

109 FERC ¶ 61,297  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company,  
Complainant,

Docket No. EL00-95-109

v.

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

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

Docket No. EL00-98-096

ORDER ADDRESSING COMPLIANCE FILING, EMERGENCY MOTION, AND  
COMMENTS FOLLOWING TECHNICAL CONFERENCE

(Issued December 20, 2004)

1. On March 26, 2003, the Commission issued an order<sup>1</sup> in the California refund proceeding in Docket No. EL00-95, *et al.*<sup>2</sup> The March 26 Order, among other things, changed the methodology for calculating the mitigated market clearing prices (MMCP) for the period from October 2, 2000 through June 20, 2001 (Refund Period). In recognition of the fact that the revised methodology would tend to reduce the MMCP and could potentially reduce it below sellers' actual fuel costs, the Commission provided sellers with the opportunity to make claims for a fuel cost allowance (FCA) to recover the difference between their actual fuel costs for mitigated sales and the proxy for gas prices used in calculating the MMCP.

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<sup>1</sup> See *San Diego Gas & Electric Co. Sellers of Energy & Ancillary Services*, 102 FERC ¶ 61,317 order on reh'g, 105 FERC ¶ 61,066 (2003). (*March 26 Order*).

<sup>2</sup> See *San Diego Gas & Electric Co. Sellers of Energy & Ancillary Services*, 101 FERC ¶ 63,026 (2002).

2. In its September 24, 2004 Order,<sup>3</sup> the Commission found that the FCA is not an assessment of costs to customers, but instead is an offset to refunds available. This offset is available only when generators can demonstrate clearly that they would not be made whole for the costs they incurred to make mitigated sales because of a difference between their actual fuel costs for mitigated sales and the proxy for gas prices used in calculating the MMCP. The effect of the FCA is to act as a floor under which the fuel portion of the simulated market rate (the MMCP) may not fall. This is consistent with the Commission's policy to ensure that the established refund liability does not prevent a seller from recovering its variable costs.<sup>4</sup>

3. The Commission is striving to provide refunds as quickly as possible. The need to resolve issues, such as the FCA, and to do so in a way that provides sufficient due process and fairness to all the parties, however, dictates the speed at which we are able to proceed.

4. In this order, we address several issues pertaining to the FCA and the format for submitting the FCA claims. These issues were raised by parties in their filings in response to the California Independent System Operator Corporation's (CAISO's) compliance filing,<sup>5</sup> Indicated Generators' emergency motion,<sup>6</sup> and in comments following the October 7, 2004 technical conference.<sup>7</sup> In particular, we conditionally accept the CAISO's compliance filing, including the CAISO's proposed format for the submission of FCA claims (FCA Template). Accordingly, we grant in part and deny in part the Indicated Generators' emergency motion to reject the CAISO's FCA Template. In addition, we explain further certain principles of the FCA allocation methodology.

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<sup>3</sup> See *San Diego Gas & Electric Co.*, 108 FERC ¶ 61,311 (2004) (*September 24 Order*).

<sup>4</sup> See *Carolina Power & Light Company*, 87 FERC ¶ 61,083 (1999) (limiting the application of the penalty for selling in violation of the FPA to an amount that permits the seller to recover variable costs, *i.e.*, fuel costs and variable operating and maintenance expenses). See also *Coastal Oil & Gas Corp. v. FERC*, 782 F.2d 1249 at 1253 (5<sup>th</sup> Cir. 1986) (ruling that disgorgements must still let a seller recover its costs).

<sup>5</sup> The CAISO's compliance filing was directed in *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Services*, 107 FERC ¶ 61,166 (2004) (*May 12 Order*).

<sup>6</sup> Indicated Generators are: Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy Marketing, LP, Mirant Generators California, LLC, Mirant Generators Delta, LLC and Mirant Generators Potrero, LLC.

<sup>7</sup> See Notice of Technical Conference, Docket No. EL00-95-000, September 27, 2004; and Notice of Agenda, Docket No. EL00-95-000, October 4, 2004.

5. We also grant the requested extension of time of 90 days from the date of issuance of this order for submitting the FCA claims. We encourage the CAISO and claimants to make every effort to complete and process the auditor-verified FCA claims expeditiously.

6. This order benefits customers by continuing to progress the methodology for calculating refunds for electricity purchases made in organized spot markets in California during the Refund Period.

## I. Background

### Allocation of Fuel Cost Allowance Amounts

7. The May 12 Order reversed a previous Commission determination that the FCA should be allocated to customers as an offset to refunds in proportion to customers' Gross Control Area Load in the same manner as emissions costs offsets.<sup>8</sup> Instead the Commission directed that "the recovery of the fuel allowance should be assigned to those that relied on the energy sales spot market to serve load" and ordered the CAISO to develop a method that follows this principle.<sup>9</sup>

8. On August 17, 2004, the CAISO submitted a compliance filing detailing its proposed five-step methodology for allocating the recovery of the FCA.<sup>10</sup> In response, several parties<sup>11</sup> filed comments and protests to the CAISO's compliance filing. The

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<sup>8</sup> See *May 12 Order* at P 60, citing *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Services*, 105 FERC ¶ 61,066 at P 197 (2003).

<sup>9</sup> See *May 12 Order* at P 60.

<sup>10</sup> The issue of the specific time interval on which the fuel cost allowance will be allocated was addressed in the *September 24 Order* at P 85.

