

UNITED STATES OF AMERICA 105 FERC ¶ 61,203
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

California Independent System
Operator Corporation

Docket Nos. ER03-746-001
ER03-746-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued November 14, 2003)

1. In this order, the Commission acts on a compliance filing related to an order issued on June 13, 2003, concerning the California Independent System Operator Corporation's (CAISO) proposed Tariff Amendment No. 51 to its Open Access Transmission Tariff (OATT).¹ This order benefits market participants by clarifying the procedures needed to address the requirements resulting from the recent California refund proceeding.²

Background

2. On April 15, 2003, the CAISO filed Amendment No. 51 to its OATT. In Amendment No. 51, the CAISO explained that it would need to complete preparatory re-runs before the rerun of its settlement system as ordered in the California refund proceeding. These preparatory re-runs would enable the CAISO to establish accurate baseline data. The preparatory adjustments cover the period from April 1, 1998 through June 20, 2001.

3. In Amendment No. 51 the CAISO also sought approval to have the invoicing and Settlement process for the preparatory adjustments and re-runs completely separated

¹ California Independent System Operator Corporation, 103 FERC ¶ 61,331 (2003) (June 13 Order).

² San Diego Gas & Electric Company, et al., 102 FERC ¶ 61,317 (2003) (California Refund Order), clarified, 103 FERC ¶ 61,078 (2003).

(i.e., "walled off") from the invoicing and settlement process that it was using to clear its market. Currently in the CAISO tariff, charges and adjustments for past Trade Dates are added to current trade month Settlement Statements and invoices.

4. In an answer to protests on the Amendment No. 51 filing, the CAISO requested a waiver of its tariff to change the dispute period to allow Scheduling Coordinators a 15 business day dispute period for the limited purpose of reviewing the preparatory settlement re-run statements. The current tariff allows the Scheduling Coordinator eight business days to review the Settlement Statements that it receives.

5. In the Amendment No. 51 Order³, the Commission conditionally accepted and suspended Amendment No. 51, subject to refund, to become effective the earlier of November 14, 2003, or a date specified in a further Commission order in the proceeding. The Commission also directed the CAISO to provide additional information in a compliance filing. Specifically, the Commission directed the CAISO to (1) explain and justify each proposed adjustment for the 18 major revisions; (2) provide an explanation for the proposed change to Section 11.6.3.2 of the Tariff concerning the criteria the Governing Board would use to assess payment of the costs of a Settlement Statement re-run; (3) provide a detailed explanation of how it intends to allocate any amounts it cannot recover from one customer to other customers; (4) detail the separation process that it plans to implement regarding the walling-off of invoices; and (5) provide a detailed explanation of how Market Participants can dispute the re-run assessments, including when the dispute period begins.

Compliance Filing

6. In response to the Commission's directive, the CAISO provided details in its July 3, 2003 compliance filing concerning its 17 proposed revisions. The CAISO dropped one of its proposed revisions because it estimated that the effect of this revision would be de minimis. For each of the revisions, the CAISO provided information concerning the relevant issue, the date range, the estimated impact in megawatts or in dollars (where available), the Charge Types potentially affected, the allocation methodology it would employ, and the reason for the revision. The CAISO states that the list of preparatory adjustments and re-runs includes all of the adjustments and re-runs that the CAISO believes need to be conducted for the time period from April 1998 to the end of the refund period, June 20, 2001. The CAISO states that preparatory re-runs do not include issues that arose subsequent to June 20, 2001 because such issues post-date the refund period and are not applicable to the determination of the re-baselined database needed to conduct the Refund Proceeding re-run.

³ California Independent System Operator Corporation, 103 FERC ¶ 61,331 (2003).

