ¶ 61,067 at P 2, 38.

⁸ The California Parties are the People of the State of California *ex rel.* Edmund G. Brown Jr., Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (SDG&E).

⁹ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 121 FERC ¶ 61,188 (2007).

Banning, Colton and Riverside, California jointly; the Indicated Public Entities¹⁰ and the CAISO filed answers to the California Parties' rehearing request. The California Parties and the CAISO filed responses to several answers. On November 19, 2007, Salt River Project Agricultural Improvement and Power District (Salt River) also filed a rehearing request. The CAISO filed an answer to it, and Salt River responded.

6. On November 19, 2007, the PX filed a motion for clarification regarding the disbursement of outstanding receivables to non-public utility sellers. The CAISO; California Parties;¹¹ Modesto, Santa Clara and SMUD jointly;¹² Indicated Parties; Indicated Public Entities;¹³ NCPA;¹⁴ and LADWP filed answers. Indicated Parties also filed a motion for accounting.

Discussion

A. Procedural Matters

7. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2008), prohibits answers to requests for rehearing. Accordingly, we reject the answers to the rehearing requests of the California Parties and Salt River.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the California Parties and the CAISO's responses to the answers to the California Parties' rehearing request or Salt River's response to the CAISO's answer to Salt River's rehearing request and will, therefore, reject them.

¹⁰ Indicated Public Entities supporting this answer are the Northern California Power Agency (NCPA) and the Sacramento Municipal Utility District (SMUD).

¹¹ In this instance, the California Parties do not include SDG&E. *See* California Parties Dec. 4, 2007 Answer to PX Motion at n.1.

¹² Modesto, Santa Clara and SMUD amended their answer on December 7, 2007.

¹³ Indicated Public Entities supporting this answer are NCPA and SMUD.

¹⁴ NCPA takes no position on the PX motion for clarification, except to emphasize that, because NCPA did not use the PX as a Scheduling Coordinator, the question does not apply to NCPA. NCPA Dec. 12, 2007 Answer to PX Motion at 1-2.

B. California Parties Rehearing Request**1. Calculation of Refund – Netting Issue**

9. In the Remand Order, the Commission recognized the court's finding that the Commission, in the context of this proceeding, has no authority to order governmental entities and other non-public utilities to pay refunds under FPA section 206.¹⁵ However, the Commission also concluded that the CAISO/PX should complete their refund calculations including all entities that participated in the CAISO/PX markets.¹⁶ The Commission believed that halting the refund calculation process would be detrimental to the public interest.¹⁷ The Commission agreed with the CAISO that it would be time intensive and unreasonable to recalculate all of the refund calculations in order to remove the governmental entities and other non-public utilities.¹⁸

10. However, as a result of the court's finding, the Commission 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 PX spot markets during the Refund Period must be reflected in reduced refund amounts that buyers will receive.¹⁹ The Commission determined that this shortfall in refunds must be allocated somehow among buyers.²⁰ The Commission agreed with the 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.²¹

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 PX spot markets.²² Under this approach, all net

¹⁵ Remand Order, 121 FERC ¶ 61,067 at P 38.

¹⁶ *Id.* (citing Energy Policy Act of 2005, Pub. L. No. 109-58, § 1286, 119 Stat. 594, 981 (2005) (to be codified as 16 U.S.C. § 824e(e)(2))).

¹⁷ *Id.* P 38.

¹⁸ *Id.*

¹⁹ *Id.* P 39.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

refund recipients, both public utilities and non-public utility entities,²³ would receive an allocation of the shortfall in proportion to their refunds.²⁴ The Commission found that its approach here was consistent with how the Commission decided to allocate the interest shortfall, stating that, in both situations, the shortfall was allocated in a fair and proportional manner.²⁵

12. In their request for rehearing, the California Parties contend that it is ambiguous whether the CAISO and PX are to: (1) reduce the refund calculation by the amount of refunds that otherwise would have been paid based on their existing methodology, which nets all sales and purchases before calculating each party's refund amount or (2) perform a new calculation that determines the hypothetical refunds that each governmental entity would have owed on its gross sales without regard to its purchases.

13. The California Parties request that the Commission clarify that the calculation of the refund under-collection resulting from *Bonneville* will be based on the total net refunds owed by each governmental entity.²⁶ According to the California Parties, under the CAISO and PX tariffs, no entity is charged or is paid for its gross purchases or gross sales; all charges and payments are calculated on a net basis.²⁷ The California Parties contend that requiring the CAISO to recalculate the governmental entities sales separately from their purchase refunds will likely delay completion of the refund calculations, which the Commission found would be detrimental to the public interest.²⁸

14. For support, the California Parties point to the CAISO's Thirty-Ninth Status Report in which the CAISO interpreted the Remand Order as requiring it to complete its refund calculations without changing the methodology, which the CAISO currently is

²³ Non-public utility entities include governmental entities and other non-public utilities.

²⁴ Remand Order, 121 FERC ¶ 61,067 at P 39.

²⁵ *Id.*

²⁶ California Parties Nov. 19 2007 Second Request for Rehearing at 4-5 (California Parties Rehearing Request).

²⁷ *Id.* at 9-10 (citing Declaration of Dr. Carolyn A. Berry at ¶¶ 5-8, 17-18; Exh. No. ISO-24 at 21:12-22:3 (Mar. 1, 2002); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 115 FERC ¶ 61,171, at P 34, 50 (2006)).

²⁸ *Id.* at 15-16 (citing Berry Declaration at ¶ 15; Remand Order, 121 FERC ¶ 61,067 at P 38).

calculating on a net basis.²⁹ The California Parties state that the CAISO intends to issue a credit to each governmental entity equal to the net refunds each governmental entity is found to owe and will allocate the total cost of these credits to all parties whose net final refund position is positive.³⁰ Thus, the California Parties state that, if the procedures set forth in the Thirty-Ninth Status Report are followed, refunds will be calculated and reported by the CAISO as net amounts using the entire Refund Period as the netting period.

