110 FERC ¶ 61,288
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Coral Power, L.L.C., Enron Power Marketing, Inc.,
Arizona Public Service Company, Cargill Alliant, LLC,
San Diego Gas & Electric Company, Avista Energy, Inc.,
Sempra Energy Trading Corp., PacifiCorp and
Constellation Power Source

v. Docket No. EL01-36-002

California Power Exchange

ORDER ON REHEARING

(Issued March 15, 2005)

1. In this order, we deny rehearing of and clarify the Commission's October 7, 2004 Order in this proceeding.[1] In the October 7 Order, the Commission addressed on rehearing an order relating to the use of chargebacks by the California Power Exchange Corporation (PX) in response to alleged defaults by the Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SoCal Edison) in early 2001. The Commission, in an April 6, 2001 Order[2] had determined that the PX's use of the chargeback mechanism was unjust and unreasonable and had ordered the PX to rescind all prior chargeback actions related to PG&E's and SoCal Edison's liabilities and to refrain from taking any future chargeback actions. In response the PX credited the chargebacks on account summaries that it issued to PX participants, but did not return the cash collected pursuant to the chargeback mechanism.[3] The Commission addressed two issues in the October 7 Order: (1) how the PX should account for shortfalls caused by the

---

[1] *Pacific Gas and Electric Company v. California Power Exchange Corporation, et al.*, 109 FERC ¶ 61,027 (2004) (October 7 Order).

[2] *Pacific Gas and Electric Company v. California Power Exchange Corporation*, 95 FERC ¶ 61,020 (20010 (April 6, 2001 Order).

[3] Only some PX participants made cash payments to the PX as a result of the chargeback mechanism; the cash payments totaled about $15 million. Other chargebacks

20050315-3055 Issued by FERC OSEC 03/15/2005 in Docket#: EL01-36-002

defaults, and (2) whether the PX should disburse chargeback funds prior to the completion of the Refund Proceedings. The Commission determined that how to account for shortfalls would best be decided in the Refund Proceedings.[4] In addition, the Commission decided that it would not require disbursement of chargeback funds until completion of the Refund Proceedings.[5]

2. On November 8, 2004, the Competitive Supply Group (CSG)[6] filed a request for rehearing of the October 7 Order. CSG argues that the Commission erred: (1) by allowing the PX to retain the chargeback funds until the conclusion of the Refund Proceedings; and (2) by suggesting that parties other than those causing a shortfall may be required to make up any shortfall by forfeiting funds that are being held by the PX pursuant to the defunct chargeback mechanism.

3. In this order, we deny rehearing on the issue of allowing the PX to retain the chargeback funds until the conclusion of the Refund Proceeding. We clarify, however, that the chargeback funds held by the PX are not to be used to make up any general shortfall, but may be retained only until the individual PX account of the PX participant that made a chargeback payment is resolved in the Refund Proceedings, either at the conclusion of the Refund Proceeding or when the PX participant that made the chargeback payment settles its portion of the Refund Proceeding. This order will benefit customers because it will assure an equitable determination and allocation of shortfalls.

Discussion

---

did not result in payments of cash, but rather in a reduction in the dollar amount of payments made to market participants. The PX "rescinded" this category of chargebacks through accounting entries.

[4] October 7 Order at P 1, 46.

[5] *Id.* at P 1, 47.

[6] CSG states for purposes of its rehearing it consists of: Avista Energy, Inc., Coral Power , L.L.C., El Paso Merchant Energy, L.P., IDACORP Energy, L.P., Morgan Stanley Capital Group Inc., Merrill Lynch Capital Services, Inc., and Powerex Corp.

20050315-3055 Issued by FERC OSEC 03/15/2005 in Docket#: EL01-36-002

4. In the October 7 Order the Commission determined that an issue that was raised by the PX's action on chargebacks, how to account for shortfalls in the PX market, would best be decided in the Refund Proceedings. The Commission also decided that, in light of its belief that the Refund Proceeding would soon be concluded, that the disbursement of funds should wait until a final computation of who owes what to whom.[7] The Commission continued that "[i]n the event that there is a shortfall of payments due from sellers, the shortfall may need to be allocated such that a seller with chargebacks that are being held by the PX, may not be entitled to the entire amount previously paid as a shortfall."[8]

5. On rehearing, the CSG argues that the Commission should have ordered the return of chargeback funds paid to the PX immediately with interest. CSG also argues that the Commission should clarify that: (1) the chargeback funds paid to the PX should not be available to cover any market-wide shortfalls that may result after the Refund Proceeding calculations are completed; (2) if a market participant causes a shortfall, it should be obligated to make-up the shortfall; and (3) under no circumstances should another market participant's chargeback amount, where that market participant has not caused a shortfall, be withheld to cover the shortfall caused by another market participant.

6. We will deny rehearing to the extent that CSG is requesting an immediate refund to the chargeback funds collected by the PX. CSG has raised nothing on rehearing that warrants changing our decision in the October 7 Order that retention of the chargeback amounts, until the conclusion of the Refund Proceedings, will assure the proper allocation of chargeback amounts.

7. We will clarify, however, that CSG is correct that a market participant's chargeback amount, where the market participant has not caused a shortfall, should not be withheld to cover the shortfall caused by another market participant. In the April 6, 2001 Order we found that the PX's use of the chargeback procedures was an unjust and unreasonable method to cover the shortfalls caused by PG&E's and SoCal Edison's actions. We agree with CSG that the chargeback payments should likewise not be available to cover shortfalls caused by other market participants. The only proper use of the chargeback payments, at this point in these proceedings, is as an offset against what an individual seller may owe as a result of the Refund Proceedings. When it is determined in the Refund Proceeding the amount that any individual seller owes, and that seller has made a chargeback payment, the chargeback payment may be used to offset what the seller owes in the Refund Proceedings. If the chargeback payment exceeds what was owed in the Refund Proceedings, the chargeback amount should then be returned.

---

[7] *Id.* at P 47.

[8] 109 FERC ¶61,027 at P 47 (footnote omitted).

20050315-3055 Issued by FERC OSEC 03/15/2005 in Docket#: EL01-36-002

The return of the chargeback payments should be made either at the conclusion of the Refund Proceedings, once it is determined that an individual seller will owe nothing as a result of the Refund Proceedings, or when a seller that made a chargeback payment settles its portion of the Refund Proceedings.

The Commission orders:

Rehearing of the Commission's October 7 Order is hereby denied in part, and clarified in part, as discussed in the body of this order.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

20050315-3055 Issued by FERC OSEC 03/15/2005 in Docket#: EL01-36-002

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Coral Power, LLC, Enron Power Marketing, Inc.,
Arizona Public Service Company, Cargill Alliant, LLC,
San Diego Gas & Electric Company, Avista Energy,
Inc., Sempra Energy Trading Corp., PacifiCorp and
Constellation Power Source
v. Docket No. EL01-36-002
California Power Exchange Corporation

(Issued March 15, 2005)

Nora Mead BROWNELL, Commissioner *dissenting*:

For the reasons I articulated in my dissent to the October 7 Order, I would grant rehearing and order the PX to release these funds immediately. Therefore, I dissent from today's order.

Nora Mead Brownell