7. Prior to Amendment No. 51, Section 11.6.3.2 provided that whenever a Scheduling Coordinator (SC) requested a Settlement Statement re-run the costs would be allocated to the SC who requested the re-run. In Amendment No. 51, the CAISO proposed to change Section 11.6.3.2. This section as proposed would provide that if a SC requests a re-run, the CAISO Governing Board would determine whether the results of the re-run would primarily benefit the SC requesting the re-run, or whether it would primarily benefit the market as a whole. The Commission directed the CAISO to provide an explanation for the proposed change to Section 11.6.3.2 of the Tariff “and a detailed explanation of the criteria the Governing Board would use to assess payment of the costs of a Settlement Statement re-run and with all of the allocation factors.”

8. According to the CAISO, the change to Section 11.6.3.2 is necessary to allow it to address equitably the consequences of an SC’s request for a re-run. The CAISO states that if the results primarily benefit the SC, then the costs of the re-run would be allocated to the SC that requested it. Similarly, if the re-run benefits primarily the market as a whole, the CAISO would allocate the costs of the re-run to the entire market through the Grid Management Charge (GMC). If the results of the re-run would benefit both the SC that requested it and the market, in approximately equal measure, the CAISO would allocate half of the costs of the re-run to the SC requesting it and the other half would be allocated to the entire market through the GMC.

9. The Commission directed the CAISO to provide a detailed explanation of how it intends to allocate to all customers any amounts it cannot recover from a single customer and whether, or to what extent, this proposal differs from its current tariff provision or practice. Specifically, the CAISO had proposed to delete the last sentence of Section 11.6.3.3. This sentence stated, “The net balance of all adjustments shall go into a balancing account, on a debit or credit, to the Grid Management Charge.”

10. In its July 3 compliance filing, the CAISO explained that the cost of a settlement re-run will be allocated among SCs except for rounding (residual pennies). Section 11.2.9(a) of the CAISO Tariff allows the CAISO to allocate such rounding to SCs as a neutrality charge based on load and exports. The CAISO stated that after SCs are charged or credited for the changes arising from the settlement re-run, except for any rounding amounts, there is no remaining “net balance of all adjustments.” With respect to settlement charges or credits, a re-run will not create a resulting settlement imbalance that would be charged to the GMC. In the event that bills remain uncollected in a period, typically a monthly billing, the CAISO must prorate the shortfall to creditors for that billing period. The CAISO intends to do the same for the re-runs that are walled off as proposed under Amendment No. 51. If there remain payment defaults following the walled-off re-runs, the shortfalls resulting from such defaults will be prorated to the creditors in those re-runs. Those shortfalls would not affect the clearing of the current

market. The CAISO states that its proposed deletion of the last sentence of Section 11.6.3.3 has no impact on how it would collect funds from or disburse funds to SCs as a result of a market re-run.

11. In its July 3 compliance filing, the CAISO proposes to extend its wall-off authority for future adjustments and re-runs that involve the following: (1) trade days over 12 months old; (2) participant bankruptcies or major defaults that would prevent total cash clearing, or (3) amounts above \$15 million. The CAISO states that it would invoke the wall-off provisions only after providing the market with a 30-day notice.

12. In the compliance filing, the CAISO continues to propose to extend the window for Settlement Statement disputes relating to the preparatory rerun from the standard eight business days to 15 business days. The CAISO requests waiver of these Tariff provisions strictly for the purpose of extending the dispute window with regard to the preparatory rerun.

Addendums to the July 3 Compliance Filing

13. On July 3, 2003, the CAISO submitted a motion for an extension of time in which to file an appendix on Issue No. 13, "Rescission of Unavailable Ancillary Service." On July 9, 2003, the CAISO filed an Addendum to the July 3, 2003 compliance filing. This addendum provides additional detail on the methodology of the "Rescission of Unavailable Ancillary Service" issue and the justification for including it in the preparatory rerun. On August 22, 2003 the CAISO filed a further addendum to the July 3 compliance filing. This addendum clarifies how the CAISO intends to apply certain Charge Types regarding Issue No. 11, "Intra-zonal Congestion." On October 1, 2003 the CAISO filed yet another addendum to the July 3 compliance filing. This addendum clarifies Issue No. 16, "Williams," and details the allocation of a settlement concerning AES Southland and Williams Energy Marketing & Trading Company.