15. The California Parties are concerned that the Remand Order could be interpreted as requiring that the CAISO calculate amounts owed to governmental entities based upon a gross sales methodology irrespective of the purchases made by such entities within the same time interval. The California Parties contend that using gross sales will produce unfair and absurd results.³¹ Specifically, the California Parties argue that using a gross methodology would: (1) require the CAISO to completely recalculate the refund amounts thereby delaying the completion of the refund proceeding;³² (2) distort the settlement of transactions from how they actually occurred in the market; and (3) potentially cause anomalous financial impacts such as the transfer of significant wealth from investor-owned utilities to the governmental entities, primarily California Energy Resources Scheduler (CERS), in the realm of \$5.6 billion dollars, plus an additional amount for interest of approximately \$2.8 billion.³³ The California Parties argue that the refunds either must be calculated on a net basis and allocated on a net basis (as the California Parties claim the Commission directed in the Remand Order)³⁴ or

²⁹ *Id.* at 6 (citing Thirty-Ninth Status Report of the [CAISO] on Settlement Re-Run Activity at 12-14, Docket Nos. ER03-746, EL00-95, and EL00-98 (Nov. 13, 2007) (Thirty-Ninth Status Report)).

³⁰ *Id.* (citing Thirty-Ninth Status Report at 12).

³¹ *Id.* at 10-14 (citing Berry Declaration at ¶¶ 21, 23, 24, 26, 27).

³² *Id.* at 15-16.

³³ *Id.* at 11 (citing Berry Declaration at ¶ 27). On January 17, 2001, California Governor Gray Davis issued an emergency order that directed the California Department of Water Resources (CDWR) to assume responsibility for procuring a major portion of the power for the state's three main investor-owned utilities. The CDWR division in charge of power purchasing was the CERS. During the Refund Period, CERS stood in the position of (1) purchasing energy for the net short load of the California investor-owned utilities, and (2) buying energy for imbalance market needs, at the request of the CAISO.

³⁴ *Id.* at 14-15 (citing Remand Order, 121 FERC ¶ 61,067 at Ordering Paragraph C).

calculated and allocated on a gross basis. They claim that it would be improper to calculate the amount of refund under-collection on the basis of gross sales when the Commission is allocating the refund under-collection on the basis of net purchases.

Commission Determination

16. We grant in part and deny in part the California Parties' request for rehearing. We find that sales and purchases should be netted. However, we find that netting the refunds over the entire Refund Period is contrary to the CAISO Open Access Transmission Tariff (CAISO Tariff) and could have the indirect effect of requiring governmental entities and other non-public utilities to pay refunds. Therefore, we find that the netting should be done over the same period as applicable when the obligations were incurred under the CAISO Tariff.

17. The CAISO Tariff applicable to purchases and sales at the time they were made provides for netting on the basis of the time interval associated with the charge type for that transaction. The CAISO Settlement and Billing Protocols Tariff (SABP Tariff) provided for the method of settlement of charges.³⁵ Specifically, SABP Tariff section 3.2.1 provided for the "Settlement of Payments to/from Scheduling Coordinators and Participating [Transmission Owners]," stating:

The [CAISO] will calculate for each charge the amounts payable by the relevant Scheduling Coordinator... *for each Settlement Period* of the Trading Day, and the amounts payable to that Scheduling Coordinator... *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 Scheduling Coordinator... *for each charge for that Trading Day*. Each of these amounts will appear in the Preliminary and Final Settlement Statements that the ISO will provide to the relevant Scheduling Coordinator... as provided in SABP 4.
(emphasis added)

18. Under CAISO Tariff section 11.6, "Settlement Period" is defined as beginning at the start of an hour and ending at the end of the hour.³⁶ Thus, when the relevant sales and

³⁵ At the time of the sales and purchases, the SABP Tariff was part of the applicable CAISO Tariff. Under the CAISO's Market Redesign and Technology Upgrade, it appears that these provisions will be in the Business Practice Manuals.

³⁶ 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."

purchases were made, the CAISO netted its sales and purchases over hourly intervals.³⁷ The CAISO did not net its records over an extended period such as the nine month interval comprising the Refund Period.

19. Requiring the CAISO to net pursuant to the interval period is consistent with how the CAISO markets were settled and thus is consistent with market participants' expectations. All market participants, including governmental entities and other non-public utilities, agreed to be bound by the CAISO Tariff provisions.³⁸ In this instance, using the netting methodology established by the CAISO Tariff is fair and consistent with the court's decision. Therefore, we direct the CAISO to calculate refund amounts using the billing and payment procedures set forth in the CAISO Tariff.

2. Emissions Offsets and Fuel Cost Allowances

20. In the 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.³⁹ The Commission explained that the purpose of cost filings was to prevent a confiscatory result for sellers required to make refunds.⁴⁰ The Commission further

³⁷ While previous CAISO testimony appears to indicate that netting may have occurred over intervals as small as ten minutes, Exhibit No. ISO-24, March 1, 2002, Testimony of Spencer Gerber, Director of CAISO Settlements and Billing Docket Nos. EL00-95-045, *et al.* at 21-22, there does not appear to be any support in the CAISO Tariff for netting periods of less than one hour.

³⁸ We note that the Commission has addressed the issue of netting in a variety of orders. For example, in order to determine the seller's refund liability, the mitigated market clearing price (MMCP) was developed and applied on a 10-minute interval basis, consistent with the CAISO's market pricing rules. *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 112 FERC ¶ 61,176 (2005). In general, the Commission's policy is to order the utilization of a netting methodology unless some distinction with regard to the specific costs at issue warrants a different methodology. *See, e.g., San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 115 FERC ¶ 61,171; *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 114 FERC ¶ 61,313 (2006); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 109 FERC ¶ 61,297 (2004).

³⁹ Remand Order, 121 FERC ¶ 61,067 at P 43.

⁴⁰ *Id.*

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.⁴¹

21. 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. The California Parties argue that, because the Commission cannot require governmental entities to pay refunds, it should not allow them to claim emission offsets or fuel cost allowances. In the alternative, the California Parties seek rehearing. They argue that it would be arbitrary, capricious, a misapplication of *Bonneville* and not an exercise of reasoned decision-making to leave in place emission offsets and fuel cost allowances for governmental entities.

Commission Determination

22. We deny the California Parties' request. In the Remand Order, the Commission held that it was not necessary for non-public utility entities to make cost filings.⁴² Specifically, the Commission stated that the purpose of cost filings was to prevent a confiscatory result for sellers required to make refunds.⁴³ Only sellers with refund liability could receive emission offsets and fuel cost allowances that were to be justified in their cost filings. Because the non-public utility entities do not have any FPA 206 refund liability, the Commission concluded that there was no need for them to make cost filings.⁴⁴ The Commission's reference to non-public utility entities included governmental entities. Therefore, this issue was addressed by the Commission in the Remand Order. Accordingly, we find that neither clarification nor rehearing is necessary.

