

**98 FERC ¶ 63,028**  
**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 ADOPTING REVISED JOINT STIPULATION OF ISSUES  
ON 202(c) ISSUES**

**(Issued March 14, 2002)**

1. This order confirms my ruling on March 13, 2002 and adopts the revised Joint Narrative Stipulation of Issues (JS) filed on March 12, 2002 with regard to the 202(c) issues set for hearing which is reproduced in the Appendix. The JS shall apply to adjudication of these issues subject to further rulings and orders.

Bruce L. Birchman  
Presiding Administrative Law Judge

## APPENDIX

### STIPULATED ISSUES

1. **II What transactions were conducted pursuant to Section 202(c) of the Federal Power Act?**

2. 0.1 How, if at all, should the following factors apply to determine whether a transaction was conducted pursuant to Section 202(c)?

3. 1.1 Context of Transactions

4. *ISO Position:* There were many reasons that entities were supplying energy to the ISO during this time period. The DOE Orders represented a last resort mechanism. Therefore, in order to distinguish sales made pursuant to the DOE Orders from sales made for other reasons, the ISO relied on notations made on the OOM sheets by ISO operations personnel. These notations were made when a supplier explicitly indicated that Energy was being provided pursuant to the DOE Orders, or when ISO operations personnel contacted suppliers requesting that they deliver the Energy they stated was available as "excess" Energy pursuant to the DOE Order. (ISO-10 at 9:5-12:17, 13:5-10; ISO-21 at 14:12-16:9, 17:1-22:9, 21:13-22:19).

5. *California Parties Position:* The ISO complied with the Commission's instructions in the July 25 Order to exclude from refund calculations those transactions entered into pursuant to DOE Orders, as described in the testimony and exhibits of the ISO. OOM transactions on dates for which the ISO filed a certification pursuant to the DOE Orders, and for which there is definitive evidence demonstrating that the transaction was identified to the ISO as a DOE Order transaction at the time (including an ISO operator OOM sheet notation or the transcript of a conversation between the seller and the ISO identifying the transaction as a DOE Order transaction), are the only transactions properly classified as 202(c) transactions. The California Parties did not submit testimony on the 202(c) issue, and so are not referencing a position based on their testimony in this sub-issue or on the other sub-issues listed below, but reserve their right to cross-examine witnesses at hearing and brief the issues based upon the evidence admitted into the record at hearing.



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6. *BPA Position:*

*Burbank Position:* The context of Burbank's sales is central to understanding its motivations for making sales into the ISO market during the 55 day period when the DOE Orders were in effect. The ISO was desperate for energy and capacity and requested, on at least 34 occasions, authority from the DOE to require suppliers to sell into its markets. The ISO never provided a procedure or criteria for complying with the DOE Orders. Rather, Burbank was merely informed of the ISO's resource deficiencies and its authority to call on generators to provide it with energy and capacity. In response to the ISO's representations, Burbank sold into the ISO's markets even though, during most of this period, the ISO and IOUs were a substantial credit risks. The best method for determining which sales were made pursuant to the DOE Orders is to look at the context within which the transaction occurred. The context within which Burbank made its sales indicates that Burbank would not have made sales to purchasers with creditworthiness problems if it was not required to under the DOE Orders. (JBG-1 at 17:17-19:3; JBG-9 at 3:1-4:14, 5:1-9:15; BUR-1 at 4:12-7:4, 8:10-9:2).

8. *Coral Position:* The issues in this case must take into account what was going on in California's electricity market at the time Coral's sales to the ISO were made on December 14, 2000, namely, the extreme shortages of electricity in the ISO's short-term markets, which was compounded by the unwillingness of many sellers to sell power to the ISO by mid-December 2000 due to the ISO's lack of creditworthiness. Because the ISO was no longer a creditworthy counterparty, Coral decided on December 13, 2000 to discontinue extending blanket credit to the ISO and to instead to examine on a case-by-case basis whether to make a sale to the ISO. However, once Coral learned on December 13, 2000 of Department of Energy Secretary William Richardson's announcement that he was invoking his authority under Section 202(c) of the Federal Power Act to require sellers to sell power into California, Coral elected to

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maintain its sales until it first had the opportunity to ascertain precisely what were its obligations under Section 202(c) so as not to risk violating a federal mandate. Thus, Coral's sales to the ISO on December 14, 2000 were made as a direct result of Secretary Richardson's announcement to invoke Section 202(c) of the Federal Power Act. Once Coral thereafter learned that it was only required to sell excess power to the ISO and that it was not required to affirmatively use its credit to purchase power from other sellers for resale to the ISO, Coral immediately discontinued sales to the ISO effective December 15, 2000. The ISO's and Staff's formulaic approach to examining the issues in this case ignores the circumstances that Coral and the ISO were confronting in real-time on December 13-14, 2000 and must be rejected as unreasonable. However, even if it is held that Coral's sales to the California ISO on December 14, 2000 were not technically "required" by the DOE Order under the ISO's and Staff's formulaic approach, Coral should be nevertheless be exempt for equitable reasons from the mitigation and refund requirements in this proceeding for the sales that it made to the ISO on those days. (CP-1 at 4:7-15:21; CP-2 at 27-34; CP-3; CP-4; CP-5; CP-6; CP-7; CP-8; CP-9; CP-10; CP-11; CP-12; CP-13; CP-14; CP-16; CP-17 at 2:9-6:17;CP-19).

9. *Glendale Position:* The context of Glendale's sales is key to understanding its motivations for making sales into the ISO market during the period when the DOE Orders were in effect. The ISO market was suffering from substantial resource deficiencies and the ISO requested that the DOE provide it with authority to require suppliers to sell into its markets. The ISO never provided suppliers a procedure or criteria for complying with the DOE Orders. Rather, it merely informed suppliers of it's resource deficiencies and its authority order them to sell into its markets to relieve these resource deficiencies. Pursuant to the DOE Orders, the ISO requested that suppliers sell into its markets. In response to the ISO's representations and requests, Glendale sold energy and capacity into the ISO's markets even though, during most of this period, the ISO and IOUs were substantial credit risks. Glendale would not have made these

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sales to purchasers with creditworthiness problems if it believed that it was not required to do so under the DOE Orders. (JBG-1 at 17:17-19:3; JBG-9 at 3:1-4:14, 5:1-9:15; GLN-1 at 4:17-7:18, 9:1-9:19).

10. *LADWP Position:* By the time the Secretary of Energy issued the first DOE Order, LADWP was seriously concerned about the ISO and PX's creditworthiness. (DWP-1 (Reformulated) at 3:14-16, 8:9-23). As a result, LADWP wanted the financial protection of selling power under the DOE Orders (DWP-1 (Reformulated) at 3:17-4:2, 8:9-14). The ISO began its practice of advising market participants, including LADWP, of the ISO's certification of specific operating days under the DOE Orders (DWP-1(Reformulated) at 4:19-5:8; DWP-2). In some cases, the ISO would give advanced notice of a certification day. (DWP-1 (Reformulated) at 6:22-7:5; DWP-5). Such advanced notices allowed LADWP to make resources available directly to the ISO and to load served by the ISO through the PX markets, while assuring LADWP that its resources would fall under the protection of the DOE Orders. (DWP-1 (Reformulated) at 7:6-17, 9:1-23). LADWP responded to the ISO's notices by notifying the ISO of the amount of excess energy LADWP expected to have available on the designated ISO certification day. (DWP-1 (Reformulated) at 5:13-6:7; DWP-3; DWP-15 at 3:1-4:12; DWP-16). LADWP and the ISO then negotiated sales for the delivery of energy to the ISO on ISO certification days. (DWP-1 (Reformulated) at 6:8-21, 8:9-22; DWP-4R; DWP-6). Also in response to the ISO's advanced certification notices, LADWP entered into transactions to serve the ISO's load through the PX for delivery on an ISO certification day. (DWP-1 (Reformulated) at 9:1-22; DWP-7).
  