Notice, Interventions, Protests and Answers

14. Notice of the CAISO's July 3, 2003, filing was published in the Federal Register, 68 Fed. Reg. 42,412 (July 17, 2003), with interventions and protests due no later than July 24, 2003.

15. The following parties filed comments or protests to the CAISO's July 3 compliance filing: Automated Power Exchange (APX); California Generators,⁴ Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (jointly filed); Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC; Modesto Irrigation District; Northern California Power Agency; Pacific Gas and Electric Company (PG&E); and Southern California Edison Company (SoCal Edison). The California Generators and Duke Energy filed comments and protests to the July 9 Addendum to the compliance filing. On August 8 and September 4, 2003, the CAISO filed answers to the comments and protests. On August 20, 2003, PG&E filed an answer to the first CAISO answer. On October 16, 2003, PG&E filed comments to the October 1, 2003 Addendum and San Diego Gas & Electric (SDG&E) filed a late intervention and comments supporting the October 1, 2003 Addendum. We will grant SDG&E's untimely motion to intervene given the early stage of this proceeding and the absence of any undue prejudice or delay.

16. Generally, the parties raise the following objections and comments to the CAISO compliance filing or the CAISO's proposals: (1) the CAISO failed to comply with the requirements in the June 13 Order to provide detailed explanations concerning its proposals; (2) the Commission should require that the CAISO provide more than its proposed 15 business days for parties to review the settlement data; (3) the majority of the CAISO's proposed adjustments are not related to the refund proceeding, but are corrections to account for software, data, and scheduling errors from past billing disputes; (4) preparatory adjustments and settlement re-runs should be considered in the refund proceeding; (5) the CAISO's arbitrary selection of issues to be re-run is unduly discriminatory; (6) the Commission should require the CAISO to submit for prior approval every proposed re-run and explain in detail the basis for the re-run; (7) the CAISO has not adequately explained why unrecovered costs that would have been allocated to current customers through the grid management charge will now be allocated to past customers; (8) the CAISO cannot engage in retroactive rulemaking by relying on a 1999 tariff amendment to rescind payments back to April 1, 1998; (9) generators should not be penalized through the CAISO's proposed rescission of payments that are likely related to intervals in which the CAISO's own dispatching software or instructions caused the reserved capacity to appear "unavailable"; and (10) the CAISO's addendum to

⁴ The California Generators are Reliant Energy Power Generation, Inc.; Reliant Energy Services, Inc.; Mirant Americas Energy Marketing, LP; Mirant California, LLC; Mirant Delta, LLC; Mirant Potrero, LLC; Duke Energy North America, LLC; Duke Energy Trading and Marketing, LLC; Williams Energy Marketing & Trading Company; Dynegy Power Marketing, Inc.; El Segundo Power LLC; Long Beach Generation LLC; Cabrillo Power I LLC; and Cabrillo Power II LLC.

its compliance filing improperly attempts to rescind ancillary services capacity payments related to alleged "Double Selling" and the proper forum for this issue is one of the Show Cause proceedings.

17. In its August 8, 2003 answer, the CAISO stated that it has provided sufficient information concerning the walling-off process and each of the preparatory adjustments and re-runs, and commits to provide further details to be responsive to the specific questions of market participants (Answer at page 12). Among other things, the CAISO will (1) provide a proposed calendar for the adjustment, re-run, and invoicing activity, including dispute deadlines; (2) host a telephone conference with Scheduling Coordinators, prior to commencement of the preparatory adjustments and re-runs, followed by periodic update calls if needed; and (3) provide, during the production process for the preparatory adjustments and re-runs, the Settlement detail files associated with each entity's Settlement Statements concurrently or prior to when it provides those Settlement Statements, so that the Settlement Statements can be validated.