<sup>11</sup> Enron Power Marketing, Inc. (Enron); (Reliant); Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC, and Williams Power Company, Inc. (Dynegy & Williams); Sempra Energy Trading Corp. (Sempra); Arizona Electric Power Cooperative, Inc. (AEPSCO); Constellation NewEnergy, Inc (Constellation), Northern California Power Agency (NCPA); the Competitive Supplier Group (CSG), comprised of Avista Energy, Inc., Constellation Power Source, Inc., Coral Power, L.L.C., IDACORP Energy L.P., Portland General Electric Company, Powerex Corp., and Puget Sound Energy, Inc.; and California Parties, comprised of the People of the State of California, *ex rel.* Bill Lockyer,

(continued. . . .)

CAISO and California Parties then filed answers to these protests. In its answer to the protests, the CAISO also included its proposed FCA Template for the FCA submissions, as required by the Commission order issued on September 2, 2004.<sup>12</sup> On September 28, 2004, Indicated Generators filed an emergency motion to reject the CAISO's FCA Template and requested extension of time to submit the FCA claims. Numerous parties<sup>13</sup> filed answers in response to the Indicated Generators' motion.

9. On October 7, 2004, the Commission Staff held a technical conference to discuss the issues raised in the CAISO's compliance filing, the protests and comments thereto, and the Indicated Generator's emergency motion to reject the CAISO's proposed FCA Template. Comments following the technical conference were filed on October 15, 2004, and reply comments were filed on October 20, 2004.<sup>14</sup>

## II. Discussion

### A. Procedural Matters

10. The Notice of the CAISO's compliance filing was published in the *Federal Register*, 69 Fed. Reg. 56,500 (2004), with comments and protests due on August 30, 2004.

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Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas and Electric Company (PG&E), and Southern California Edison Company.

<sup>12</sup> See *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Services*, 108 FERC ¶ 61,219 at ordering paragraph F (2004) (*September 2 Order*).

<sup>13</sup> City of Anaheim (Anaheim), City of Redding and City of Santa Clara (Cities), Sacramento Municipal Utility District (SMUD), Nevada Power Company and Sierra Pacific Power Company (Nevada Companies), Los Angeles Department of Water and Power (LADWP), Modesto Irrigation District (Modesto), Puget Sound Energy, Inc. (Puget Sound), NCPA, AEPCO, Enron, California Parties and CAISO.

<sup>14</sup> The following parties filed comments following the technical conference: Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy Marketing, LP and Mirant California, LLC (Reliant & Mirant); NCPA; Anaheim; Cities; Modesto; SMUD; LADWP, City of Vernon (Vernon); AEPCO; Puget Sound; Enron; Powerex Corp. (Powerex); Ernst & Young (E&Y); California Parties; and the CAISO.

11. CAISO and California Parties filed answers to protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept CAISO's and California Parties' answers to protests because they provide information that will assist us in our decision-making process.

**B. Allocation for Recovery of the FCA**

12. In its compliance filing, the CAISO presents its five-step method to allocate the FCA amounts in accordance with the Commission's requirement that FCA amounts be allocated to entities that relied on spot market energy sales. First, the CAISO proposes to calculate the total net day-ahead and hour-ahead purchases through the Power Exchange (PX) for each participant and for each time interval. Each participant's sales would be subtracted from its purchases for each time interval and those entities with zero or less net purchases would not be allocated a share for the FCA amounts for that interval. Second, the CAISO proposes to calculate the net purchases from the ISO markets on the same basis as sales through the PX. Third, the CAISO proposes to combine the net PX spot market purchases with the net ISO spot market purchases from steps one and two. Fourth, the CAISO would divide each participant's total net spot market purchases for each time interval by the total spot market purchases made by all entities during each time interval. Fifth, the CAISO would allocate the total amount of approved FCAs for each time interval based on each participant's share of the total market purchases during those intervals as determined in step four.

**Net vs. Gross Calculation of FCA Claims**

13. The CAISO states that its proposed methodology to allocate FCA amounts to buyers is premised on the understanding that generators will calculate their FCA claims based on their net spot market sales in megawatt-hours (MWhs). According to the CAISO, a generator should not be eligible for an FCA offset in hours in which the generator may have made mitigated sales, but, on a net basis, was a net buyer. The CAISO argues that because the generator was a net buyer for the hour rather than a net seller, its proposed methodology allocates a share of any FCA associated with net sales by other generators during that hour and charges this share to the generator. The CAISO concludes that if the Commission intends to allow suppliers to calculate their FCA claims based on gross sales rather than net spot market energy provided, then each seller's gross purchases should also be used in determining its allocation of FCA amounts.

14. California Parties agree that the calculation of FCA claims should be performed on a MWh net basis and cite a previous Commission determination that the FCA should be

based upon the MWh actually sold into the CAISO and PX markets<sup>15</sup> in support. They argue that if a generator sold 100 MWh to the market and bought 90 MWh back from the market in the same interval, the netting of MWh calculation (10 MWh) better reflects the actual fuel usage for sales into the mitigated spot markets. California Parties contend that netting prevents sellers from: (1) recovering in excess of their out-of-pocket fuel expenditures; (2) collecting fuel costs even if the generator's unit was prescheduled to supply bilateral spot energy in the bilateral market or even if sales originated from higher-priced electricity purchases; (3) being rewarded though they may have manipulated the markets; and (4) collecting fuel costs for energy that appears to have been supplied to the mitigated spot markets but was in fact removed from these markets and sold at unmitigated prices. In addition, California Parties argue that a gross approach contradicts the intent of the refund proceeding by penalizing the very buyers that were victims of market dysfunction and manipulation.