11. *MID Position:* As a general matter, neither the ISO nor FERC published or provided criteria or guidance as to how to comply with the DOE Orders. MID disagrees with the imposition of post hoc criteria, to which Market Participants had no prior notice when making sales pursuant to the DOE Orders. (MID-2 at 4:12-7:18; MID-7 through MID-10; MID-12 at 5:13-9:12; MID-13 through MID-17).

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12. *NCPA Position:* Resources were extremely scarce, and NCPA had to provide for its own members first. Its units included ones that had almost used up emissions limits, as well as water-limited hydro resources. In addition, neither the ISO nor PG&E was creditworthy at the time. Moreover, the context of each of these transactions showed that it was made pursuant to the DOE orders. (NCP-1 at 3:1-5:4, NCP-4 at 2:12-3:25).
13. *Pasadena Position:* The context was critical. Pasadena, as an Attachment A entity, determined that the best and most practical way to comply with the DOE orders was to bid into the ISO's markets. (PAS-1A at 13). Pasadena would not have made the sales in the absence of the DOE orders. (PAS-1A at 12:17 - 13:21). This is particularly true because the ISO was not creditworthy. (PAS-1A at 13:4-8). Pasadena believed that the best response to the DOE orders was to make available its unneeded capacity and energy. (PAS-4 at 3-4).
14. *Pinnacle West Position:* The Pinnacle West Companies contend that due to the California ISO's urgent need to purchase power and the requirements of the DOE Orders, energy was provided to the California ISO in real time without concerns about detailed documentation. The Pinnacle West Companies provided energy under the DOE Orders to fully comply with the letter and spirit of the orders. (PNW-1 at 4:11-20, PNW-1 at 5:2-16). The Pinnacle West Companies believe that when the California ISO made requests to purchase energy, the Pinnacle West Companies were required under the DOE Order to comply with the California ISO's requests and made sales pursuant to the DOE Orders. (PNW-3 at 3:15-23).
15. *Portland Position:* Emergency conditions, a crisis mode of operation, and a legally binding federal order governed Portland's actions during the period between December 14, 2000 and February 6, 2001. While these factors do not change the requirements or legal effect of the DOE orders, they provide the framework pursuant to which the DOE orders in fact were implemented and how the transactions in fact were conducted. (PGE-1 at 4:18-8:12) Portland and the ISO

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developed a written process followed by periodic hourly phone updates to implement the DOE orders. (PGE-3; PGE-4; PGE-14; PGE-1 at 4:8-11; PGE-1 at 6:6-7:20; PGE-15 at 5:14-6:9).

16. *PPL Position:* PPL determined before December 14, 2000 that it would no longer sell power to the ISO because of creditworthiness concerns. Accordingly, all sales made by PPL to the ISO after that date (extending from December 20, 2000 to January 9, 2001) were made only under the compulsion of DOE orders. PPL was unwilling to assume the risk of nonpayment (and other regulatory risk) and thus did not sell voluntarily during this period. (PPL-9 at 2:11-3:17)
17. *PS Colorado Position:* PS Colorado contends that during the period which the DOE Orders were in effect, PS Colorado believed that it was obligated to provide the CAISO energy pursuant to the DOE Orders and that when the CAISO called PS Colorado to request energy, the sales were requested and required pursuant to the DOE Orders and Section 202(c) of the FPA. (PSC-5:7-15). PS Colorado contends that, because serious credit concerns existed throughout the refund period, out-of-market sales would not have been made absent the DOE orders. (PSC-1 at 5:18 to 6:23).
18. *Southern Cities Position:*
19. *SMUD Position:* The period of the DOE Order sales was a crisis period where the ISO took emergency action as a buyer and sellers responded to the ISO's urgent requests. In this crisis circumstance, there was not time for formal communication or procedures regarding sales to the ISO under the DOE Orders. During this period, the ISO held daily conference calls to stress the severity of the energy shortfalls and the DOE Certifications. The ISO would use the calls to request call participants to sell available generation to the ISO and remind participants of their obligation to provide excess generation to the ISO under the DOE Orders. The ISO primarily contacted PG&E, SMUD's Scheduling Coordinator, regarding the DOE sales, and sometimes contacted SMUD directly. Based on these

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conference calls and SMUD's communications with PG&E, SMUD understood that its sales of spot energy to the ISO on days covered by the ISO's 34 Certifications were made pursuant to the DOE Order. (SMD-1 at 10:13- 14:15; SMD-3 at 2, paragraph 3 - 5, paragraph 7.)

20. Because SMUD believed it was obligated to make sales to the ISO under the DOE Orders, SMUD provided energy to the ISO despite the risks associated with such sales. First, SMUD faced a risk to reliability associated with finding replacement resources with regard to its DOE-mandated sales to the ISO. As a load-serving entity, SMUD's load responsibility generally exceeds its generation of energy. Therefore, SMUD has limited opportunities to act as a seller. (SMD-1 at 8:9-9:8). In order to provide energy to the ISO on Certification days, SMUD used hydroelectric project water that was budgeted to supply SMUD's native load. As a result of such use, the project water was significantly drawn down over the winter months of December 2000 and January 2001, and no longer available to generate electricity to meet SMUD's native load requirements in the summer months of 2001. SMUD also provided the ISO with any energy in excess of its native load requirements from its power purchase contracts. In order to ensure adequate supply to meet its statutory responsibility to serve native load, SMUD was forced to purchase replacement energy. Failure to make such purchases would have exposed SMUD and its customers to significant risk. (SMD-1 at 20:14-21:17). Second, SMUD faced very real concerns over the ISO's creditworthiness. Just before the issuance of the first DOE Order, SMUD entered into two "sleeve" transactions on behalf of the ISO at the ISO's request in order to help the ISO avert rolling blackouts. Because the ISO was not creditworthy, SMUD purchased energy on behalf of the ISO and sold to energy to the ISO. The ISO was unable to pay SMUD for this \$3.9 million transaction that SMUD entered into on the ISO's behalf. Notwithstanding this sobering experience just prior to the effectiveness of the first of the DOE Orders, SMUD complied with its obligation as an entity

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subject to the requirements of the DOE orders and provided energy to the ISO. (SMD-1 at 17:13-19:21).

21. SMUD's sales to the ISO were, in part, motivated to prevent blackouts in northern California (along Path 15) during the relevant period. However, the fact that SMUD made sales to the ISO out of such concerns does not negate the fact that the sales were nevertheless provided in satisfaction of SMUD's obligation under the DOE Orders and ISO Certifications to sell excess energy to the ISO. Arguments that SMUD's sales under the DOE Orders should not be characterized as such merely because SMUD made the sales out of other concerns as well miss the point of this proceeding. (SMD-1 at 20:1-12). Similarly, excluding SMUD's sales to the ISO on January 9, 2001, that were in excess of \$64/MWh, would unfairly punish SMUD for the ISO's violation of Amendment 3 to the DOE Orders by agreeing to a price in excess of \$64/MWh. (SMD-9 at 10:3-13:9). Excluding SMUD's sales that were made pursuant to the DOE Orders would lead to the inequitable result of punishing SMUD for its compliance with the Orders notwithstanding the risks to it associated with sales to the ISO.
  
22. *SWC/MWD Position:* The context in which the transactions took place is critical to identifying transactions that took place under the DOE Order, and for evaluating the post hoc criteria proffered by the ISO and Staff. (SWC-8 at 3:13-25, 5:15-6:21). The issuance of the DOE orders requiring sales was unprecedented and resulted from the desperate circumstances of pending blackouts. (SWC-1 at 11:17-12:1; SWC-8 at 5-7). California Department of Water Resources' ("CDWR") inclusion in Appendix A to the DOE order heightened its commitment to help meet the ISO's needs for energy. (SWC-8 at 6:10-14). CDWR was in daily contact with the ISO, providing the ISO with hourly estimates of energy available to the ISO under the Order from SWP's facilities, including Devil Canyon, San Luis and Hyatt-Thermalito, (SWC-1 at 8:22-24, 9:1-7; SWC-15) and responding to the ISO's urgent request for energy identified in those estimates. (SWC- 8 at 11:17-26). In these frenzied circumstances the ISO did not issue any procedures or criteria for identifying DOE Order

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sales (SWC-8 at 6-7), and SWC/MWD sold energy identified to the ISO as required under the DOE Orders.