3. Soft Cap Adjustment

23. The California Parties seek clarification that the Remand Order does not affect the Commission's December 2000 decision to prospectively cap market-clearing prices in the PX and CAISO by implementing the \$150 soft cap or breakpoint. The California Parties argue that the application of the soft cap is separate from the MMCP-based refund methodology that the Commission adopted in an order issued on July 25, 2001.⁴⁵ The California Parties contend that, when the soft cap was in effect, it set the "background

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ California Parties Rehearing Request at 21. We note that the California Parties have not provided a citation for the order issued on July 25, 2001. *See id.* at 18, 20.

market price.”⁴⁶ They add that the later-adopted MMCP acted as a further ceiling on this “background price,”⁴⁷ just as the MMCP acted as a ceiling on the more common single market-clearing price that was the “background price” during time periods when the breakpoint was not applicable. They note that “when the breakpoints were triggered, there was no single market clearing price,”⁴⁸ and the breakpoint price was the only valid unmitigated market price. The California Parties conclude, therefore, that there was no other price available for a seller to collect through the CAISO and PX markets. The California Parties further argue that *Bonneville* only affects the Commission’s decision to order refunds through application of the MMCP, not prospective pricing changes such as the \$150 soft cap that was adopted in orders that were not before the court in *Bonneville*. In the alternative, the California Parties seek rehearing. They argue that it is arbitrary, capricious, a misapplication of *Bonneville* and not an act of reasoned decision-making to reverse the earlier Commission determinations concerning the application of the soft cap.

Commission Determination

24. We deny the California Parties’ request. FPA section 313 requires that an application for rehearing set forth specifically the ground or grounds upon which such application is based.⁴⁹ While the California Parties have provided background information on the \$150 soft cap and MMCP, they have not explained why the differentiation between the soft cap and MMCP is pertinent to this proceeding. Nor have they pointed to language in the Remand Order, which did not mention the \$150 soft cap, that requires clarification or rehearing. For these reasons, we deny the California Parties’ request for clarification or rehearing.

4. Release of Receivables and Collateral

25. In the Remand Order, the Commission agreed with the LADWP that it should receive the monies that it is owed for sales it made into the CAISO/PX markets during the Refund Period and therefore granted its motion regarding the disbursement of principal amounts.⁵⁰ The Commission noted that any disbursement of unpaid amounts

⁴⁶ The California Parties have not explained the meaning of “background market price.” *See id.* at 21.

⁴⁷ The California Parties have not explained the meaning of “background price.” *Id.*

⁴⁸ California Parties Rehearing Request at 21 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 99 FERC ¶ 61,160, at 61,656 (2002)).

⁴⁹ 16 U.S.C. § 8251 (2006).

⁵⁰ Remand Order, 121 FERC ¶ 61,067 at P 57.

first must be adjusted based upon preparatory rerun data, as finalized upon the completion of alternative dispute resolution matters that are currently pending.⁵¹ Additionally, the Commission stated that, once it ruled on the parties' filings seeking designation as a non-public utility entity for purposes of the California refund proceeding, it would direct disbursement on past due amounts owed to non-public utility entities for sales they made in the CAISO/PX spot markets during the Refund Period.⁵²

26. The California Parties seek clarification that no unpaid amounts will be disbursed and no collateral released until the Commission: (1) approves compliance filings submitted by the CAISO and PX that reflect preparatory rerun adjustments, including dispute resolution matters and the \$150 breakpoint; and (2) rules on the filings by those governmental entities that seek a designation as a non-public utility. The California Parties add that the collateral and funds to pay out receivables addressed in the Remand Order⁵³ are held by the PX, which is subject to the procedures for distribution of funds and release of collateral in the Official Committee of Participant Creditors' Fifth Amended Chapter 11 Plan, as modified (Oct. 1, 2002) (Confirmed Plan).⁵⁴ Therefore, the California Parties state that other procedures, as provided in the Confirmed Plan, may be required in addition to the procedures the Commission may establish to distribute funds or release collateral.

Commission Determination

27. We grant in part and deny in part the California Parties' request. As the Commission stated in the Remand Order, unpaid amounts owed to non-public utility entities for sales they made in the CAISO/PX spot markets during the Refund Period would not be disbursed until (1) they were adjusted based upon preparatory rerun data, as finalized upon the completion of pending alternative dispute resolution matters and (2) Commission ruled on the parties' filings seeking designation as a non-public utility entity for purposes of the California refund proceeding.⁵⁵ Therefore, we clarify that the Commission will not direct the disbursement of unpaid amounts owed to governmental entities and other non-public utilities for sales they made in the CAISO/PX spot markets

⁵¹ *Id.*

⁵² *Id.*

⁵³ California Parties Rehearing Request at 23 (citing Remand Order, 121 FERC ¶ 61,067 at P 42, 68).

⁵⁴ *Id.* (citing *Cal. Power Exch. Corp.*, 103 FERC ¶ 61,001, at P 47 (2003); Confirmed Plan, Art. II, Definitions 27 and 35, section III.D.4.d and section IV.E).

⁵⁵ Remand Order, 121 FERC ¶ 61,067 at P 57.

during the Refund Period until the Commission (1) approves compliance filings submitted by the CAISO and PX that reflect preparatory rerun adjustments, including dispute resolution matters, and (2) rules on the filings by those entities that seek a designation as a non-public utility. As for the application of the \$150 soft cap, as mentioned above, the Remand Order did not mention the \$150 soft cap nor did it affect the Commission's directives in prior orders with respect to the applicability of the soft cap.⁵⁶

28. We deny the California Parties' request that similar conditions apply to the release of collateral. In the Remand Order, the Commission denied the California Parties' request that the Commission direct the CAISO and PX to retain the collateral of governmental entities until the CAISO and PX completed their calculations and market participants' accounts have been billed accordingly. For the reasons set forth in the Remand Order,⁵⁷ we will not require the release of collateral only following the Commission's acceptance of compliance filings submitted by the CAISO and PX that reflect preparatory rerun adjustments, including dispute resolution matters. Our determination with regard to the \$150 soft cap is the same as discussed above.⁵⁸ We find it reasonable, however, to condition the release of collateral upon the Commission's ruling on the filings by those entities that seek a designation as a non-public utility. Therefore, we clarify that collateral should not be released until the Commission has ruled on these designation filings. The other procedures, which the California Parties state are provided in the Confirmed Plan, are not part of this proceeding; therefore, we will not opine on them.