15. Several sellers oppose the CAISO's proposal to calculate FCA claims based on net sales. Cities argue that the CAISO's proposed netting "allocation" methodology is actually a calculation methodology, which the Commission has already established, and is thus beyond the scope of the limited task the Commission has ordered the CAISO to perform. Some of the sellers state that in order to change the fuel cost allowance methodology to a net basis, they would need to recalculate their fuel cost claims from scratch. They believe this would result in substantial delay and further complication of the FCA claims. Reliant & Mirant call the CAISO's proposal an "eleventh-hour" attempt to change the calculation methodology. Reliant & Mirant, LADWP, and Modesto all cite Commission orders in this proceeding which have rejected other arguments for netting.<sup>16</sup> LADWP adds that the Commission should reject netting of electricity purchases and sales because the Commission has ruled that spot electricity sales were a marginal use of a seller's generation resources.<sup>17</sup>

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<sup>15</sup> California Parties cite *September 24 Order* at P 54, citing *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Services*, 103 FERC ¶ 61,078 at P 18 (2003) (*April 22 Order*).

<sup>16</sup> The following Commission determinations were cited: *San Diego Gas & Electric Co.*, 103 FERC ¶ 61,078 at P 14 (2003); *May 12 Order* at P 25 (netting of gas purchases and sales); *May 12 Order* at P 41-45 (electricity purchases and sales); and *May 12 Order* at P 68 (netting out FCA amounts when actual daily fuel costs were less than gas proxy price).

<sup>17</sup> LADWP cites *May 12 Order* at P 53.

16. Several sellers also argue that calculation of their FCA claims should be done based on gross sales so that they are compensated for their total actual fuel costs incurred to make mitigated ISO and PX sales. They contend that calculating FCA claims on a net basis would result in some sellers owing refunds but not receiving a full or even partial FCA to reflect their actual costs of fuel burned to make mitigated sales. NCPA, Cities and Western note that, in their circumstances, netting would have market purchases made by an unrelated entity impact the sales (and therefore the FCA claim) of a generator if both entities made these transactions through the same Scheduling Coordinator (SC).

17. California Parties argue that netting is appropriate because sales and purchases are being mitigated in most cases to a single price, the MMCP, and thus every MWh is valued identically. They add that the Commission's determination that a single MMCP should be used for all markets erases distinctions between the markets and values every MWh identically. California Parties state that producing a MWh for consumption in one market or another creates identical fuel costs, if the fuel usage relates to the same time interval.

18. Reliant & Mirant counter that the correct question is not whether the mitigated prices for purchases and sales are equal but instead whether refunds for purchases and sales are equal. They state that in any interval in which both the pre- and post-mitigation prices were not the same, refund amounts would not be equal across markets and therefore transactions in those markets could not be netted on a MWh basis without producing skewed results. Both Reliant & Mirant and LADWP argue that, because of the differences in prices, refund liability is determined on a transaction-by-transaction basis (rather than on a net basis) and thus netting would be inconsistent with how refund calculations are performed.

### **Commission Determination**

19. As an initial matter, we agree with the CAISO that the methodology used to allocate FCA amounts should match the methodology used to calculate FCA claims. Similarly, because the FCA claims are direct offsets to refund liabilities owed by sellers, the approach to calculating FCA claims should match the methodology for determining the refund liability. We will therefore first examine the way in which refund liabilities are determined.

20. We note that refund amounts owed and owing during the same time interval, on a per MWh basis, will not consistently be equal. The original price at which suppliers sold into the ISO and PX markets during a specific time interval was not always the same as

the market clearing price at which buyers purchased energy.<sup>18</sup> In this situation, a market participant who both bought and sold power would receive a per MWh refund based on its purchase which is different from the per MWh liability owed on its sale. Refund liabilities are therefore not calculated on a net MWh basis, but rather on a gross basis. That is to say, it is only the dollar amount of refunds owed and owing which are netted, not the associated MWhs. To do otherwise would involve netting MWhs of unequal value.

21. A similar situation occurs in the calculation of FCA claims. If the sales and purchases are not netted, a FCA claim associated with a sale will be different from the FCA amount associated with a purchase. The FCA claim from a sale will reflect the specific generator's *actual cost* of fuel burned to make the sale, while the FCA amount associated with the purchase will reflect the *average cost* of fuel burned by all generators to supply mitigated sales during that time interval. Netting MWhs would ignore this difference. Accordingly, we find that FCA claims should also be calculated on a gross basis.

22. Furthermore, we reiterate that the Commission has provided generators the opportunity to file for a FCA claim if their fuel costs for mitigated sales exceed the proxy for gas prices used in calculating the MMCP. To the extent fuel was burned to make mitigated sales, and the cost of fuel exceeded the proxy for gas prices used in computing the MMCP, a generator should be eligible to file for a FCA.<sup>19</sup> Reducing the amount of mitigated sale (and thus the associated FCA claim) by any purchases during a particular interval is inconsistent with this principle.

23. California Parties are concerned that a gross calculation of FCA claims would allow sellers to recover in excess of the out-of-pocket fuel expenditures that were actually incurred to make mitigated sales into the ISO and PX markets. We again remind parties that the independent auditor is responsible for verifying that a generator did in fact burn fuel to make a mitigated sale when making an associated FCA claim. We also find no merit in California Parties' assertion that a gross calculation penalizes buyers, who were the victims of market dysfunction and manipulation during the Refund Period. California

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<sup>18</sup> We note at least three specific instances where this occurred: (1) during the soft cap period, where a supplier could sell at or above the market clearing price; (2) for out-of-market sales, where the sale price was unrelated to the market clearing price; and (3) for transactions in multiple markets, where the clearing price for one market was different than that of another market.