23. *Staff Position:* Staff does not dispute the fact that the California markets were in a state of turmoil and that creditworthiness of the buyers was a concern of the ISO and those entities participating in the California ISO markets. However, those factors do not change the requirements or legal effect of the DOE Orders. (S-1; S-33).

24. 1.2 Attachment "A" Entity

25. *ISO Position:* Only sales from those entities listed on Attachment A to the DOE Orders should be eligible for designation as 202(c) transactions. (ISO-21 at 5:5-11)

26. *California Parties Position:*

27. *BPA Position:*

28. *Burbank Position:* Burbank was listed on Attachment A and takes no position as to its necessity.

29. *Coral Position:* Coral is listed as an Attachment A entity in the DOE Orders. (CP-1, at 4:11-15).

30. *Glendale Position:* Glendale was listed in Attachment A and takes no position as to its necessity.

31. *LADWP Position:* LADWP is listed on Attachment A to the DOE Orders.

32. *MID Position:* MID was one of the entities listed on Attachment A to the DOE Orders. (MID-2 at 4:19-21).

33. *NCPA Position:* NCPA is an Attachment A entity. (NCP-4 at 2:9).

34. *Pasadena Position:* Pasadena is an Attachment A entity and takes no position as to whether this criterion is a prerequisite.

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35. *Pinnacle West Position:*

36. *Portland Position:* Portland is an Attachment A entity (PGE-1 at 4:20-21; PGE-15 at 6:18-19). Otherwise it takes no position on this issue.

37. *PPL Position:* PPL is an Attachment A entity, and otherwise takes no position on this issue.

38. *PS Colorado Position:*

39. *Southern Cities Position:* Anaheim and Riverside were listed on Attachment A to the DOE Orders. (SOC-2(I) at 5:3-4, SOC-5 at 2:22-23).

40. *SMUD Position:* SMUD meets this criteria and takes no position at this time regarding whether this criterion must be satisfied in order to qualify as a 202(c) transaction. (SMD-1 at 11:18; SMD-9 at 3:10-12).

41. *SWC/MWD Position:* CDWR is listed on Attachment A to the DOE Order. (SWC-1 at 8:14-16).

42. *Staff Position:* Only those entities listed on Attachment A of the DOE Orders were subject to the provisions of the DOE Orders. (S-1 at 12:16-14:12).

43. 1.3 ISO Certification Day

44. *ISO Position:* Only those sales made on days for which the ISO certified to DOE that it anticipated an inadequate supply of electricity should be eligible for designation as 202(c) transactions. (ISO-21 at 5:12-13, 8:1-10:19).

45. *California Parties Position:*

46. *BPA Position:*

47. *Burbank Position:* Burbank disagrees with this criteria. During the entire period when the DOE Orders were in effect,

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Burbank reasonably believed that it was obligated, under the DOE Orders, to make available to the ISO markets all of its excess energy and capacity as was indicated in correspondence between the ISO and DOE. (JBG-1 at 7:6-7:15, 13:1-17:6, JBG-9 at 5:1-9:15). It is an uncontested fact that the ISO never provided suppliers with any criteria as to how to comply with the DOE Orders. (JBG-9 at 4:1-14, 11:1-11:20). Without an express criteria, Burbank had no way of knowing how to comply with the DOE Orders, other than to sell into the ISO markets during the entire period when the DOE Orders were in effect. (JBG-9 at 9:4-9:15). Because of the creditworthiness concerns associated with the ISO and IOUs, Burbank would not have made any of these sales, during this period, but for the DOE Orders. (JBG-9 at p. 9:17-10:12).

48. *Coral Position:* Whether the ISO certified to DOE on December 14, 2000 that it was unable to obtain adequate supplies of electricity on that day is irrelevant to the issues in this case given that, while DOE Secretary Richardson's decision to require sellers to sell power into California was known on December 13, 2000, his first order was not publicly available until late in the day on December 14, 2000. Thus, Coral had no way of knowing of the certification requirement at the time that it made its sales to the ISO on those days. Under these circumstances, the fact that the ISO did not submit a formal certification on December 14, 2000 is immaterial to the issues in this case. The ISO's and Staff's bright-line test on this matter ignores these realities and should be rejected. (CP-1, at 9:14-11:19; CP-13; CP-14; CP-17, at 2-5:3).
49. *Glendale Position:* Glendale disagrees with this criteria. During the entire period when the DOE Orders were in effect, Glendale believed that it was obligated, under the DOE Orders, to make available to the ISO markets all of its excess energy and capacity as was indicated in correspondence between the ISO and DOE. (JBG-1 at 7:6-7:15, 13:1-17:6, JBG-9 at 5:1-9:15). It is an uncontested fact that the ISO never provided suppliers with any criteria as to how to comply with the DOE Orders. (JBG-9 at 4:1-14,

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11:1-11:20). Without an express criteria, Glendale had no way of knowing how to comply with the DOE Orders, other than to sell into the ISO markets during the entire period when the DOE Orders were in effect. (JBG-9 at 9:4-9:15). Because of the creditworthiness concerns associated with the ISO and IOUs, Glendale would not have made any of these sales, during this period, but for the DOE Orders. (JBG-9 at p. 9:17-10:12).

50. *LADWP Position:* LADWP entered into the transactions for delivery of energy under the DOE Orders both on a certification day itself, (DWP-1 (Reformulated) at 6:8-21; DWP-4R) and, when the ISO gave LADWP advanced notice of a certification day, on a day prior to that certification day (DWP-1 (Reformulated) at 6:22-8:23, 9:4-22; DWP-5; DWP-6; DWP-7). LADWP's energy deliveries to the ISO and PX under the DOE Orders all occurred on ISO certification days. (DWP-4R; DWP-6; DWP-7)
51. *MID Position:* It was MID management's view that during the time period when the DOE Orders were in effect (Dec. 14, 2000 through Feb. 6, 2001), all transactions MID made into the ISO markets were made pursuant to the DOE Orders. (MID-2 at 4:12-8:16, MID-7 to MID-11; MID-12 at 2:27-12:5). Further, neither the ISO's nor Trial Staff's criteria were disseminated among Market Participants as to give them notice that the DOE Orders would be administered through those criteria. (MID-2 at 4:12-7:18, MID-7 to MID-10; MID-12 at 5:13-9:12, MID-13 to MID-17).
52. *NCPA Position:* NCPA made only one sale on a non-certification day. NCPA made that sale pursuant to its obligation under the DOE orders, even though NCPA's own resources were extremely limited and neither the ISO nor PG&E was creditworthy. (NCP-4 at 2:10-17, NCP-1 at 4:1-12). NCPA's sale on that day, January 11, was at prices below the MMCP estimates provided by the CAISO. (NCP-4 at 2:18-20)
53. *Pasadena Position:* Pasadena believes that sales on both certification days and non-certification days constitute sales pursuant to the DOE orders. This was the most practicable response by a small utility like Pasadena. PAS-4 at 3-6; PAS-5. Pasadena would have found it difficult to

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wait until the last minute for an ISO request for power.  
PAS-4 at 5:1-6.

54. *Pinnacle West Position:*

55. *Portland Position:* Per stipulation (being finalized), all of Portland's transactions being claimed were conducted on certification days. Therefore, Portland takes no position on this issue.

56. *PPL Position:* All of PPL's sales during the period the DOE Orders were in effect were made on DOE certification days. (PPL-10).

57. *PS Colorado Position:* PS Colorado contends that all OOM transactions between PS Colorado and the CAISO during the period when the DOE orders were in effect (December 14, 2000 through February 7, 2001) were conducted pursuant to Section 202(c) of the Federal Power Act. (PSC-1 at 4:7-17). PS Colorado believes that serious credit concerns existed throughout the refund period, and that out-of-market sales would not have been made absent the DOE orders. Such financially volatile conditions warrant the assumption that all transactions during the period when the DOE orders were in effect were made pursuant to Section 202(c) of the FPA. (PSC-1 at 6:4-7).

