

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**San Diego Gas & Electric Company,
Complainant,**

v.

Docket No. EL00-95-045

**Sellers of Energy and Ancillary Service Into
Markets Operated by the California
Independent System Operator Corporation
and the California Power Exchange,
Respondents.**

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

Docket No. EL00-98-042

ORDER MODIFYING TRIAL SCHEDULE AS CONCERNS 202(C) ISSUES

(Issued November 23, 2001)

For the reasons set forth below, consistent with the discussions at the November 13, 2001 conference, good cause is present to modify the trial schedule only to the extent of adjudicating section 202(c) issues on January 8, 2002, rather than during December 17 to 21, 2001, and modifying the dates for the filing of initial briefs on issue 1 and 202(c) issues to January 15 and 22, 2002 respectively. The responsive testimony on issues relating to "other sources of cost recovery," including NOX, emissions and startup costs, will be addressed at the February hearing on issues 2 and 3 to which such cost issues are directly related.

There have been several revisions of the August 13, 2001 trial schedule which were necessitated by the need to first obtain corrected data from the ISO. As modified at the September 5 prehearing conference and at oral argument on September 20, 2001, the trial schedule required the filing of responsive testimony that addressed issue 1, section 202(c) issues, and other sources of cost recovery, including NOX, startup and emission cost issues. An informal conference that was held on November 13 addressed a variety of ongoing procedural concerns-- including the need for further groupings of the participants and trial stipulations (both of which could maximize the limited time available for hearing on issues 1, 2, and 3), and modification of application of the

Protective Order to the mass of responsive testimony that has been filed under seal to assure that the hearings would be public to the maximum extent practical. The conference was not on the record because of a misunderstanding by the official reporting company that the Scoping Conference convened on November 13 was not an on the record conference. I stated that the responsive testimony on "other sources of cost recovery," which included a large amount of testimony on issues related to NOX, startup and emission costs, should not be addressed in the December hearing on issues 2 and 3 and should be addressed in the February hearing related to issues 2 and 3 to which these cost issues, concerning refunds or offsets, are directly related to who owes what to whom. Several participants felt it would maximize the limited time available for the hearing on issue 1 with regard to mmcp issues, if section 202(c) issues could be heard on a single day immediately prior to the December hearing on issue 1 or during the first week of January and agreed to discuss this further in a conference call on November 20.

Following the conference call on November 20, the ISO provided me by e-mail with a proposal to revise the trial schedule that is agreed to by most of the active participants. That proposal would modify the hearing schedule to hear issue 1 between December 17 to 21, 2001, hear 202(c) issues on January 8, hear the NOX and emissions startup refund offset issues on January 9, 2002, and if necessary additional hearing on 202(c) and/or NOX, etc. issues, and modify the dates for initial and reply briefs on all of these issues on January 10 and 15, 2002 to January 15 and 22, 2002. The participants also propose a further conference call on November 26 to discuss lifting of the Protective Order as to testimony and discovery and settlement discussions on January 3 and 4, 2002 concerning NOX, startup, and emissions costs issues. One participant, reflecting the views of some of the non-public utility group which had submitted responsive testimony on November 6, 2001 that included other additional sources of cost recovery, commented that others may have been planning to submit such testimony in the hearings that are scheduled for issues 2 and 3. That participant requested that to the extent such testimony is not considered in the December hearings as a result of my change of view or otherwise, the matter should be reflected in the revised procedural schedule. The City of Vernon commented that the issue of whether purchase power/transmission costs and similar costs should offset any refunds alleged owed to purchasers should be addressed as issues 2 and 3 in the February hearings on those issues.

I view the scheduling proposal as moving in the direction of expanding the hearing schedule prior to significant advances in further grouping and trial stipulations with regard to adjudication of issues 1, 2, and 3. I also believe that the portion of responsive testimony and exhibits on NOX, startup, and emissions cost issues are more

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appropriately addressed with and in the hearing on issues 2 and 3 to which they are directly related.

For these reasons, and consistent with the discussion at the November 13 conference, good cause is present to modify the trial schedule only to the extent of adjudicating section 202(c) issues on January 8, 2002, so that the first round of hearings will be limited to adjudication of issue 1 and 202(c) issues, and to modify the dates for the filing of initial and reply briefs on issue 1 and 202(c) issues to January 15 and 22, 2002 respectively.

Bruce L. Birchman
Presiding Administrative Law Judge