C. PX Motion for Clarification

1. Mitigation of Governmental Entities and Other Non-Public Utilities' Sales

29. The PX states that approximately fourteen PX participants that may be designated as non-public utility entities used the PX as a Scheduling Coordinator in the CAISO's real-time market. The PX further states that, because the PX is a public utility, its primary Scheduling Coordinator identification number within the CAISO will not be reflected in the CAISO's databases as a non-public utility, even though the PX acted on behalf of non-public utilities. The PX contends that, as a result, the amount of credit that the PX ultimately receives from the CAISO for sales it made as a Scheduling Coordinator

⁵⁶ See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 99 FERC ¶ 61,160 at 61,656.

⁵⁷ Remand Order, 121 FERC ¶ 61,067 at P 68.

⁵⁸ See *supra* P 28.

will be reduced to reflect refunds on such sales. The PX argues that, if the PX takes into account the mitigation of such sales by non-public utility participants, the inconsistent treatment will cause a cash shortfall in the PX markets. The PX states that, if the sales of non-public utility entities made through the PX are mitigated, then no adjustment is necessary between the CAISO and PX. But the PX asserts that, if these transactions are exempt from mitigation, then the PX will need to provide the CAISO with the sale refund reversals of the non-public utility entities to account for the entities that used the PX as a Scheduling Coordinator.

30. Therefore, the PX requests that the Commission clarify whether sales in the CAISO real-time market made by non-public utilities that used the PX as a Scheduling Coordinator should be exempt from mitigation. If so, the PX asks whether the PX should provide the CAISO with an adjustment for such entities to avoid inconsistent treatment of such sales between the PX and the CAISO and to avoid a cash shortfall in the PX market.

31. LADWP argues that, under *Bonneville*, the Commission has no authority to impose price mitigation on municipal utilities' sales to either the PX or the CAISO, including those sales in which the PX acted as a Scheduling Coordinator.⁵⁹ LADWP notes that the Commission has not held the PX itself liable for refunds associated with energy scheduled by the PX as a public utility and Scheduling Coordinator in the CAISO markets. LADWP points out that, instead, refund liability for energy schedules submitted by the PX was apportioned by the PX to PX market participants, including non-public utilities. LADWP contends that *Bonneville* prohibits the CAISO and PX from crediting or otherwise imposing on non-public utility entities any refund obligations under FPA section 206.⁶⁰

32. Modesto states that, contrary to the PX's assertion, the sales of PX participants were sales in the PX market, not the CAISO market. Modesto, Santa Clara and SMUD agree that the indirect mitigation by the CAISO of sales by non-public utilities runs counter to the *Bonneville* mandate. Modesto, Santa Clara and SMUD add that the Commission has distinguished between Scheduling Coordinators that were competing market participants like other buyers and sellers and those that were only facilitating sales into the CAISO like the Automated Power Exchange (APX), which the Commission found similar to the PX.⁶¹ Therefore, they argue that, like APX customers, PX customers

⁵⁹ LADWP Dec. 4, 2007 Answer to PX Motion at 3 (citing *Bonneville*, 422 F.3d 908, 911).

⁶⁰ *Id.* at 4 (citing Remand Order, 121 FERC ¶ 61,067 at P 42).

⁶¹ Modesto, Santa Clara and SMUD Dec. 4, 2007 Answer to PX Motion at 4 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 105 FERC ¶ 61,066, at P 166 (2003)).

should be directly responsible for refunds to the CAISO. LADWP, Modesto, Santa Clara and SMUD support a sales reversal adjustment. LADWP states that the adjustment will avoid inconsistent treatment of such sales between the PX and CAISO and a cash shortfall in the PX market and will not require a recalculation of refunds.

33. In contrast, the California Parties argue that these sales should be mitigated notwithstanding *Bonneville* because the sales were made by a jurisdictional Scheduling Coordinator who, like Coral Power LLC, sold power into the CAISO market on behalf of a governmental entity. The California Parties argue that the Commission has ruled that *Bonneville* only prohibits the Commission from ordering refunds in instances where a governmental entity acted as the Scheduling Coordinator, not in instances where a governmental entity acted through a jurisdictional Scheduling Coordinator.⁶²

34. The CAISO does not take a position on whether these sales should be subject to mitigation.⁶³ However, the CAISO states that, if it is directed to provide the PX with a credit to reflect the PX's inability to pay refunds associated with sales it made on behalf of non-public utility entities, then the CAISO will need to collect any such amount credited to the PX from its own Scheduling Coordinators in order avoid a shortfall of refunds in the CAISO markets. Therefore, if the Commission concludes that sales made by the PX in the CAISO markets as a Scheduling Coordinator for non-public utility entities should be exempt from mitigation and the CAISO should provide the PX with a corresponding credit, then the CAISO requests that the Commission clearly articulate a methodology by which the CAISO will allocate the amount of the PX credit among its market participants. The CAISO claims that such a methodology is needed to ensure that its markets remain cash neutral during the Refund Period. The CAISO notes that there is no existing mechanism in the CAISO Tariff for crediting the PX under these circumstances or for recovering amounts from other market participants associated with any such credit.

Commission Determination

35. Essentially, the issue is whether the PX itself should be held liable for the refunds the Commission previously found to be owed by governmental entities and other non-public utilities prior to *Bonneville* by virtue of its position as those entities' Scheduling Coordinator. Many governmental entities and other non-public utilities sold power to the PX who then resold that energy in the CAISO market. While it is clear from *Bonneville*

⁶² California Parties Dec. 4, 2007 Answer to PX Motion at 2-3 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 114 FERC ¶ 61,070, at P 212 (2006)).

⁶³ *See id.* at 2.

that sales by governmental entities and other non-public utilities to the PX cannot be subject to refund mitigation, the Commission has not addressed whether the resales by the PX, a jurisdictional entity, of such power should also be exempt from mitigation.