58. *Southern Cities Position:*

59. *SMUD Position:* SMUD meets this criterion and takes no position at this time regarding whether this criteria must be satisfied in order to qualify as a 202(c) transaction. (SMD-1 at 6:1-5; SMD-9 at 3:13-16).

60. *SWC/MWD Position:* CDWR/SWP sales occurred on ISO certification days pursuant to the DOE Order. (SWC-1 at 15:2-6; SWC-4, Schedules F and G).

61. *Staff Position:* The DOE Orders covered only transactions which took place on those days for which the

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ISO certified to DOE that it anticipated an inadequate supply of electricity. (S-1 at 14:13-15:13). Following is a list of entities and claimed transactions on non-ISO certification days that were not pursuant to the DOE Orders:

62. 1) MID - December 14, 15, 18, 19, 2000 and January 7, 8, 10, 11, 14 and 15, 2001. (S-33 at 17:12-17).
63. 2) NCPA - January 11, 2001. (S-33 at 18:11-14).
64. 3) SMUD - December 20, 2000 HE 1-3 and January 16, 2001 HE 1-12. (S-33 at 21:12-22:9; S-66).
65. 4) Riverside - January 3-8, 2001. (S-33 at 29:18-30:5; S-56).
66. 5) Pasadena - January 5-8, 10-11, 13-16, 2001. (S-33 at 33:15-34:4).
67. 6) Pinnacle - January 16, 2001 HE 7. (S-33 at 50:6-15).
68. 7) Portland General - December 14 through 20, 2001 HE 5. (S-33 at 51:19-52:19).
69. 8) PSC of Colorado - January 15, 2001. (S-33 at 59:10-17).
70. 9) Burbank - December 15 through 20, 2000 HE 5, December 29 through January 1, 3-8, and 10-11 and 13-16, HE 12. (S-33 at 64:2-10).
71. 10) Glendale - December 15 through 20, 2000 HE 5, December 29 through January 1, 3-8, and 10-11 and 13-16, HE 12. (S-33 at 65:20-67:7)

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72. 11) Coral - December 14, 2000 (S-33 at 67:8-69:5). Staff did not address December 13, 2000 in its rebuttal testimony because Coral did not make a claim for transactions on this date in its prefiled testimony.

73.            ~~oP~~ "DOE Order" Reference

74.            *ISO Position:* In order to distinguish sales made pursuant to the DOE Orders from sales made for other reasons, the ISO relied on notations made on the OOM sheets by ISO operations personnel. These notations were made when a supplier explicitly indicated that Energy was being provided pursuant to the DOE Orders, or when ISO operations personnel contacted suppliers requesting that they deliver the Energy they stated was available as "excess" Energy pursuant to the DOE Order. Thus, the ISO adopted a neutral standard, and entities that wished to make clear their intentions could do so, and did so. Additionally, one supplier provided the ISO with a number of transcripts of conversations between operators for the supplier and the ISO demonstrating that the sales discussed were made pursuant to 202(c), although the ISO's OOM sheets did not identify those sales as 202(c) sales. (ISO-10 at 9:5-12:17, 13:5-10; ISO-21 at 14:12-16:9, 17:1-22:9, 21:13-22:19)

75.            *California Parties Position:*

76.            *BPA Position:* BPA does not believe it is a prerequisite for the ISO to record a transaction in its OOM log as a 202(c) transaction in order for the transaction to qualify as a 202(c) transaction. (BPA-1 at 10:2-13:7).

77.            *Burbank Position:* Burbank disagrees with the ISO's criteria for determining which sales were made pursuant to the DOE Orders. The ISO has admitted that it did not ask all sellers whether the sale was pursuant to the DOE Orders. Moreover, the ISO has acknowledged sales to be DOE sales without an OOM reference. Therefore, the ISO's criteria is flawed. (JBG-1 at 17:7-19:3; BUR-1 at 7:6-9:2).

78.            *Coral Position:* Without conceding that this consideration is relevant to the issues in this case, the fact that the ISO personnel did not note on the ISO's OOM Sheet on December 14, 2000 that Coral's sales to the ISO on that day were made pursuant to Section 202(c) is irrelevant to whether Coral's sales to the ISO on that day were in fact

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made pursuant to Section 202(c) given that the ISO did not institute this "protocol" until December 20, 2000. (CP-1, at 11:5-19; CP-2, at 28-32; CP-9, at 10).

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79. *Glendale Position:* Glendale disagrees with the ISO's criteria for determining which sales were made pursuant to the DOE Orders. The ISO has admitted that it did not ask all sellers whether the sale was pursuant to the DOE Orders. Moreover, the ISO has acknowledged sales to be DOE sales without an OOM reference. Therefore, the ISO's criteria is flawed. (JBG-1 at 17:7-19:3; GLN-1 at 8:1-11:13).
80. *LADWP Position:* In response to the ISO's notices of certification days, LADWP notified the ISO of the excess energy it expected to have available on a certification day. (DWP-1 (Reformulated) at 5:13-6:7; DWP-3; DWP-15 at 3:7-4:12; DWP-16). LADWP's notices to the ISO specifically referenced the "DOE Orders". (DWP-1 (Reformulated) at 5:13-6:7; DWP-3). LADWP then negotiated transactions with the ISO to deliver energy to the ISO on the certification days. (DWP-1 (Reformulated) at 4:16-18, 6:13-18, 8:11-22; DWP-4; DWP-6). LADWP believes that the ISO represented to the Secretary of Energy that many transactions were entered into under the DOE Orders in addition to those specifically noted by the ISO as DOE sales on the ISO's OOM sheets. (DWP-15 at 4:13-12:8; DWP-17; DWP-18).
81. *MID Position:* It was MID management's view that during the time period when the DOE Orders were in effect (Dec. 14, 2000 through Feb. 6, 2001), all transactions MID made into the ISO markets were made pursuant to the DOE Orders. (MID-2 at 4:12-8:16, MID-7 to MID-11; MID-12 at 2:27-12:5). Further, neither the ISO's nor Trial Staff's criteria were disseminated among Market Participants as to give them notice that the DOE Orders would be administered through those criteria. (MID-2 at 4:12-7:18, MID-7 to MID-10; MID-12 at 5:13-9:12, MID-13 to MID-17).
82. *NCPA Position:* NCPA's internal records, including responses to the ISO prior-day requests for energy and dispatch notes, support NCPA's position that its sales were made pursuant to the DOE orders. On each of the five days on which sales were made, NCPA was specifically contacted by telephone to provide energy to the CAISO. At the time of the first request, on December 20, NCPA staff made it clear that they would only have energy to provide under the "new

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ruling from DOE." (NCP-1 at 3:15-4:23; NCP-4 at 3:8-25; NCP-6 at 1).

83. *Pasadena Position:* Pasadena does not believe that some "reference" to DOE orders is a prerequisite for sales. The ISO never requested Pasadena to provide documentation of DOE sales. (PAS-4 at 6:18-20; PAS-4 at 3:14-17). Pasadena believed that its record of sales to the ISO would be its documentation of DOE sales. (PAS-4 at 6:21 - 7:2).
84. *Pinnacle West Position:* The Pinnacle West Companies contend that it is arbitrary and illogical for the California ISO to label "202(c) transactions" only based on real-time operators notations on the OOM sheets. (PNW-1 at 5:21-22). Using notations on the OOM sheets as a basis for identifying transactions entered into pursuant to the DOE orders ignores the realities of real-time trading. (PNW-1 at 6:6-8).
85. *Portland Position:* Reference to the DOE orders was not required, is not probative evidence, relies on incorrect and inaccurate record keeping and is not the best evidence. (PGE-1 at 4:4-17; PGE-1 at 6:6-10:4; PGE-10; PGE-15 at 2:17-6:12; PGE-15 at 8:4-11:2; PGE-18). Portland and the ISO developed a written process followed by periodic hourly phone updates to implement the DOE orders. (PGE-1 at 6:6-7:20; PGE-15 at 5:14-6:9; PGE-3; PGE-4; PGE-14). Portland records (PGE-2 Revised; PGE-3 through PGE-9; PGE-11; PGE-16), ISO OOM sheet captions listing the DOE sales as "DOE" (compilation in PGE-21) and ISO reports to DOE (compilation in PGE-20 and PGE-21) are more reliable evidence as to what constituted DOE transactions.
86. *PPL Position:* The ISO has admitted that all of its transactions with PPL during the period the DOE Orders were in effect (the sales having been made between December 20, 2000 and January 9, 2001) were DOE sales, even though some of those sales did not appear on ISO-15 with a "DOE sales" notation. (PPL-9 at 4:5-5:19; PPL-14 at 1:18-2:14; PPL-15).