18. On August 20, 2003, PG&E filed an answer to the CAISO's August 8, 2003 answer. In its August 20 answer, PG&E objects to the CAISO's proposed allocation of the costs of Energy Exchange transactions. On September 4, 2003, the CAISO filed an answer to PG&E's August 20 answer. We will not accept PG&E's August 20 answer and the CAISO's September 4 answer because the factual predicate upon which these parties relied in filing these answers is moot.⁵ Specifically, in the Commission's October 16, 2003 Order on Rehearing⁶ in the California refund proceeding, the Commission denied rehearing regarding mitigation of Energy Exchange transactions and clarified the approval of the CAISO's accounting methodology for Energy Exchange transactions. However, we find the CAISO's August 8, 2003 answer to be helpful in the development of the record in this proceeding, and accordingly, we accept it.

Request for Rehearing

19. On July 14, 2003 the Northern California Power Agency (NCPA) filed a motion for clarification or, in the alternative, a request for rehearing of the June 13 order. NCPA seeks clarification that the Commission did not intend to prejudge the issue of whether the settlement re-runs described in the June 13 order should be handled through a compliance filing, or through the settlements process (with either an eight day or 15 day

⁵ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or an answer to an answer unless otherwise permitted by a decisional authority. 18 C.F.R. § 385.213 (a)(2) (2002).

⁶ See San Diego Gas & Electric Company, et al., 105 FERC ¶ 61, 066 at paragraph 5 (Rehearing Order).

dispute window). In the alternative, if the Commission intended to preclude the possibility of a compliance filing, NCPA urges the Commission to grant rehearing of this issue.

Discussion

20. In the June 13 Order, the Commission relied on the CAISO's representation that all of its proposed Amendment 51 preparatory adjustments are "imperative prerequisites" for its re-run of the settlement process pursuant to the California Refund Order. Given the CAISO's statement on the importance of these major revisions to the California Refund Order, the Commission attempted to accommodate the CAISO's proposal for 18 major revisions. However, because the CAISO provided only a basic description of these proposed 18 major revisions, the Commission conditionally accepted and suspended Amendment 51, subject to refund, to become effective the earlier of November 14, 2003, or a date specified in a further Commission order and directed the CAISO to provide explanations and details to justify the 18 major revisions and other specific aspects of the CAISO proposed amendment. However, despite the CAISO's submission of six filings to explain and provide details concerning these major revisions, we find that the CAISO has not shown in any of these filings that its proposed preparatory adjustments are "imperative prerequisites" that must be completed before the California refund settlements and billing process can begin. For this reason, although we will approve or deny the CAISO's proposed revisions in this proceeding, we expect that the settlements and billing process in the CAISO California refund proceeding will not be delayed as a result of the CAISO establishing new baseline data in this proceeding. Furthermore, we will require that the CAISO file with the Commission a compliance filing as soon as possible, but no later than January 30, 2004, containing the results, explanations and details of the CAISO's adjustments and re-run in this proceeding. In light of this compliance filing requirement, NCPA's request for rehearing is granted.

21. We will defer addressing some of the protests to the compliance filing and addendums regarding certain adjustments until after the preparatory re-runs are conducted and the financial impact on the market participants is known. As detailed in the CAISO's August 8, 2003 answer, and mentioned in the body of this order, the CAISO has committed to provide further details to be responsive to the specific questions of market participants. We direct the parties to raise objections to the preparatory re-runs through the use of the CAISO's Alternative Dispute Resolution procedures. If the matter is not resolved through this forum the parties can appeal to the Commission as necessary. We believe that this course of action strikes a reasonable balance between assuring that market participants understand the adjustments and calculations that are occurring and giving market participants an adequate opportunity to raise questions or disputes with the CAISO while minimizing the delay associated with completing the refund process.

22. We direct the CAISO to commence the preparatory re-runs for the issues we are accepting as discussed below. These issues are administrative in nature and will provide a more accurate baseline. As explained in the CAISO's July 3, 2003 compliance filing, some of the preparatory re-runs will be automated, full Settlement system recalculations, and others will be manual uploads into the Settlement system (either for the refund period or for the time period prior to the refund period). According to the CAISO's July 3rd filing, the CAISO is able to separate the impacts of the manual uploads from those of the automated recalculations, and to isolate the impacts of each of the manual uploads. We direct the CAISO to provide the affected market participants with workpapers detailing the impacts of the manual uploads from those of the automated recalculations, and isolate the impact of each of the manual uploads.