<sup>19</sup> See *May 12 Order* at P 33.

Parties are re-arguing against the very existence of the fuel cost allowance, which the Commission has already addressed,<sup>20</sup> and against the requirement that rates produced under the MMCP not be confiscatory.<sup>21</sup>

### Net vs. Gross Allocation of FCA Amounts

24. California Parties and the CAISO maintain that netting sales against purchases results in an allocation methodology that is more consistent with the principles of cost causation. First, they argue that netting is the most equitable allocation among the state's investor-owned utilities (IOUs) for the following reasons: (1) the IOUs were required to sell all of their generation through the PX regardless of the spot power purchases they needed, leading to a situation where the IOUs "self-supplied" some of their own power purchases; (2) this generation the IOUs sold into the PX was predominantly hydroelectric and nuclear and therefore not eligible for fuel cost recovery; and (3) the IOUs, and later the State of California, paid about 95 percent of all overcharges (measured by the MMCP) in the ISO and PX markets to serve the state's customers.

25. Second, California Parties and the CAISO argue that netting appropriately allocates a share of the FCA amounts associated with net sales by other generators to any generator who relied upon the spot market that hour as a net buyer rather than a net seller. California Parties argue that, otherwise, thermal generators would receive a FCA offset based on their gross level of generation, but would only pay a reduced FCA amount that reflects a proportionate share of the IOU's hydroelectric and nuclear generation—at the benefit of other market participants. Third, the CAISO also believes that netting is the most practical approach because, under its tariff, positive and negative uninstructed energy for all loads and supply resources in each SC's portfolio are netted together by congestion zone for each 10-minute interval. Vernon adds that when scheduling energy, the PX also netted schedules with SCs when they purchased and sold energy within a zone.

26. The CAISO states that if the Commission decides to base recovery of the FCA on gross rather than net sales, it proposes an alternative hybrid methodology, based on the following principles: (1) for any entity having an approved FCA claim, purchases by that entity would be included in the fuel cost allocation based on gross purchases; and (2) for any entity not having an approved or submitted FCA claim (*e.g.*, the major California utilities, other non-thermal generators and marketers), fuel costs will be allocated based on net purchases.

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<sup>20</sup> See, *e.g.*, *September 24 Order* at P 16.

<sup>21</sup> See generally *March 26 Order*, and *May 12 Order* at P 3.

27. Other parties oppose an allocation methodology based on netting. Cities argue that the Commission's rejection of an allocation methodology based on gross control area load in the May 12 Order does not require or justify the CAISO to net purchases and sales of each generator. They add that the CAISO's argument that uninstructed energy is netted for settlement purposes does not address the fact that instructed energy transactions and PX transactions are not netted. Enron argues that netting unfairly places the responsibility to pay the entire FCA amount for the entire spot market on those market participants who were net purchasers.

28. In regard to the issue of self-supply, Cities state that entities, which sold hydro and nuclear energy in mitigated transactions and have incurred an overall revenue shortfall, have the opportunity to file for cost-based recovery. Reliant & Mirant respond that for the first three months of the Refund Period, the IOUs regularly sold their own generation into the PX day-ahead market, but then purchased large amounts of electricity produced by other suppliers' units in the CAISO's spot market. For the remaining six months, Reliant & Mirant state, IOUs only procured their net needs from the spot market. Reliant & Mirant conclude that whether or not some entities self-supplied does not change the amounts or prices of fuel burned in providing electricity to the California markets. California Parties counter that Reliant & Mirant selectively cite to one document as evidence of the IOUs' underscheduling.

29. In general, sellers support an allocation based on their gross sales. Dynegey & Williams argue that the proper allocation would assess FCA amounts based solely on spot purchases. Reliant & Mirant propose that under a gross allocation, a generator should owe refunds and receive a FCA on its sales and then receive refunds and be allocated a share of the FCA on its purchases.

### **Commission Determination**

30. Several parties argue against allocation of FCA amounts based on gross purchases, contending that not all mitigated purchases should be treated equally. We disagree. The FCA is part and parcel of the revised MMCP mitigation scheme and the FCA amounts should be incorporated into the final sales price for all mitigated purchases. To the extent any market participant, including generators, relied on the mitigated spot markets to purchase energy, we believe that such participant should thus bear a proportionate share of the total FCA amount. For example, a generator whose sales were mitigated should: (1) owe refunds and be eligible to file a FCA claim on its mitigated sales; and (2) receive refunds and owe an FCA amount on its mitigated purchases. Only the dollar amounts arising from these figures should be netted. We also note that this gross allocation of FCA amounts is consistent with our finding that refund liabilities and FCA claims are to be calculated based on gross sales.

31. The CAISO and California Parties argue against allocation of FCA amounts based on gross sales because the IOUs ‘self-supplied’ some of their own mitigated spot purchases. Other parties, however, appear to disagree over just how much energy was actually “self-supplied” in the mitigated spot markets. To the extent that the IOUs did re-purchase the same spot market energy which they had previously sold, this was the structure of the California market design. We reiterate that all buyers must pay the same energy cost and that a net allocation is simply inconsistent with the refund and FCA calculations, as explained above.

32. We also find unpersuasive the CAISO’s argument that a netting allocation is consistent with its tariff, which nets uninstructed energy. As Cities have noted, neither the CAISO instructed energy market nor the PX market netted purchases with sales. Therefore it does not appear that there is a consistent practice between all markets.