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87. *PS Colorado Position:* PS Colorado disagrees with using notations on the OOM sheets as a basis for identifying transactions conducted pursuant to 202(c) of the Federal Power Act. (PSC-1 at 7:1-4). The CAISO operators would not necessarily know what PS Colorado's understanding or intent was in making the sales - *i.e.*, to comply with Section 202(c) of the FPA. (PSC-1 at 7:4-6). Moreover, it does not appear that the CAISO applied consistent practices in completing the OOM sheets.
88. *Southern Cities Position:*
89. *SMUD Position:* Transactions are not required to satisfy this criterion to qualify as a 202(c) transaction. During the period at issue in this proceeding, there was neither need nor opportunity for the ISO to maintain such extensive records, and the ISO's position that such notations are required is contrary to its own actions during this period. (SMD-1 at 23:8-24:11; SMD-3, paragraphs 4-7).

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90. *SWC/MWD Position:* The ISO's reliance on its OOM sheet notations (SWC-1 at 10:17-22; SWC-6 at 15), ignores the fact that the ISO simply did not make such notations for sales within the ISO Control Area, including sales requested and dispatched electronically. (SWC-1 at 11-14; SWC-8 at 14:17-20). There was no ISO criteria for documentation of DOE Order transactions, (SWC-1 at 11-12), including any criteria requiring a notation for DOE Order transactions.

91. *Staff Position:* A "DOE Order" notation on the OOM sheet was not required in order for a transaction to be considered as having been conducted pursuant to the DOE Orders. (S-1 at 12:16-13:3).

92 1.5 Market or Non-Market Transactions

93 *ISO Position:* Only those sales made outside of the ISO's markets are eligible for designation as 202(c) transactions, for the reasons set forth in the testimony of Linda Patterson on behalf of the Commission Trial Staff. Additionally, sales of Ancillary Services should not be eligible for designation as 202(c) transactions because the DOE Orders explicitly refer to an obligation by suppliers to delivery "electric energy" when requested by the ISO. (ISO-21 at 5:14-16; 11:1-22)

94 *California Parties Position:*

95 *BPA Position:* BPA does not believe that Section 202(c) transactions are limited to real-time OOM transactions. (BPA-1 at 2:19-3:17; BPA-1 at 4:17-6:18) Bids into the ISO Supplemental energy market or other ISO structured markets can qualify as Section 202(c) transactions. (BPA-1 at 7:5-8:5; BPA-5 at 2:12-7:17).

96. *Burbank Position:* Burbank believes that its sales of ancillary services and energy into the ISO's markets, during the period when the DOE Orders were in effect, were made pursuant to the DOE Orders. In its representations to suppliers and the DOE during the refund period, the ISO indicated that it intended to call on suppliers to bid into the ISO markets. (JBG-9 at 13:1-7, 5:1-8:19). In response

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to the ISO's representations and because of the lack of a criteria for complying with the DOE Orders, Burbank complied with the DOE Orders by making sales into the ISO markets. (JBG-9 at 8:15-9:15, JBG-1 at 7:18-17:6) Burbank only made sales to the ISO because the DOE Orders required it to. (JBG-9 at 9:17-10:12).

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97. *Coral Position:* Without conceding the relevance of this consideration, all of Coral's sales made to the ISO during the refund period were non-market OOM transactions.
98. *Glendale Position:* Glendale believes its sales of ancillary services and energy into the ISO's markets, during the period when the DOE Orders were in effect, were made pursuant to the DOE Orders. In its representations to suppliers and the DOE during the refund period, the ISO indicated that it intended to call on suppliers to bid into the ISO markets. (JBG-9 at 13:1-7, 5:1-8:19). In response to the ISO's representations and because of the lack of a criteria for complying with the DOE Orders, Glendale complied with the DOE Orders by making sales into the ISO markets. (JBG-9 at 8:15-9:15, JBG-1 at 7:18-17:6, GLN-1 at 7:4-7:18). Glendale only made sales to the ISO because the DOE Orders required it to. (JBG-9 at 9:17-10:12)
99. *LADWP Position:* LADWP and the ISO negotiated sales for the delivery of energy to the ISO on ISO certification days. (DWP-1 (Reformulated) at 6:8-21, 8:9-23; DWP-4R; DWP-6). Also in response to the ISO's advanced notices of certification of operating days under the DOE Orders, LADWP sold energy under the DOE Orders through the PX to make resources available on a day-ahead basis to load served by the ISO. (DWP-1 (Reformulated) at 9:1-10:9; DWP-5; DWP-7).
100. *MID Position:* It was MID management's view that during the time period when the DOE Orders were in effect (Dec. 14, 2000 through Feb. 6, 2001), all transactions MID made into the ISO markets were made pursuant to the DOE Orders. (MID-2 at 4:12-8:16, MID-7 to MID-11; MID-12 at 2:27-12:5). Further, neither the ISO's nor Trial Staff's criteria were disseminated among Market Participants as to give them notice that the DOE Orders would be administered through those criteria. (MID-2 at 4:12-7:18, MID-7 to MID-10; MID-12 at 5:13-9:12, MID-13 to MID-17).
101. *NCPA Position:* The sales at issue were not bid into the CAISO market but rather were made after NCPA was requested by phone to provide energy to the CAISO. (NCP-1 at 4:13-16; NCP-4 at 2:10).

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102         *Pasadena Position:* Pasadena believes that selling into  
.         the ISO's markets is a valid response to the DOE orders.  
          (PAS-1A at 13; PAS-4 at 5-8; PAS-5). This was the most  
          practical means of compliance for Pasadena. (PAS-4 at 5:1-  
          6).

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103. *Pinnacle West Position:*

104. *Portland Position:* All of Portland's sales were "non-market" transactions (PGE-15 at 6:20-21 and PGE-21). Otherwise Portland takes no position on this issue.

105. *PPL Position:* All of PPL's sales were "non-market" transactions, and PPL otherwise takes no position on this issue.

106. *PS Colorado Position:*

107. *Southern Cities Position:* The label "conducted pursuant to Section 202(c)" should extend to proactive sales made by "Attachment A" entities on ISO certification days, even if these sales are not "non-market" sales under FERC Staff's definition. (SOC-2(I) at 5:1-16, SOC-5 at 2:20-23, 3:1-11, SOC-8(R) at 3:1-19). At the very least, "over-scheduling" sales, which were necessitated by ISO scheduling constraints, should be considered 202(c) transactions. (SOC-8(R) at 4:7-23, 5:1-23, 6:1-23, 7:1-13).

108. *SMUD Position:* SMUD meets this criterion and takes no position at this time regarding whether this criterion must be satisfied in order to qualify as a 202(c) transaction. SMUD's sales transactions were "non-market" transactions because they did not result from SMUD bidding into one of the structured ISO's structured markets. This is due to SMUD's particular contractual arrangement with the ISO and PG&E. (SMD-9 at 3:17-4:12; SMD-9 at 3:17-5:2; SMD-10).