36. The Commission generally has held that refund liability attaches to the Scheduling Coordinator of the transaction.⁶⁴ However, the Commission created an exemption from liability for APX, distinguishing between Scheduling Coordinators that were market participants and those that were intermediary Scheduling Coordinators such as APX.⁶⁵ The Commission determined that, unlike other Scheduling Coordinators, the APX was only facilitating sales into the CAISO and was not a competing market participant like other buyers and sellers.⁶⁶ The Commission determined that the APX should be exempt from liability because it found that the APX had “more similarities to the PX than with energy producers.”⁶⁷ The Commission concluded that the customer refunds should be paid by the sellers, except in those instances where the liability could not be apportioned, in which case the APX was jointly and severally liable with the sellers.⁶⁸

37. We find that, like APX, the PX is a unique entity that should similarly be shielded from liability in this respect. Unlike other Scheduling Coordinators, the PX was a non-profit public benefits corporation formed by the state of California to aid in the transition to a competitive retail market.⁶⁹ Under California law, a public benefits corporation is formed for a public or charitable purpose.⁷⁰ These corporations are not operated for the

⁶⁴ See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 102 FERC ¶ 61,317 (2003); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 107 FERC ¶ 61,166, at P 18, *clarified*, 108 FERC ¶ 61,219, *reh’g denied and partial clarification granted*, 108 FERC ¶ 61,311 (2004); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 116 FERC ¶ 61,167, at P 45 (2006), *reh’g denied and clarification granted*, 122 FERC ¶ 61,274 (2008).

⁶⁵ *San Diego Gas & Elec. Co. v. Sellers of Ancillary Servs.*, 105 FERC ¶ 61,066 at P 166.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* P 170.

⁶⁹ Cal. Pub. Util. Code § 340 (1997) required the PX to be incorporated as a public benefit nonprofit corporation.

⁷⁰ See Cal. Corp. Code § 5110 (2008) (comments based on Legislative Committee summary).

benefit of their members but for some broader good.⁷¹ We find that, as a non-profit entity created for a public purpose, the PX should be distinguished from private Scheduling Coordinators who assumed the risks of operating in the market and received a premium for assuming those risks. The decision relied upon by the California Parties, *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*,⁷² does not contradict this result. In that case, the Scheduling Coordinator, Coral Power, LLC, was a market participant, not an intermediary Scheduling Coordinator or a non-profit entity. Accordingly, we find that the PX 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. As such, we clarify that the sales in the CAISO real-time market made by governmental entities and other non-public utilities that used the PX as a Scheduling Coordinator should be exempt from refund liability. We also find that the PX should provide the CAISO with a reversal adjustment for such entities to avoid inconsistent treatment of such sales between the PX and the CAISO and to avoid a cash shortfall in the PX market.

38. Because we have found that the PX is exempt from liability, the CAISO requests that we provide the methodology to allocate any resulting shortfall.⁷³ The Commission addressed the shortfall issue in the Remand Order,⁷⁴ and, herein, we have further refined the methodology to allocate any shortfall.⁷⁵ We find it reasonable to apply the same allocation methodology to any shortfall regardless of its origin (i.e., whether it is the result of the PX exemption from liability or the exemption of governmental entities and other non-public utilities from the payment of refunds). Accordingly, we direct the CAISO to apply this allocation methodology to any resulting shortfall.

2. Dispersal of Funds from PX Account

39. In the Remand Order, the Commission granted in part and denied in part LADWP's motion requesting disbursement of past due amounts, plus interest, owed to governmental entities for sales they made in the CAISO/PX spot markets during the Refund Period.⁷⁶ The Commission stated that, based upon the *Bonneville* remand, the

⁷¹ *Id.*

⁷² 114 FERC ¶ 61,070.

⁷³ CAISO Dec. 4, 2007 Answer to PX Motion at 10-11.

⁷⁴ *See* Remand Order, 121 FERC ¶ 61,067 at P 38-39.

⁷⁵ *See supra* P 16-20.

⁷⁶ Remand Order, 121 FERC ¶ 61,067 at P 57.

governmental entities have no further FPA section 206 refund liabilities.⁷⁷ The Commission agreed with LADWP that they should receive the monies that they are owed for sales they made into the CAISO/PX markets during the Refund Period.⁷⁸ Therefore, the Commission granted their motion regarding the disbursement of principal amounts.⁷⁹ However, the Commission denied LADWP's motion to the extent that it requested the expedited release of interest associated with the principal amounts that they are owed on their past due amounts.⁸⁰

40. The PX asks whether funds maintained in the PX Settlement Clearing Account should be used to pay past due amounts owed to governmental entities for sales such entities made through the PX into the CAISO spot market. The PX states that, based on its assumptions concerning which PX participants the Commission may classify as non-public utility entities, it holds approximately \$110 million in principal amounts that would be due to such entities based on their current net account balances reflected on their PX account settlement statements.⁸¹ The PX states that it would be able to pay this amount from the PX Settlement Clearing Account, which currently holds approximately \$400 million in principal and interest.⁸² The PX also notes that it is a co-party with PG&E on the PG&E Bankruptcy Escrow Account, which currently has a balance of \$1.2 billion.⁸³ The PX is concerned that, although the Commission has required the payment of principal amounts past due to non-public utility entities in the CAISO and PX markets during the Refund Period, it has not addressed the CAISO's cash shortfall due to the PX's debit balance. The PX explains that, if it were to pay the amount due to the CAISO creditors that are non-public utility entities, the PX Settlement Clearing Account would be reduced substantially to approximately \$65 million.⁸⁴ As a result, the PX states that, if

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* P 58.

⁸¹ PX Motion at 6.

⁸² *Id.* at 8.

⁸³ *Id.* at 6, n.2.

⁸⁴ *Id.* at 7.

future global settlements are approved that exceed or approximate that amount, it would face a cash shortfall for its operational expenses.⁸⁵

41. The CAISO agrees that the funds in the PX Settlement Clearing Account should be used to pay past-due amounts for non-public utility entities that sold in the CAISO markets. The CAISO argues that, because the appropriate source of payment for past-due principal amounts owed to non-public utility entities for transactions in the CAISO markets during the Refund Period is the PX,⁸⁶ then the distribution to the PX's non-public utility entity creditors through the CAISO must come from PX funds.