### **Netting between Markets vs. Netting within Markets**

33. The CAISO distinguishes between two types of netting: (1) netting between market, *i.e.*, between the ISO and PX markets; and (2) netting within each market. The CAISO believes that netting between markets is appropriate due to the close inter-relationship between them within the overall spot market and the fact that the Commission has found the entire spot market to be dysfunctional during the Refund Period. It argues that because of portfolio scheduling in the PX and strategies that involved the circulation of energy from the PX to the ISO market, allocation of costs between the ISO and PX for suppliers is often arbitrary. Similarly, the CAISO states that the relative proportion of an entity’s purchases in the PX versus the ISO market is not a reasonable indicator for who should bear responsibility for costs incurred to meet overall market needs.

34. However, the CAISO argues that if the Commission should not require netting between markets due to a concern about the differences in sales and purchase prices, the Commission should clarify that netting is required within each market and especially within the PX market. The CAISO contends that a seller’s FCA claim should be based on its PX Day-Ahead Market sales netted against its PX Block Forward Market sales and PX Day Market purchases.

35. Enron believes that the CAISO’s original proposal improperly purports to eliminate the distinction between the ISO and PX markets. Enron argues that settling each market separately would avoid the inconsistency in prices between markets that was raised by Mirant & Reliant. Enron also argues that the Commission has recognized that the ISO and PX have separate tariffs and are separate markets that should not be combined in this proceeding. Enron adds that, to the extent the methodology nets one set

of obligations or rights in one market against obligations or rights in another market, it is inconsistent with the Bankruptcy Code<sup>22</sup> and Enron's confirmed plan of reorganization.

### **Commission Determination**

36. We reiterate that the calculation of FCA claims and the allocation of FCA amounts should be performed based on gross sales and purchases, as explained above. We agree with the CAISO that a generator's sales should not include its PX Block Forward Market sales for the purposes of calculating the generator's FCA claim. However, we do not believe that the existence of Block Forward Market sales requires netting sales against purchases within each of the spot markets for the purpose of calculating FCA claims. We address this more fully in the following section.

37. In light of our finding that the FCA should not be allocated on a net basis, but rather on a gross basis, Enron's argument against netting between markets is rendered moot. In any case, "[t]he Bankruptcy Code clearly anticipates ongoing governmental regulatory jurisdiction while a bankruptcy proceeding is pending."<sup>23</sup> Section 1129(a)(6) of the Bankruptcy Code requires approval by a regulatory agency with jurisdiction of any rate change provided for in the reorganization plan.<sup>24</sup> Thus, the existence of the Bankruptcy Court-confirmed reorganization plan does not limit the Commission's authority to establish refunds, which falls within the Commission's rate-making authority.

### **Mitigated vs. Non-mitigated Spot Transactions**

38. The CAISO proposes in its compliance filing that all ISO and PX sales and purchases that are excluded from refund calculations should also be excluded from the calculation for purchases subject to any FCA amounts. The CAISO states that this includes purchase and sale volumes in the PX Day-Ahead Market associated with positions in the PX Block Forward Market, and any sales in the ISO markets pursuant to contracts with a duration of 24 hours or longer, or found to have been made pursuant to 202(c) of the Federal Power Act.<sup>25</sup> Enron agrees with this proposal to exclude transactions that are not subject to mitigation.

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<sup>22</sup> 11 U.S.C. §§ 101 *et seq.* (2004).

<sup>23</sup> *In the Matter of: Mirant Corporation*, 378 F.3d 511 (5<sup>th</sup> Cir. 2004).

<sup>24</sup> 11 U.S.C. § 1129(a)(6) (2004).

<sup>25</sup> 16 U.S.C. § 824a(c) (2004).

39. Powerex argues that because the FCA is a direct result of price mitigation, any FCA amounts should be borne only by those that benefit from mitigation. Powerex argues that the FCA should be recovered through reductions in refunds received by purchasers and that purchasers who do not receive a refund in a specific time period have not benefited from mitigation during that time period and should not bear responsibility for the FCA amounts. Powerex states that since the Commission has ordered that only mitigated sales are eligible for a FCA claim, only mitigated purchases should bear a FCA amount. Similarly, Powerex argues that just as sellers will not be able to recover a FCA in excess of the original price paid to them for their sales, purchasers should not incur a FCA charge that exceeds their refunds in the same time period.

#### **Commission Determination**

40. We find the CAISO's proposal to exclude non-mitigated transactions for the purposes of allocating FCA amounts is consistent with how the FCA claims are calculated and refunds are determined. We also agree with Powerex's related arguments that seek to limit the offsets to a refund in the same manner in which the Commission has limited the FCA claims associated with a sale. Accordingly, we find that only mitigated purchases should be allocated a FCA charge incurred in each time interval and that the FCA amount is limited so that the final purchase price after mitigation (MMCP plus FCA amount) is not greater than the original market clearing price.

### **C. Allocation of Fuel Costs to Marketers**

#### **Comments, Protests, and Answers**

41. Sempra argues that the CAISO's proposed recovery of fuel costs from market participants that were net purchasers would unfairly impose on power marketers costs that they should not bear, given that the Commission has not provided power marketers an opportunity to submit their own FCA claims. The CAISO responds that not requiring marketers to bear a portion of the FCA associated with spot market purchases they made would inevitably place the burden of paying for the gas associated with marketers' purchases on load-serving entities. The CAISO argues that load-serving entities would end up paying for fuel costs in excess of the quantity of spot market energy they actually relied upon.

#### **Commission Determination**

42. We again find that the most appropriate method for allocating recovery of the FCA is on a gross basis to those who purchased from the spot market at mitigated prices.