23. The CAISO in its compliance filing identifies adjustments to account for PG&E's under-reporting of meter data. We direct the CAISO to make the adjustments to correct these metering errors. However, we also direct the CAISO to take into account any verifiable data detailing instances of over-reported load. This will ensure that the CAISO's correction of metering errors uses a balanced approach.

24. In its compliance filing, the CAISO proposes an adjustment to account for additional meter data errors and errors in the CAISO Master file. We direct the CAISO to make the adjustments to correct these errors and provide details sufficient for market participants to understand the impact on market participants.

25. We find that the CAISO's proposed adjustment concerning allocation of energy exchange costs is appropriate. This proposal addresses the fact that the CAISO allocated certain energy exchange costs to participants during the periods when exchange returns were made, instead of allocating such costs to participants whose under-scheduling in earlier periods caused the need for the energy exchange receipts. As affirmed in the California refund proceeding,⁷ the CAISO's proposed adjustment complies with the procedure the Commission approved for this period.

26. The CAISO proposes to make an adjustment for a bilateral contract that the CAISO entered into with Dynegy under "Good Faith Negotiations" (GFN) for an eleven day period spanning December 5-15, 2000. According to the CAISO, during the contract period, some of the contracted for energy was incorrectly reflected as uninstructed energy or ancillary services. The CAISO states that its proposed adjustment will correctly reflect the agreed upon treatment of this energy as Out-of-Market (OOM). We direct the CAISO to properly reflect these bilateral contract transactions in its logs as OOM.

⁷ See San Diego Gas & Electric Co., et al., 102 FERC ¶ 61,317 at paragraph 5N and 105 FERC ¶ 61,066 at footnote 17.

27. In the CAISO's proposed revision concerning Williams, the CAISO proposes to make a billing adjustment because Williams disputed trade days on which it believed it was not properly paid for mislogging of dispatched energy and miscalculation of energy settlements. However, in the California refund proceeding, Williams requested that the Commission accept Williams' proposal for effectuating its November 11, 2002 settlement agreement with the California State Releasing Parties.⁸ On December 30, 2002, the Commission granted Williams' request to partially dismiss it from the California refund proceeding "to the extent that the proceeding directs refunds for electric power sold by Williams to the [California State Releasing Parties]."⁹ However, because Williams has not yet filed the settlement agreement with the Commission and we have not accepted it, we deferred making a decision on how to effectuate the settlement agreement until after Williams files this settlement agreement with the Commission and we have assessed its possible impact on rates, terms and conditions of service.¹⁰ Similarly, in this proceeding, we will defer a decision on this proposed revision until after we have assessed the settlement agreement and its possible impact on rates, terms and conditions of service.

28. The CAISO proposes an adjustment to account for eight million dollars that the Commission ordered as a reduction in the amounts outstanding owed to Williams.¹¹ The CAISO proposal will allocate this eight million dollar charge to other SCs based on their load and exports. Similarly, the CAISO states that it reached a "Good Faith Negotiation Settlement" with the California Power Exchange (PX) and SDG&E that will include an adjustment to SDG&E of approximately two and a half million dollars for "Regulation Energy Payment Adjustment" payments. The CAISO proposal will allocate these charges to the PX (as the SC) and as a credit to SDG&E. We will grant these CAISO proposed adjustments and direct the CAISO to provide in its compliance filing details sufficient for all parties to understand the impact of these charges on its market participants.

⁸The California State Releasing Parties are comprised of the following: the Governor of the State of California; the State of California Department of Water Resources; the California Public Utilities Commission; the California Electricity Oversight Board; and the Attorney General of California.

⁹San Diego Gas & Electric Company, *et al.*, 101 FERC & 61,391 at P 15 (2002).