42. LADWP requests that the Commission direct the PX to disburse to the non-public utility entities their current net account balances as reflected on their PX account settlement statements with funds in the PX Settlement Clearing Account.⁸⁷ LADWP adds that the Commission should direct the PX to pay the CAISO the amount due to the CAISO creditors that are allocable to non-public utility entities.⁸⁸ LADWP states that the PX Settlement Clearing Account should be used to pay past due amounts for non-public utility entities' sales into the PX, including those sales made by municipal utilities to the PX that cleared the CAISO markets with the PX acting as Scheduling Coordinator.⁸⁹ LADWP contends that the disbursement of funds from the PX Settlement Clearing Account is consistent with the Remand Order and the PX Reorganization Plan, which

⁸⁵ The PX states that, since the PX Rate Cash Settlement Agreement, its rate case budgets have ranged from \$2.1 to \$3.2 million. PX Motion at 7 (citing *Cal. Power Exch. Corp.*, 113 FERC ¶ 61,017 (2005); *Cal. Power Exch. Corp.*, 120 FERC ¶ 61,006 (2007)). The PX adds that, from January 1, 2008 through December 2010, the PX expects to file six more rate cases, with total expenses of approximately \$12 to \$18 million. *Id.*

⁸⁶ CAISO Dec. 4, 2007 Answer to PX Motion at 1-6.

⁸⁷ Modesto, Santa Clara and SMUD have adopted LADWP's position on this issue. Modesto, Santa Clara and SMUD Dec. 7, 2007 Amendment to Answer to PX Motion at 1-2.

⁸⁸ Modesto, Santa Clara and SMUD have adopted LADWP's position on this issue. *Id.*

⁸⁹ *Id.*

expressly defers to the Commission to determine when and how payments will be made from the PX Settlement Clearing Account.⁹⁰

43. Indicated Parties argue that the fact that non-public utility entities do not have a refund obligation should not mean that other parties bear all the risk that the PX Settlement Clearing Account will be depleted by the time the proceedings are resolved. Indicated Parties request that the Commission address how the PX and CAISO will protect other parties' rights to their receivables and refunds going forward.

44. Indicated Parties also contend that the PX has failed to address whether and to what extent amounts owed to non-public utility entities are the result of transactions with PG&E and therefore should be paid from the PG&E Bankruptcy Escrow Account. Indicated Parties state that the Commission has recognized that the PG&E bankruptcy plan envisions distributions from the PG&E Bankruptcy Escrow Account if the Commission issues an order directing disbursements and such order is approved by the Bankruptcy Court.⁹¹ Therefore, Indicated Parties request that the Commission direct the PX to make any disbursements to the non-public utility entities for amounts due to those entities as a result of transactions in the PX and CAISO markets from both the PX Settlement Clearing Account and the PG&E Bankruptcy Escrow Account to the extent monies are owed to non-public utility entities as a result of transaction with PG&E. Indicated Public Entities agree that funds from the PX Settlement Clearing Account and the PG&E Bankruptcy Escrow Account, jointly held by the PX and PG&E, should be used.

45. The CAISO adds that it is willing to act as the disbursement agent for the PX. The CAISO points out that the fact that the PX has no direct relationship with its creditor entities is not the basis for the CAISO's willingness to act as the disbursement agent. The CAISO is willing to do so pursuant to the terms of the PX's Confirmed Plan of Reorganization (PX Reorganization Plan).⁹² The CAISO adds that, even if the

⁹⁰ LADWP Dec. 4, 2007 Answer to PX Motion at 5-6 (quoting PX Reorganization Plan, Exhibit 3, section B.1, which states that payments from the account shall be made "subject to such adjustments and priorities, and in such manner, as may be established by FERC," and the amount of each claim shall be determined "in accordance with a calculation methodology or allocation established pursuant to rule, order or judgment of FERC.")

⁹¹ Indicated Parties Dec. 4, 2007 Answer to PX Motion at 7 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 108 FERC ¶ 61,002, at P 36 (2004)).

⁹² CAISO Dec. 4, 2007 Answer to PX Motion at 8 (citing Confirmed Plan of Reorganization, Exh. 3 ("Allowance and Distribution Procedures"), section B.6).

Commission directs it to be the disbursement agent, the obligation to pay suppliers belongs to the CAISO Scheduling Coordinators, including the PX, not the CAISO itself. The CAISO notes that directing the PX to remit its unpaid balances to the CAISO Clearing Account, without further directions, will not achieve the result desired by the CAISO because the CAISO Tariff obligates the CAISO to apply the payment to all creditors (i.e., non-public and public utilities).⁹³ LADWP requests that the Commission designate the CAISO as the disbursing agent for such payments to ensure the appropriate credits are made.⁹⁴

Commission Determination

46. The PX has failed to explain why funds should be disbursed only from the PX Settlement Clearing Account to pay past due amounts owed to governmental entities and other non-public utilities. The PG&E Bankruptcy Escrow Account contains funds deposited by PG&E related to its debit balances in the PX markets. In the past, the Commission has recognized that the PG&E Bankruptcy Plan clearly envisions distributions from the PG&E Bankruptcy Escrow Account to the extent the Commission issues an order directing disbursements and such order is approved by the bankruptcy court.⁹⁵ Thus, to the extent that past due amounts owed to governmental entities and other non-public utilities are the result of purchases by or are otherwise attributable to PG&E, those amounts should be paid from the PG&E Bankruptcy Escrow Account. Therefore, we direct that payments 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. For any sales that do not meet these criteria, payments are to be made from the PX Settlement Clearing Account. We find that this directive reasonably protects other parties' rights to their receivables and refunds going forward, as the Indicated Parties' request. In addition, we note that, to the extent there is a refund shortfall, parties can seek redress in state and federal courts. We note that the PX has not requested that the CAISO act as the disbursement agent for the PX; therefore, we will not address this issue at this time.

⁹³ *Id.* at 9 (citing CAISO Tariff section 11.6.2).

⁹⁴ Modesto, Santa Clara and SMUD have adopted LADWP's position on this issue. Modesto, Santa Clara and SMUD Dec. 7, 2007 Amendment to Answer to PX Motion at 1-2.

⁹⁵ *See San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 108 FERC ¶ 61,002 at P 36.