We explained in the May 12 Order<sup>26</sup> why marketers may not seek a FCA and remind marketers that the Commission has provided them with the opportunity to submit evidence as to whether the refund methodology results in an overall revenue shortfall for their transactions during the period October 2, 2000 through June 20, 2001.<sup>27</sup>

**D. Impact of Settlements on the Allocation of Fuel Costs**

**Comments, Protests, and Answers**

43. Enron argues that the Commission should reject the CAISO's proposed methodology because it fails to take into account the impact of FCA settlements. The CAISO responds that the Commission did not require it to take into account FCA settlements. The CAISO also argues that the settlement parties are in the best position to develop and propose a methodology for allocating fuel cost amounts in their settlement agreements because those parties have the most expertise with the terms and operation of their settlement agreements.

44. Enron also states that it supports the consensus view of the parties at the technical conference that none of the settlements between market participants should impact the FCA amounts allocated to non-settling parties. NCPA and Enron argue that the settling generators should resubmit their claims using the new CAISO FCA Template. Enron proposes that the CAISO should first determine the total FCA and then allocate allowed fuel costs to claimants regardless of any settlements. Enron further states that for those market participants who have settled, the terms of the settlement agreement may reduce or increase the amount of the FCA.

45. Dynegy and Williams argue that there is no need to impose the audit requirement on FCA claims by the settling parties, since that requirement has been imposed by the Commission in response to the California Parties' opposition to the FCA claims, which the California Parties subsequently withdrew. In their reply comments, California Parties side with Dynegy and Williams by arguing that their claims should not be audited. They also state that other parties that later opposed Williams' and Dynegy's claims have long waived their rights to file an opposition, since they have failed to raise objections to these FCA claims for over a year. NCPA, on the contrary, argues that the settling parties should not be exempted from the auditing requirement.

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<sup>26</sup> See *May 12 Order* at P 14-15.

<sup>27</sup> See *San Diego Gas and Electric Co.* 97 FERC ¶ 61,275 at 62,193-94 (2001).

### **Commission Determination**

46. We will not entertain further arguments on the proposed exemption from the auditing requirement for settling parties. We have addressed the exemption request in our prior orders and found that no exemption would be allowed.<sup>28</sup> Accordingly, we reiterate that settling parties' FCA claims, which have been opposed to by non-settling parties, must be auditor-verified and resubmitted in accordance with the CAISO's FCA Template, as modified. We, however, do not believe that settling parties who decide to forgo their FCA claims should be required to compile and resubmit the FCA data. To do so would impose an unjustified burden on settling parties, whereas the absence of the FCA data from settling parties will not affect the amount of FCA due to other claimants. In response to Enron's contention, we reiterate that settlements do not affect the FCA amounts to be allocated to sellers.

#### **E. Impact of the CAISO's Proposal**

##### **Protest and Answer**

47. CSG argues that it is difficult to see the impact of the CAISO's proposal without reviewing all of the fuel cost data that is to be submitted. Thus, they argue that the Commission should not accept the CAISO's proposed allocation methodology until all audited fuel cost data have been submitted and reviewed. According to CSG, only then will the Commission be able to determine a reasonable allocation approach. The CAISO responds that the financial impact of its proposal is not determinative of its reasonableness. The CAISO adds that waiting until the fuel cost data has been submitted will lead to an additional delay in the refund rerun process.

### **Commission Determination**

48. We agree with the CAISO that the financial impact of its proposal is not determinative of its reasonableness. The reasonableness of an approach should be determined based on principles, not based on which result it gives. CSG's preference for an after-the-fact determination of the appropriate methodology, based on its results, is not just cause for delay.

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<sup>28</sup> See *September 24 Order* at P 22; and *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Services*, 109 FERC ¶ 61,074 at P 5-7 (2004).

**F. Scheduling Coordinator Identification Numbers****Aggregation of Multiple SC IDs**

49. NCPA objects to the proposal to aggregate across the different ISO SC Identifiers (SC IDs) for its retail and wholesale portfolios. Specifically, NCPA asserts that this proposal will aggregate PG&E's own (net short) retail portfolio with the wholesale portfolio containing NCPA's load and resources, which was typically long on power supply. NCPA states that it is the CAISO practice to keep these SC IDs separate, and that the CAISO does not routinely aggregate or net between separate SC IDs. NCPA states that PG&E's proposed aggregation of PG&E's portfolios would deviate from standard ISO practices and needlessly create problems and additional future litigation. Accordingly, NCPA urges the Commission to reject the proposal to allow PG&E to net its wholesale and retail SC IDs.

50. California Parties argue that the aggregation of SC IDs will produce a better result because the IOUs, like PG&E, spread their purchasing and supply roles across various SC and PX market participant IDs to meet local regulatory and accounting concerns. California Parties argue that considering those IDs in a disaggregated fashion could obscure the IOUs' self-supply. California Parties propose a compromise, to be applied only to the NCPA case, stating that PG&E does not object to separating the SC ID titled "PGAE," which is used for certain transactions by PG&E's wholesale customers including NCPA's transactions, from PG&E's other SC IDs. California Parties propose that PG&E's other SC and PX identifiers would still be netted, thus permitting PG&E to offset its purchases and sales.

51. NCPA's reply comments oppose California Parties' characterization of the issue, but accept California Parties proposal to keep separate the SC ID's that NCPA had identified as problematic

52. In its reply comments, Reliant & Mirant oppose California Parties' compromise proposal, stating that California Parties incorrectly assume that only one party opposes aggregation of SC IDs. Reliant & Mirant also oppose the SC ID aggregation because it results in netting of MWs.