¹⁰ California Refund Order at paragraph 182.

¹¹ See *AES Southland, Inc. and Williams Energy Marketing & Trading Company*, 95 FERC ¶ 61,167 (2001).

29. According to the August 8 CAISO answer that discussed the CAISO proposed adjustment involving the correction of certain double charges associated with the cost of addressing intra-zonal congestion through Out-of-Sequence (OOS) and Out-of-Market (OOM) dispatches,¹² the CAISO states that the double charges resulted from incorrectly designed computer code. The code did not reroute the portion of such costs that exceeded the Market Clearing Price (MCP) to the appropriate Charge Type and, thus, resulted in the misallocation of such costs among participants. This proposed change merely reflects the tariff procedure that would have been followed if not for the incorrect computer code and, thus, will be approved.

30. The CAISO proposes an adjustment to Charge Type (CT) 1030 allocations. This adjustment involves Non-Compliance charges to the market based upon load and export quantities. The CAISO discovered that it based the allocation of CT 1030 only on Preliminary statement quantities. It states that this preparatory re-run will correct the allocations to include the incremental load and export data received between the Preliminary and Final statements. We direct the CAISO to make the adjustment to correct these errors.

31. We will reject the CAISO's proposed adjustment regarding the rescission of unavailable ancillary services. As the CAISO describes, this proposed adjustment concerns the "double billing" issue set for hearing in the Enron strategy show cause proceedings.¹³

¹² It also addresses the effects of correcting mislogged OOS and OOM transactions, as discussed further under Issue No. 17, on the calculation of charges to recover the cost of addressing intra-zonal congestion and addresses certain cases where incorrect manual adjustments were made in the past.

As discussed elsewhere in this order, the mislogged transactions will be corrected in this proceeding. Accordingly, we find that it is appropriate for the CAISO to address the effects of those corrections on the calculation of charges to recover the cost of addressing intra-zonal congestion. Regarding the proposed correction of past manual adjustments, we find that such corrections should be made in this proceeding provided that parties have the ability to ensure the accuracy of the corrections. In that regard, we also find that the dispute resolution procedures noted elsewhere in this order, in conjunction with parties' rights to review by this Commission once actual corrections have been made, give them appropriate ability to ensure the accuracy of these corrections.

¹³ See e.g., *Enron Power Marketing, Inc. et al.*, 102 FERC ¶ 61,316 (2003).

32. We also find that the CAISO's proposed correction of mislogged OOS transactions in accordance with the directives of the March 26 Order is appropriate. On October 16, 2003, the Commission addressed arguments on rehearing of the March 26 Order, including the CAISO's request for rehearing regarding this issue. Accordingly, we find that the CAISO's proposed correction of mislogged OOS transactions is consistent with the March 26 California refund order and we direct the CAISO to perform this set of corrections.

33. The CAISO proposes to correct various errors in its manual Settlements processing of "Regulation Non-Compliance" charges. We direct the CAISO to make the adjustment to correct these errors and provide in its compliance filing details sufficient for all parties to understand the impact of these charges on its market participants.

34. The Commission directed the CAISO to explain in detail the criteria the Governing Board would use to assess payment of the costs of Settlement Statement re-runs. NCPA and PG&E protest the CAISO's explanation regarding the criteria the Governing Board will use to assess payment of the costs of the Settlement Statement re-runs. PG&E states that the criteria is still highly subjective and does not adequately permit potential requestors to evaluate whether or not they might have to bear the costs of a proposed re-run. The CAISO has failed to clarify exactly what method the CAISO will use to allocate re-run costs and has not shown that there is an existing problem that requires a change to the tariff's current allocation of re-run costs. Therefore, we will reject the tariff language change in Section 11.6.3.2.