109. *SWC/MWD Position:* The ISO never informed CDWR individually or in the Peak Day conference calls initiated by the ISO that the ISO would not treat sales through the ISO's markets as DOE Order sales. (SWC-8 at 6:21-25) The ISO, through its generation dispatcher and the Automatic Dispatch System, requested and arranged DOE Order transactions with CDWR/SWP, which included: (A)

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Out-of-Market and Out-of-Sequence transactions that did not use the ISO's markets (SWC-1 at 14; SWC-4, Schedule L), and (B) transactions through the ISO's Hour-Ahead Ancillary Services market and Supplemental-Energy market. (SWC-1 at 12:11-20; SWC-8 at 12:7-26,13:1-11). The ISO did not inform CDWR that it would exclude market transactions from sales under the DOE Order.

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110. *Staff Position:* In order for a transaction to have been eligible for designation as a "DOE transaction," it must have been requested by the ISO in advance and there must have been an agreement on rates and terms or a referral to FERC. No evidence has been shown that the ISO requested entities to bid into the ISO's formal markets after the ISO had received notification from the entities as to their available excess generation. Moreover, prior agreement on rates is not characteristic of the California ISO-operated markets, but is characteristic of OOM purchases. For these reasons, the Staff concluded that transactions in the OOM market or "non-market" transactions were the only type of transactions that were contemplated by the DOE Orders. (S-1 at 12:22-17:20; S-11; S-17). With respect to Uninstructed Imbalance Energy, it is the Staff's position that it does not qualify as a DOE transaction because it was not at the ISO's request.

111 Transactions by the following entities were not considered DOE transactions based on Staff's analysis:

112 1) MID - The sales shown on Exhibits MID-4 and MID-6 are sales to the ISO made through MID bidding into the ISO's energy and Ancillary Services markets and not from specific requests from the ISO for MID's excess available energy. MID-5 reflects Uninstructed Imbalance Energy transactions. (S-33 at 13:9-17:19; S-19; S-20; S-35; S-45 through 51).

113 2) NCPA - Failed to provide supporting evidence that transactions for December 23, 2000 and January 16, 2001 were "non-market" transactions. (S-33 at 17:21-21:9; S-37).

114. 3) SMUD - It's unclear whether the "Muni Surplus" sales reflected on SMD-5 were provided pursuant to the DOE Orders. Also the Uninstructed Imbalance Energy transactions on SMD-5 do not qualify as DOE transactions. (S-33 at 21:11-25:24; S-55; and S-83 through S-86).

115. 4) Cities of Anaheim and Riverside - Except for HE 13 on December 21, all energy sold by Anaheim to the ISO was

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Uninstructed Imbalance Energy. All of Riverside's claimed transactions were Uninstructed Energy. (S-33 at 26:20-32:3; S-53 through S-55).

116. 5) Pasadena - Pasadena bid all available capacity and energy from its GTs into the ISO's Ancillary Services Market. (S-33 at 32:4-34:10; S-58).
117. 6) BPA - The sales BPA made into the Supplemental Energy market constitute market transactions and not DOE transactions. (S-33 at 34:12-41:10; S-38; S-59).
118. 7) LADWP - The transactions LADWP made with the PX are not considered DOE transactions because the DOE Orders only addressed services requested by the ISO. (S-33 at 41:11-49:11; S-60 through S-65).
119. 8) Pinnacle - The transaction on December 22, HE 21 was a sale of Supplemental Energy into the real time market. (S-33 at 49:12-50:5).
120. 9) PS Colorado - It is unclear whether the transactions on January 17 on PSC-2 were Uninstructed Energy. (S-33 at 59:18-62:11; S-55; S-77 and S-78).
121. 10) Cities of Burbank and Glendale - None of the sales these entities claim qualify as DOE transactions because they were market transactions. (S-33 at 62:13-67:7; S-37; S-79 through S-81).
122. 11) State Water Contractors and Metropolitan Water District - Based on the evidence presented, it appears that the CDWR sales are market transactions. (S-33 at 69:6-71:5; S-82).
123. 1.6 E-516, Emergency Service Agreement , or Interconnected Control Area Operating Agreement
124. *ISO Position:* Sales made during the period in which the DOE Orders were in effect by entities listed in ISO Operating Procedure E-516 were made pursuant to that Procedure rather than Section 202(c). Sales made by LADWP during the period in which the DOE Orders were in

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effect were made pursuant to Schedule 13 of the Interconnected Control Area Operating Agreement rather than Section 202(c). (ISO-21 at 17:1-19:19)

125            *California Parties Position:*

126.           *BPA Position:*

127           *Burbank Position:* Burbank takes no position on this  
issue.

128           *Coral Position:* Without conceding its relevance, this  
consideration is not applicable to Coral because Coral is  
an out-of-state seller.

129           *Glendale Position:* Glendale takes no position on this  
issue.

130           *LADWP Position:* By December 2000, LADWP was seriously  
concerned about the ISO's creditworthiness so that, when the  
DOE Orders were issued, LADWP sought financial protection by  
selling energy to the ISO pursuant to the orders. (DWP-1  
(Reformulated) at 3:10-4:7, 8:9-9:23). In response to the  
ISO's notices of certification days, LADWP notified the ISO  
of the excess energy it expected to have available on the  
certification day. (DWP-1 (Reformulated) at 5:13-6:7; DWP-3;  
DWP-15 at 3:1-4:12; DWP-16). LADWP's notices to the ISO  
specifically referenced the "DOE Orders". (DWP-1  
(Reformulated) at 5:13-6:7; DWP-3). LADWP then negotiated  
transactions with the ISO to sell energy to the ISO on the  
certification days, and those sales occurred on the  
certification days. (DWP-4R; DWP-6). Schedule 13 of LADWP's  
Interconnected Control Area Operating Agreement with the ISO  
does not give the ISO the authority to require LADWP to sell  
energy to the ISO.

131.           *MID Position:* The ISO's Operating Procedure E-516 is irrelevant as to whether  
sales MID made to Pacific Gas and Electric Company ("PG&E") that PG&E presumably  
made available to the ISO qualify as DOE transactions – all sales MID made from Dec.  
14, 2000 through Feb. 6, 2001 were made pursuant to the DOE Orders. (MID-2 at  
4:6-11; 8:17-9:2; MID-7 to MID-11, MID-12 at 12:6-14:15; MID-18 to MID-19).

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- 132            *NCPA Position:* E-516 and the Emergency Service Agreement did not require NCPA to make any sales to the CAISO. (NCP-4 at 3:1-7; NCP-5 at 1; NCP-7 at 3:18-5:15, NCP-1 at 4:24-28). NCPA made these sales pursuant to the DOE orders, in spite of scarce resources and creditworthiness issues. NCPA would not have made these sales absent the DOE order. (NCP-1 at 3:1-5:4; NCP-4 at 2:12-17, 3:1-25). At the time of the first request, on December 20, NCPA staff made it clear that they would only have energy to provide under the "new ruling from DOE." (NCP-6 at 1; NCP-4 at 3:8-25) Other internal records show NCPA's understanding that subsequent sales were also under the DOE order. (NCP-2).
133.            *Pasadena Position:* Pasadena takes no position on this issue.
134.            *Pinnacle West Position:*
- 135            *Portland Position:* No position.
- 136            *PPL Position:* No position.
137.            *PS Colorado Position:*
- 138            *Southern Cities Position:*
139.            *SMUD Position:* SMUD's sales of spot market energy to the ISO during the period December 20, 2000 through January 19, 2001 were not conducted under ISO Operating Procedure E-516 or an Emergency Services Agreement and, therefore, satisfy this criteria. SMUD's relevant sales to the ISO were conducted pursuant to a Restated Interim Agreement between PG&E, the ISO, and SMUD ("RIA"). The RIA is a three-party arrangement that allows SMUD to sell directly to the ISO. Thus, SMUD's sales to the ISO under the RIA were conducted under FPA Section 202(c). SMUD takes no position at this time regarding whether this criteria must be satisfied in order to qualify as a 202(c) transaction. (SMD-9 at 3:23-5:2;

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7:6-8:6; SMD-10; SMD-12).

140. *SWC/MWD Position:* No position.