53. Western also opposes PG&E's proposal to combine ISO SC and PX participant IDs. It argues that if PG&E, or any other entity, needs to net and aggregate transactions under its various ISO SC and PX participant IDs, it must justify its need to do so to the Commission as an exception to the general rule that refunds are calculated on a transaction-by-transaction basis, and the FCA amounts are calculated and allocated based on disaggregated purchases and sales. Western further states that while it may or may not make sense to allow PG&E to aggregate SC IDs based on its particular circumstances,

other SCs did not operate in the manner that PG&E did. Western continues that aggregation and netting produce unreasonable results for Western, which are not resolved by providing an exception to NCPA.

54. Similarly, Cities argue that PG&E needs to justify its request for an exception to the Commission so that it can aggregate its transactions. Cities argue that from the outset, the refund proceeding has involved mitigation of each individual transaction in the centralized markets operated by the CAISO and PX. This proceeding has not involved transactions at a SC level. The proposal to aggregate transactions for purposes of determining refund obligations violates prior Commission orders.

55. In its reply comments, California Parties state that several other commenters raise issues relating to SC IDs aggregation but fail to provide details regarding specific SC IDs. California Parties argue that the generalized concerns raised in these comments are not sufficient to determine whether and to what extent compromise adjustments similar to that proposed for NCPA may be appropriate.

#### **Disaggregation of a Single SC ID**

56. Cities assert that the CAISO proposal is intended to allow SCs to net their purchases against sales made by their SC customers to avoid calculations and/or allocations of FCA. In connection with this, they request that the Commission disallow SCs to unjustly confiscate their customers' FCA. Modesto opposes a calculation of FCA amounts at the SC level because it nets purchases and sales, which Modesto asserts is inconsistent with past Commission orders in the refund proceeding. Reliant & Mirant state that electricity sale and purchase decisions can also be made by different parties that share a single CAISO SC ID. Reliant & Mirant state that the CAISO proposal to net all MWh purchases and sales by a single SC would ignore the realities of which market participants behind that SC were selling and which were purchasing. Reliant & Mirant give the example that if NCPA were selling electricity from gas-fired units and other participants represented by the same SC were purchasing electricity, and the SCs' MWhs of purchases and sales are netted, NCPA would not receive a FCA to compensate it for actual gas costs it incurred to make its sales.

57. Western similarly argues that it would be unjust and unreasonable to reduce the amount of a seller's FCA simply because its SC may have been making purchases for its other SC customers.

#### **Commission Determination**

58. As a general matter, our determinations here are based on the understanding of the SC ID as the entity that transacted with the CAISO. We will deny any aggregation of SC IDs, as well as the disaggregation of any one SC ID. This refund proceeding has focused

on transactions in the CAISO and PX markets. Generators used SC services to make transactions in those markets, and it is the SC that has the contractual relationship with the CAISO and PX, not the generators. It is the SC's purchase or sale position that is at issue in the refund proceeding. SCs, not the generators that used SC services, are respondents in this refund proceeding.<sup>29</sup>

59. For these reasons, we deny the proposed aggregation of different IDs and will require the CAISO to treat SC IDs separately. Consistent with the approach taken in the refund proceeding, the FCA should be treated on the basis of transactions made in the CAISO and PX markets. The refund liability applies to each SC, and the SCs are the entities that performed the transactions with the CAISO and PX. This ruling is also consistent with our determination to base calculation of FCA claims and allocation of FCA amounts on gross sales and purchases.

60. Furthermore, while we instituted the FCA in an effort to recognize that our MMCP approach might not properly compensate sellers for fuel costs and to give them an opportunity to make FCA claims, it does not mean we will ignore or bypass the realities of legal and contractual relationships. The Commission's jurisdiction applies to the Scheduling Coordinators, and not beyond the legal entity that transacted in these markets. Accordingly, we deny requests to disaggregate various customers' transactions under the same SC ID.

#### **G. CAISO's Proposed FCA Template**

61. The FCA Template was proposed by the CAISO in its answer to the protests to the compliance filing, pursuant to the direction in the September 2 Order. The CAISO revised their FCA Template on October 5, in response to the Indicated Generators' emergency motion to reject the FCA Template. The FCA Template was further revised by the CAISO in its comments filed on October 15 following the October 7 technical conference.

#### **Transactions Not Identified in the CAISO FCA Template**

62. In answers to the Indicated Generators' motion, several parties argue that the proposed FCA Template does not include mechanisms for submittal of claims related to what the CAISO estimates are 10-20 percent of all sales in the mitigated markets. These omitted transactions include sales by: load-serving entities, entities that were not

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<sup>29</sup> *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 101 FERC ¶ 63,026 at P 771 (2002), adopted by *March 26 Order*.

participants in the CAISO and PX markets, entities without a participating generator agreement (PGA), entities outside the CAISO control area that made portfolio sales to the CAISO and PX.

63. Specifically, NCPA states that because many municipal utilities operated under existing contracts and did not have PGAs for their units, or had their own control areas, many municipal utilities' sales do not fit into the CAISO FCA Template. NCPA expresses a concern that load-serving governmental entities may be prevented from recovering the costs of fuel they purchased to make sales into the CAISO and PX markets. NCPA, however, states that if the CAISO was willing to commit to solving this problem, NCPA would be willing to work cooperatively to submit appropriate information. In its reply comments, however, NCPA states that, "municipals that have approached the ISO with problems such as this have not found that the ISO is willing to work with them in a way that actually will allow them to recover for the cost of fuel that they purchased."<sup>30</sup> Accordingly, NCPA argues that the FCA Template should be rejected and municipal utilities that made portfolio sales or sales from non-PGA units should be allowed to submit their claims in a form suitable for each individual entity, as long as it contains the information required by the Commission and is consistent with Commission orders on the FCA.