3. Funding of Wind-Up Operations

47. If the Commission clarifies that the PX should use the PX Settlement Clearing Account funds to pay CAISO creditors that are non-public utility entities, the PX requests that the Commission address the potential cash shortfall in funding its wind-up operations. Specifically, the PX requests that the Commission give two directives: (1) provide a credit on the PX's debit balance with the CAISO and (2) set up a reserve amount of no less than \$25 million in the PX Settlement Clearing Account.

a. Credit on PX's Debit Balance with CAISO

48. If the Commission clarifies that the PX should use the PX Settlement Clearing Account funds to pay CAISO creditors that are non-public utility entities, the PX requests that the Commission direct the CAISO to provide the PX with a corresponding credit on the PX's debit balance with the CAISO.

49. The CAISO does not dispute that the PX should get a credit against its debt to the CAISO markets in the amount of its distribution. The CAISO affirmatively states that it will credit the PX in the amount that the PX pays to satisfy its obligations through the CAISO markets.⁹⁶ Thus, the CAISO contends that no clarification is necessary because there is no dispute.

50. LADWP and the California Parties support a credit to the PX's debit balance with the CAISO.⁹⁷ However, the California Parties request that the Commission clarify that nothing in its orders is intended to abrogate or limit the otherwise applicable procedural requirements or authorizations for the release of funds or collateral detailed in the PX Reorganization Plan.⁹⁸

Commission Determination

51. We find that the CAISO has adequately addressed the PX's concerns by affirmatively agreeing to credit the PX for amounts the PX pays to satisfy the PX's obligations through the CAISO markets. Because there is no issue in dispute, we find that clarification is not necessary. Accordingly, we deny the PX's request. Based upon

⁹⁶ CAISO Dec. 4, 2007 Answer to PX Motion at 7.

⁹⁷ Modesto, Santa Clara and SMUD have adopted LADWP's position on this issue. Modesto, Santa Clara and SMUD Dec. 7, 2007 Amendment to Answer to PX Motion at 1-2.

⁹⁸ California Parties Dec. 4, 2007 Answer to PX Motion at 3-4, n.7 (citing California Parties Rehearing Request at 23).

this determination, we also find that it is unnecessary to provide the clarification requested by the California Parties.

b. Reserve Amount

52. If the Commission clarifies that the PX should use the PX Settlement Clearing Account funds to pay CAISO creditors that are non-public utility entities, the PX also requests that the Commission establish a reserve amount in the PX Settlement Clearing Account of no less than \$25 million in order to continue to fund the PX and pay unexpected expenses or the PX's operations beyond 2010. The PX claims that the establishment of the reserve of no less than \$25 million is consistent with section 10 of the Wind-Up Rate Settlement Agreement between the PX and its participants, which provides for a wind-up reserve of up to \$7.5 million.⁹⁹

53. The California Parties object to the request for additional funding. The California Parties argue that the PX request is a collateral attack on section 10 of the Wind-Up Rate Settlement, which provides a reserve of no more than \$7.5 million for wind-up expenses.¹⁰⁰ The California Parties assert that they will be deprived of the benefit of their bargain if the PX is allowed to avoid the monetary limit of \$7.5 million placed on the reserve in the Wind-Up Rate Settlement.¹⁰¹ The California Parties add that the parties have not agreed to fund the PX beyond 2010.¹⁰²

54. The California Parties also argue that the request for an additional reserve is premature. The California Parties claim that there will be enough time to address a cash

⁹⁹ PX Motion at 8.

¹⁰⁰ California Parties Dec. 4, 2007 Answer to PX Motion at 4-6 (citing *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315 (D.C. Cir. 2004), *clarification and reh'g denied*, 2004 U.S. App. LEXIS 18393 (2004); *Cal. Power Exch. Corp.*, 109 FERC ¶ 61,259 (2004); *Cal. Power Exch. Corp.*, 112 FERC ¶ 63,032, at P 3, 4 (2005); *Cal. Power Exch. Corp.*, 113 FERC ¶ 61,017; PX Wind-Up Rate Settlement Agreement § 10 at 16-17 (providing that “[t]he [\$7.5 million] Wind-Up Reserve shall not be used regardless of obligations that may be imposed on the PX to distribute [cash from the Settlement Clearing Account] by . . . refund orders issued by the Commission”); *Cal. Power Exch. Corp.*, 120 FERC ¶ 61,006 at P 1-3).

¹⁰¹ *Id.* at 7-8 (citing *Brooklyn Union Gas Co. v. FERC*, 409 F.3d 404, 407 (D.C. Cir. 2005); *Williams Natural Gas Co.*, 72 FERC ¶ 61,137, 61,709, 61,710 (1995); *Entergy Nuclear Operations, Inc.*, 112 FERC ¶ 61,117, at 61,721 (2005)).

¹⁰² *Id.* at 7 (citing Explanatory Statement, Docket Nos. ER05-167-000, *et al.*, at 5 (Sept. 1, 2005)).

shortfall for PX operational expenses if and when new global settlements that will deplete the PX Settlement Clearing Account are approved by the Commission. The California Parties add that the PX has not taken into account several factors that may diminish its concerns: (1) the PX soft-cap adjustment could reduce the amounts due governmental entities; (2) the PX's actual expenses have been generally decreasing;¹⁰³ (3) wind-up charges that are not transferred from the PX Settlement Clearing Account, but instead are paid in cash, further reduce the need for additional reserves. The California Parties note that the PX can file to amend the Wind-Up Settlement in an appropriate docket with appropriate procedures.

55. LADWP argues that, in order to avoid a shortfall in the PX Settlement Clearing Account, the Commission should direct the PX and PG&E, as co-parties to the PG&E Bankruptcy Escrow Account meant to cover PG&E's debit balance in the PX market, to transfer \$25 million from the PG&E Bankruptcy Escrow Account to the PX Settlement Clearing Account to provide sufficient funds in the latter. LADWP states that the PX should then allocate to PG&E a corresponding credit as an adjustment to PG&E's debit balance with the PX to reflect the \$25 million transfer. LADWP argues that this transfer and corresponding credit will enable the PX to distribute past due amounts to non-public utilities consistent with the Remand Order, while maintaining ample reserve to wind-up operations.

56. The CAISO declines to take a position on the proper reserve amount at this time. However, the CAISO argues that the request is premature because there are sufficient funds in the PX Settlement Clearing Account to fund the current distribution and the PX can raise any subsequent lack of funds in the PX Settlement Clearing Account to pay global settlements when the issue ripens.