141. *Staff Position:* Based on the ISO's representation that there is no obligation under E-516 to provide excess energy to the ISO, Staff concluded that a sale of excess generation under E-516/ESA may qualify as a DOE transaction if all of Staff's other criteria are met. Also, based upon the evidence presented, it does not appear that LADWP which is governed by the ICAOA was already obligated to provide excess generation. (S-33 at 8:4-10:6).

142. 0.7 PGA

143. *ISO Position:* Entities that have signed a PGA have an obligation during system emergencies to provide energy in response to ISO dispatch instructions. Therefore, the ISO had no need to use the DOE Order mechanism to obtain excess energy from such entities. (ISO-21 at 20:1-21:11)

144. *California Parties Position:*

145. *BPA Position:*

146. *Burbank Position:* Burbank takes no position on this issue.

147. *Coral Position:* Without conceding its relevance, this consideration is not applicable to Coral because Coral is an out-of-state seller.

148. *Glendale Position:* Glendale takes no position on this issue.

149. *LADWP Position:*

150. *MID Position:* It was MID management's view that during the time period when the DOE Orders were in effect (Dec. 14, 2000 through Feb. 6, 2001), all transactions MID made into the ISO markets were made pursuant to the DOE Orders. (MID-2 at 4:12-8:16, MID-7 to MID-11; MID-12 at 2:27-12:5). Further, neither the ISO's nor Trial

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Staff's criteria were disseminated among Market Participants as to give them notice that the DOE Orders would be administered through those criteria. (MID-2 at 4:12-7:18, MID-7 to MID-10; MID-12 at 5:13-9:12, MID-13 to MID-17).

151. *NCPA Position:* NCPA's sales were made from non-PGA units. (NCP-1 at 1:14-16).
152. *Pasadena Position:* The existence of a PGA is irrelevant. The ISO provided no evidence that it ever issued a dispatch order to Pasadena under its tariff whereas the ISO did identify Pasadena on Attachment A.
153. *Pinnacle West Position:*
154. *Portland Position:* No position.
155. *PPL Position:* No position.
156. *PS Colorado Position:*
157. *Southern Cities Position:*
158. *SMUD Position:*
159. *SWC/MWD Position:* The PGA between CDWR and the ISO is irrelevant to the sales identified on SWC-4, Schedules F and G. The DOE Order included CDWR on Attachment A, and the ISO expressly requested the energy identified on SWC-4, Schedules F and G from CDWR under the DOE Orders. (SWC-8 at 11:11-12:2)
160. *Staff Position:* Based upon the evidence presented, Staff did not take the position that the entities covered by a PGA were precluded from providing energy under the DOE Orders. (S-33 at 10:3-11:11; S-34 and S-44).
161. 8. Other Sellers in Control Area
162. *ISO Position:* The energy provided to the ISO by the City of Riverside during the period covered by the DOE Orders was uninstructed energy, and because the ISO had no way of

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knowing what Riverside's intentions were when it provided this energy, it should not be considered as provided pursuant to Section 202(c). (ISO-21 at 22:11-23:6)

163. *California Parties Position:*
164. *BPA Position:*
165. *Burbank Position:* Burbank takes no position on this issue.
166. *Coral Position:* Without conceding its relevance, this consideration is not applicable to Coral because Coral is an out-of-state seller.
167. *Glendale Position:* Glendale takes no position on this issue.
168. *LADWP Position:*
169. *MID Position:* It was MID management's view that during the time period when the DOE Orders were in effect (Dec. 14, 2000 through Feb. 6, 2001), all transactions MID made into the ISO markets were made pursuant to the DOE Orders. (MID-2 at 4:12-8:16, MID-7 to MID-11; MID-12 at 2:27-12:5). Further, neither the ISO's nor Trial Staff's criteria were disseminated among Market Participants as to give them notice that the DOE Orders would be administered through those criteria. (MID-2 at 4:12-7:18, MID-7 to MID-10; MID-12 at 5:13-9:12, MID-13 to MID-17).
170. *NCPA Position:*
171. *Pasadena Position:* Pasadena takes no position on this issue.
172. *Pinnacle West Position:*
173. *Portland Position:* No position.
174. *PPL Position:* No position.
175. *PS Colorado Position:*

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176           *Southern Cities Position:*

.  
177           *SMUD Position:*

.  
178           *SWC/MWD Position:* No position.

179           *Staff Position:*

.  
180.                   0.1     \$64 or Less on January 9, 2001

181           *ISO Position:* For sales made on certification day January 9, 2001, the price demanded for  
. these sales must have been at or below \$64/MWh in order to qualify as a sale made pursuant to  
Section 202 (c). (ISO-21 at 5:17-18)

182.           *California Parties Position:*

183           *BPA Position:*

.  
184.           *Burbank Position:* Burbank disagrees with both the ISO's  
(JBG-1 at 17:7-19:3; BUR-1 at 7:6-9:2) and FERC Staff's  
(JBG-9 at 3:1-12:20) criteria for determining which sales  
were made pursuant to the DOE Orders. Burbank made sales  
into the ISO's markets during the period covered by the  
January 5<sup>th</sup> DOE Order for amounts in excess of \$64 and the  
ISO accepted Burbank's market bids and gave no  
communications to the contrary.

185           *Coral Position:* Without conceding its relevance, this  
. consideration is not applicable to Coral because Coral made  
no sales to the ISO on January 9, 2001.

186.           *Glendale Position:* Glendale disagrees with both the  
ISO's (JBG-1 at 17:7-19:3; GLN-1 at 8:1-11:13) and FERC  
Staff's (JBG-9 at 3:1-12:20) criteria for determining which  
sales were made pursuant to the DOE Orders. Glendale made  
sales into the ISO's markets during the period covered by  
the January 5<sup>th</sup> DOE Order for amounts in excess of \$64 and  
the ISO accepted Glendale's market bids and gave no  
communications to the contrary.

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187            *LADWP Position:*

188            *MID Position:* Amendment No. 3 of the DOE Orders did not place a \$64/MWH price cap for transactions on January 9, 2001 – the ISO agreed to those prices. (MID-12 at 11:14-12:5). Further, neither the ISO's nor Trial Staff's criteria were disseminated among Market Participants as to give them notice that the DOE Orders would be administered through those criteria. (MID-2 at 4:12-7:18, MID-7 to MID-10; MID-12 at 5:13-9:12, MID-13 to MID-17).

189.            *NCPA Position:* NCPA had no DOE sales on January 9, 2001. (NCP-1 at 2:8-11).

190.            *Pasadena Position:* Pasadena made sales into the ISO's markets on January 9 and other so-called "\$64 days," but the ISO accepted Pasadena's market bids and gave no communications to the contrary. PAS-4 at 4:19-23; PAS-4 at 6:6-20; PAS-5.

191.            *Pinnacle West Position:*

192.            *Portland Position:* Per stipulation (being finalized), Portland has no transactions being claimed as DOE transactions on January 9, 2001.

193.            *PPL Position:* PPL's power sales to the ISO for delivery on January 9<sup>th</sup> were designated by PPL as DOE Sales, understood by the parties to be DOE sales, and have been admitted by the ISO to be DOE sales. (PPL-14 at 3:8-18; PPL-15, *passim*; PPL-17). PPL and the ISO could not, on January 9, 2001, agree to a price for these sales of \$64 or less because \$64 was well below the market price, and thus agreed to defer the issue for later Commission determination under procedures allowing the Commission to decide the rate issue if the parties cannot agree. (PPL-14 at 3:23-4:10; PPL-17). On January 11, 2001, the Secretary of Energy issued an order stating he was "eliminating the condition of service, prescribed in the January 5, 2001, amendment to the December 14, 2000, emergency order, that the rate the California ISO can agree to under any arrangement made between the entities subject to this order and the California ISO cannot exceed

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\$64 per megawatt hour in order to allow maximum flexibility under the current circumstances.” (Joint Exhibit \_\_\_\_ [January 11, 2001 DOE Order] at 3 n.2) Since the January 9, 2001 sales were an “arrangement made between [an] entit[y] subject to this order [i.e., PPL] and the California ISO,” the parties were now free under the plain language of the January 11, 2001 DOE Order to agree on a price for those sales that was above \$64 per megawatt hour, and thereafter did so. (PPL-14 at 4:11-6:10). (The agreed price was well below the MMCP that the California ISO has calculated for the relevant hours.) The CAISO has acknowledged that this was a final resolution of the issue. (PPL-15 at 13 (PPL-ISO-9)). At no time did any party ever state or indicate in any way that these sales, which had now been agreed to as contemplated by Section 202(c) and 10 C.F.R § 205.3760, were no longer DOE sales, and once the rate for the sales was agreed to, there was no need to refer them to the Commission.