35. PG&E argues that the CAISO's explanation for the deletion of the last sentence of Section 11.6.3.3 of the CAISO Tariff does not explain the original purpose of the eliminated sentence. In the June 13 Order the Commission required an explanation of the impact of the CAISO's proposed deletion, not an explanation of the original purpose of the sentence. In its July 3 compliance filing and its August 8 answer, the CAISO explains why the removal of the last sentence will have no impact on how the CAISO would collect funds from or disburse funds to SCs as a result of a market re-run (i.e. "cost-shifts"). We find that the CAISO's explanation for the removal of the last sentence of Section 11.6.3.3 is adequate and will accept the proposed tariff language revision.

36. We will allow the CAISO a waiver of its tariff to extend the dispute deadline for walled-off reruns only. Many parties to this proceeding urged the Commission to extend the dispute window beyond the fifteen day proposal. Because of the large potential financial impact on Market Participants and the amount of data that will be generated by the preparatory re-runs, we find that a modest extension of the dispute deadline is warranted. We will allow an extension from the current eight business days to 30 business days after the CAISO issues the settlement statements for the last trade date of a given month. For example, when the CAISO presents settlement statements for the

month of November 2000, Market Participants may submit disputes relating to the November data up to 30 business days after the November 30, 2000 rerun statements are published. We agree with the CAISO that the dispute window should be triggered when the CAISO publishes statements to Scheduling Coordinators, instead of being triggered when the Scheduling Coordinators' clients receive their statements. Allowing the dispute window to be triggered by the Scheduling Coordinators' clients' receipt of their statements would unnecessarily delay the entire re-run process.

37. We will accept the tariff provisions that allow for the separation of invoices (walling-off) of the re-run from the monthly market activities. Parties to this proceeding generally support the CAISO's walling-off proposal. The CAISO market will benefit from having the invoicing process for the preparatory adjustments and re-runs and the California refund proceeding re-run completely separated from the invoicing process that currently is used to clear the CAISO Market. This separation will protect current market participants from the financial consequences of events that occurred during periods when they were not active in the CAISO market. This approval of the separation of invoices of the re-run from the monthly market activities is limited to the 17 adjustments enumerated in the July 3 compliance filing. We will not grant the CAISO broad authority to make future "walled-off" adjustments and re-runs. Should the CAISO need to make a future re-run, it should file a request with the Commission at that time.

Mirant Bankruptcy

38. On September 12, 2003, the Bankruptcy Court for the Northern District of Texas issued a "Temporary Restraining Order Against the Federal Energy Regulatory Commission" ("TRO") in *In re Mirant Corp. (Mirant Corp. v. FERC)*, Adversary Proceeding No. 03-4355, which enjoins the Commission "from taking any action, directly or indirectly, to require or coerce the [Mirant] Debtors to abide by the terms of any Wholesale Contract [to which a Mirant Debtor is a party] which Debtors are substantially performing or which Debtors are not performing pursuant to an order of the Court unless FERC shall have provided the Debtors with ten (10) days' written notice setting forth in detail the action which FERC seeks to take with respect to any Wholesale Contract which is the subject of this paragraph."

39. Should the TRO be converted into a preliminary injunction, an action that the Commission opposes, the Commission will appeal that order. Despite the Commission's disagreement with the validity of the TRO and its expectation that the TRO (or a preliminary injunction) will be vacated on appeal, the Commission must comply with it until vacated. The TRO requires ten days' written notice before the Commission takes a proscribed action with respect to a covered Mirant Wholesale Contract. Accordingly, to the extent that this Order requires Mirant to act in a manner proscribed by the TRO, the Order will provide written notice to Mirant of the action that FERC will take with respect

to a covered Mirant Wholesale Contract, which action will not become effective until ten (10) days after issuance of this Order. In all other respects, this Order is effective immediately.

The Commission orders:

(A) The Commission hereby directs the CAISO to make the adjustments and tariff changes, as discussed in the body of this order.

(B) The Commission hereby directs that the CAISO submit a compliance filing as soon as possible, but no later than January 30, 2004 containing the results, explanations, and details of the CAISO's adjustments and re-run in this proceeding, as discussed in the body of this order.

(C) The Commission hereby grants NCPA's request for rehearing, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.