Commission Determination

57. In light of our determination that payments to governmental entities and other non-public utilities should come from both the PG&E Bankruptcy Escrow Account and the PX Settlement Clearing Account, we deny the PX's request for a reserve amount of at least \$25 million. Furthermore, if the PX requests a reserve amount in the future, we direct the PX to affirmatively explain how the granting of any such request would not violate the Wind-Up Rate Settlement.

4. Motion for Accounting

58. In their motion for accounting, Indicated Parties request that the Commission direct the PX, and PG&E as appropriate, to undertake a full accounting of the amounts currently anticipated to be owed to or from each market participant and the extent of

¹⁰³ *Id.* at 9 (citing Exh. No. CPX-1 at 10, Docket No. ER08-86-000).

projected shortfalls, if any, in the PX's Settlement Clearing Account or other funds. Specifically, Indicated Parties seek an accounting of: (1) the remaining amounts in the PX Settlement Clearing Account and PG&E Bankruptcy Escrow Account; (2) the receivable amounts owed to each market participant (including non-public utility entities) prior to application of mitigation but reflecting the preparatory rerun adjustments; (3) the refund amounts for each participant reflecting application of the MMCP to their transactions; (4) the approved allowances of each participant related to emissions cost offsets, fuel cost allowances, and cost recovery refund offset; (5) the allocation to each participant arising from the approved offsets and allowances discussed above; (6) interest calculations as applicable to the above; and, if necessary, (7) an allocation matrix showing "who owes what to whom," allowing appropriate amounts to be deducted from the PX Settlement Clearing Account or PG&E Bankruptcy Escrow Account depending on whether amounts were owed by PG&E or other parties.

59. Indicated Parties request that the Commission direct the CAISO to provide any relevant information to the PX to complete this accounting. The Indicated Parties acknowledge that the calculations may not be finalized for all of the above items. But the Indicated Parties request that the PX provide this accounting to the Commission and market participants in the near term (e.g., 90-120 days) and update the information on a regular basis going forward (e.g., every six months when the PX makes its wind-up rate filings). If the PX does not have the staff to undertake this accounting, Indicated Parties suggest that the Commission direct the PX to retain an independent auditor. Indicated Parties asserts that a time-limited delay of any further disbursements is appropriate until this review is completed. Indicated Parties argue that, to the extent there is a projected shortfall in PX funds, non-public utility sellers should not have a higher payment priority than public utility sellers.

Commission Determination

60. We deny the Indicated Parties' motion for accounting. Much of the information requested by the Indicated Parties will be available after the CAISO's re-run is completed. Thus, a separate accounting of that information is unnecessary and an inefficient use of resources. Adding another layer of accounting and reporting will simply delay the process. Accordingly, we deny the Indicated Parties' request.

D. Salt River Rehearing Request

61. Salt River objects to the methodology adopted by the Commission to allocate cost offsets¹⁰⁴ and the methodology adopted in the Remand Order to allocate the refund

¹⁰⁴ Salt River Rehearing Request at 2 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 115 FERC ¶ 61,171 at P 25).

shortfalls¹⁰⁵ because both allocate costs solely to net buyers. Salt River claims that net buyers are being required to unfairly and inequitably subsidize costs incurred by the PX and the CAISO to serve other market participants. Salt River claims that the methodology is unduly discriminatory to net buyers and unduly preferential to gross buyers. Salt River further contends that the refund allocation methodology is inconsistent with the methodology previously adopted by the Commission to allocate interest shortfalls.¹⁰⁶ Salt River requests that the Commission modify the Remand Order to reflect that all buyers, including gross and net buyers, purchased energy or capacity in the PX and CAISO spot markets and therefore all buyers should bear a fair share of the costs.

Commission Determination

62. We deny Salt River's rehearing request. As the Supreme Court has found, "allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."¹⁰⁷ Salt River simply presents another possible method of allocation. The fact that other methods exist does not render the Commission's selected methodology erroneous.¹⁰⁸ The methodology the Commission chose in this instance is just and reasonable because it is not prohibitively complicated and yields a fair result. We continue to find, as the Commission did in the Remand Order,¹⁰⁹ that allocating the refund shortfall on a *pro rata* basis based on buyers' net refund is a fair allocation because it is a close approximation of their net exposure to the CAISO and PX spot markets. Furthermore, Salt River's contention that our methodology adopted in this order is inconsistent with the methodology adopted in the interest shortfall order is incorrect. In the interest shortfall order, the Commission directed the CAISO to

¹⁰⁵ Remand Order, 121 FERC ¶ 61,067 at P 39.

¹⁰⁶ Salt River Rehearing Request at 8-9 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 110 FERC ¶ 61,336, at P 56 (2005); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 109 FERC ¶ 61,218, at P 32 (2004)).

¹⁰⁷ *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589, *reh'g denied*, 325 U.S. 891 (1945) ("When Congress, as here, fails to provide a formula for the Commission to follow, courts are not warranted in rejecting the one which the Commission employs unless it plainly contravenes the statutory scheme of regulation.").

¹⁰⁸ See, e.g., *State Corp. Comm. v. FPC*, 206 F.2d 690, 709 (8th Cir. 1953) (Another method might possibly be more reasonable or more accurate, but such a possibility does not justify reversal).

¹⁰⁹ Remand Order, 121 FERC ¶ 61,067 at P 39.

assign the shortfall based upon each market participant's *net* interest position.¹¹⁰ Thus, in both the interest and the refund shortfall situations, the market participant's net position determines whether it will be allotted any shortfall and how much of the shortfall will become its responsibility. There is no inconsistency between the two orders. We also find that Salt River's concern regarding the methodology adopted by the Commission to allocate cost offsets is an impermissible attack on prior Commission orders.¹¹¹ Accordingly, for the reasons set forth above, we deny Salt River's rehearing request.

The Commission orders:

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

(B) Salt River's request for rehearing is hereby denied, as discussed in the body of this order.

(C) The PX's motion for clarification is hereby granted in part and denied in part, as discussed in the body of this order.

(D) The Indicated Parties' motion for accounting is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Spitzer not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹⁰ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 109 FERC ¶ 61,218 at P 38 (emphasis added). *See also San Diego Gas & Elec.Co. v. Sellers of Energy and Ancillary Servs.*, 110 FERC ¶ 61,336 at P 41-42.

¹¹¹ *See supra* note 104.