194            *PS Colorado Position:*

195            *Southern Cities Position:*

196            *SMUD Position:* This criterion should not apply to transactions, like SMUD's sales of spot market energy to the ISO on January 9, 2001, where the ISO agreed to rates for such sales in excess of the \$64/MWh rate ceiling established by the DOE Order. (SMD-9 at 10:3-13:9).

197.            *SWC/MWD Position:* The DOE Order mandated transactions requested by the ISO on January 9, 2001, regardless of whether the price exceeded \$64/MWh. Since the Order made power available to the ISO without regard to agreement on price, price is not a criterion for transactions under the DOE Order. (SWC-8 at 17-18).

198.            *Staff Position:* According to Amendment No. 3 issued January 5, 2001, "the California ISO cannot agree to a rate above \$64 per megawatt hour." The Amendment further provided that "[i]f a rate at or below \$64 could not be agreed to by

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the parties, then the requested energy and service will nevertheless be provided and the rate issue will be referred to FERC." No such referrals have been made. (S-1 at 8:3-13; S-1 at 13:2-3; S-6; S-33 at 17:21-18:12). The following entities had sales on January 9 where the price for those sales was in excess of \$64/MWh - MID (S-33 at 17:17-19); Riverside (S-33 at 29:18-30:13); Pasadena (S-33 at 34:1-3); Portland General (S-33 at 54:4-55:15); PPL Montana (S-33 at 58:1-59:4), Burbank and Glendale (S-33 at 64:2-13 and S-33 at 67:1-3); and CDWR (S-33 at 70:11-71:5).

199.           2.       Which specific sales were conducted pursuant to Section 202(c) of the Federal Power Act?
200.           *ISO Position:* The ISO set forth the sales it considers to have been made pursuant to Section 202(c) in Exhibit No. ISO-15. Additionally, one supplier provided the ISO with a number of transcripts of conversations between operators for the supplier and the ISO demonstrating that the sales discussed were made pursuant to 202(c), although the ISO's OOM sheets did not identify those sales as 202(c) sales. (ISO-15; ISO-21 at 16:11-21)
201.           *California Parties Position:*
202.           *BPA Position:* BPA does not agree with the Staff's or ISO's criteria for identifying 202(c) transactions. (BPA-5 at 1:30-7:17). BPA made excess power sales in a variety of ways that was consistent with the DOE order and fit within the planning and load serving limitations that existed for BPA at that time. (BPA-1 at 5:7- 6:11 and BPA-5 at 5:13-5:23). The excess power provided to the ISO pursuant to Section 202(c) is identified in BPA-2. (BPA-1 at 4:18-5:2 and BPA-2).
203.           *Burbank Position:* Burbank made sales of energy and ancillary services into the ISO's market pursuant to the applicable DOE Orders on each day from December 14, 2000 through February 3, 2001. (BUR-1 at 6:1-7:4; 9:4-11; BUR-2).
204.           *Coral Position:* All of Coral's sales to the ISO on December 14, 2000 were made pursuant to Section 202(c) of the Federal Power Act. (CP-1, at 10:5-18; CP-12; CP-16).

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205. *Glendale Position:* Glendale made sales of energy and ancillary services into the ISO's market pursuant to the applicable DOE Orders on each day from December 14, 2000 through February 6, 2001. (GLN-1 at 3:11-4:15, 7:6-18, 11:15-12:3; GLN-3).
206. *LADWP Position:* LADWP sold excess energy under three categories of transactions pursuant to Section 202(c) of the Federal Power Act: (1) energy transactions entered into with the ISO outside of the ISO's single-price auction markets on certain ISO-certified DOE days (DWP-1 (Reformulated) at 3:8-6:21, DWP-2, DWP-3, & DWP-4R); (2) energy transactions entered into with the ISO outside of the single-price auction markets in response to the ISO's advanced notice of certification of an operating day under the DOE orders (DWP-1 (Reformulated) at 6:22-8:23, DWP-5, & DWP-6); and (3) energy transactions entered into with the PX to make resources available on a day-ahead basis to load served by the ISO in response to the ISO's advanced notices of certification of operating days under the DOE orders (DWP-1 (Reformulated) at 9:1-10:9, DWP-5, and DWP-7).
207. *MID Position:* MID lists its sales made to the ISO pursuant to the DOE Orders in Ex. Nos. MID-3, MID-4, MID-5 and MID-6. These spreadsheets do not include spot market sales of energy to Pacific Gas and Electric Company ("PG&E"), which MID believes PG&E subsequently made available to the ISO, and which MID believes were also made pursuant to the DOE Orders. (MID-2 at 3:21-4:11).
208. *NCPA Position:* NCPA made five sales pursuant to Section 202(c). (NCP-1 at 2:8-11).
209. *Pasadena Position:* Pasadena's DOE sales are itemized in PAS-5.
210. *Pinnacle West Position:* The Pinnacle West Companies contend that all transactions between Arizona Public Service Company and the CAISO during the time period when the DOE orders were in effect and when the CAISO provided certification to the DOE stating that it had been unable to acquire adequate supplies of electricity in the market were

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conducted pursuant to Section 202(c) of the Federal Power Act. (PNW-1 at 3:16-21; Revised PNW-2).

211. *Portland Position:* The transactions on PGE-2 Revised and PGE-21 are DOE sales. Also see PGE-17; PGE-19; PGE-22.
212. *PPL Position:* Each transaction entered into between PPL and the CAISO after December 14, 2000 was, as the CAISO has admitted, conducted pursuant to Section 202(c), including sales for delivery on January 9, 2001 that were settled at a price above \$64. (PPL-9 at 2:11-4:14; PPL-10; PPL-14 at 1:19-6:23; PPL-15; PPL-16; PPL-17).
213. *PS Colorado Position:* PS Colorado contends that all OOM transactions between PS Colorado and the CAISO during the period when the DOE orders were in effect (December 14, 2000 through February 7, 2001) were conducted pursuant to Section 202(c) of the Federal Power Act. (PSC-1 at 4:7-17, PSC-2).
214. *Southern Cities Position:* Due to the scheduling constraints identified in SOC-8, all of the energy sales made by Anaheim and Riverside on the ISO certification days were conducted through over-scheduling and all should be considered 202(c) transactions. (SOC-6, SOC-8(R) at 4:9-23, 5:1-2, 7:1-13, SOC-9 ).
215. *SMUD Position:* All spot market energy sales made by SMUD to the ISO during the period December 20, 2000 through January 19, 2001 on ISO certification days were conducted pursuant to Section 202(c) of the Federal Power Act. SMUD's sales volumes that were made during this period under FPA Section 202(c) total 8,251 Mwh. SMD-9 at 3:13-15; SMD-9 at 9:4-16; SMD-11 at 18.
216. *SWC/MWD Position:* CDWR, on behalf of SWP, sold capacity and energy to the ISO pursuant to the DOE Order issued under section 202(c). (SWC-1 at 9:8-18; SWC-4, Schedules F and G).
217. *Staff Position:* With the exception of the transactions on January 9, 2001 where the price exceeded \$64/MWh, the

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Staff agrees with the ISO that the transactions identified on ISO-15 were DOE transactions. Based on the evidence presented , the Staff disagrees that entities covered by the PGA, ICAOA, ESA and/or E-516 were precluded from providing energy under the DOE Orders. (S-1 and S-33).