64. LADWP states that because it, as well as other sellers, made portfolio (non unit-specific) sales to the CAISO and PX, it does not fit into any of the CAISO-proposed templates. LADWP requests that the Commission clarify that LADWP may determine an appropriate procedure to revise the FCA templates, in consultation with the auditor, to achieve a workable solution that does not contradict the fuel cost allowance orders.

65. Anaheim argues that the CAISO intends to deny Anaheim a FCA for mitigated sales that can be attributed to its thermal generator. Anaheim argues that "there appears to be no justification for this arbitrary result other than administrative convenience."<sup>31</sup> The CAISO has responded that "by failing to require a linkage between specific transactions and each unit's actual schedule, [Anaheim's] approach would dramatically complicate the task of reviewing and verifying fuel cost allowances, and that this approach would create endless 'gaming' opportunities for generators with portfolios of multiple units."<sup>32</sup> While Anaheim states it would defer to the CAISO on the complexity

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<sup>30</sup> NCPA's Reply Comments following the October 7, 2004 Technical Conference, Docket No. EL00-95-000, at 2 (October 20, 2004).

<sup>31</sup> Comments of Anaheim on the October 7, 2004 Technical Conference, Docket No. EL00-95-000, at 2 (October 15, 2004).

<sup>32</sup> Answer of the CAISO, Docket No. EL00-95-000, at 13 (October 5, 2004).

for other generators, it persists in arguing that because it has only one thermal generator, its case can be seen as an exception and could be determined using the method they propose.

66. AEPCO also argues that because it was located outside the CAISO control area, it has unusual characteristics that make the use of the FCA templates inappropriate. AEPCO suggests that while it might be possible to devise a template that adequately addresses the various situations, such an exercise would not appear to be a sound expenditure of anyone's resources. Instead, AEPCO proposes that it and the CAISO work together to devise a format that provides the information that the CAISO needs in a way that is not unduly burdensome to AEPCO. AEPCO states that it has had some preliminary discussions with the CAISO toward this end, and is optimistic that the objective can be achieved through voluntary cooperation.

67. California Parties state that they do not object to the flexible application of the templates, deviating where necessary, as long as the deviation is supported by clear and complete supporting work papers or documentation. California Parties, however, believe that the CAISO's development of additional templates for generating units outside the CAISO system is sufficient, and that in all other instances the existing templates should be used in order to ensure consistency and the ability to efficiently implement and evaluate FCA claims.

### **Commission Determination**

68. We reiterate that if a party that is subject to a refund obligation burned fuel to make a mitigated sale in the same time interval of the refund obligation, that party is eligible to file for a FCA. The proposed FCA Template is intended to simplify for the CAISO the refund calculation process, and should not be viewed as a factor that could prevent a party from receiving a FCA. The CAISO states that the FCA Templates filed herein do not cover all circumstances, and that there may be several types of transactions where separate or different FCA Template designs might be necessary. With respect to these additional circumstances, we direct the CAISO to work with sellers and the independent auditor (if necessary) to develop appropriate templates for the submission of fuel cost information needed for the CAISO to complete the refund process. While we encourage the CAISO to be flexible in addressing seller-specific circumstances, we believe that it is the claimants' responsibility to provide the information necessary to the CAISO in a format usable by the CAISO. Each seller must justify its FCA claim, and should supply to the CAISO, in as consistent a format as possible, the directed information. Again, we note the CAISO's stated commitment to working with sellers to determine appropriate deviations from the proposed templates, and encourage the CAISO and sellers to work together to resolve these issues.

69. We note that AEPCO appears to suggest that its particular circumstances warrant special treatment. It is not our intention here to allow AEPCO to use discussions with the CAISO or the independent auditor over the FCA Template to reargue the issues raised and addressed in this proceeding. For example, AEPCO should not attempt to re-argue with the CAISO issues such as the inclusion of transmission losses or changes to the FCA calculation. AEPCO, the CAISO, and the auditor should limit their discussions to issues such as how to appropriately include in the FCA Template mitigated transactions for which AEPCO is eligible to claim a FCA. Therefore, we emphasize that AEPCO, or any other party, should not attempt to use negotiations with the CAISO over the template format to achieve a different response than that directed by the Commission in this and prior orders.

70. Regarding Anaheim's purchases, it is the Commission's goal to apply a sound, consistent methodology. We disagree that the CAISO should be the entity to research the settlement data to determine Anaheim's claim. If Anaheim wishes to submit this portion of its claim, Anaheim is free to request the auditor to verify its use of the CAISO settlement data. Again, we encourage the CAISO and Anaheim to work together to ensure that Anaheim submits the appropriate fuel cost information to allow the CAISO to process its claim.

### **Template Modifications**

71. In their motion to reject the CAISO's proposed FCA Template, Indicated Generators argue that the CAISO's proposed FCA Template goes beyond the format prescribed by the Commission. They state that although the May 12 Order established just five categories of information to be identified by claimants in their submissions,<sup>33</sup> the CAISO has proposed 76 categories of information through four separate tables. Indicated Generators, SMUD, NCPA, AEPCO, and Nevada Companies argue that the proposed FCA Template imposes substantial additional requirements on all parties seeking a FCA. Indicated Generators also argue that, through the proposed FCA Template's methodological assumptions and formulas for testing the claims, the CAISO is attempting to usurp the auditor's position as the sole auditor of the FCA claims. They contend that the CAISO's role should be limited to processing claims already verified by the auditor.

72. Furthermore, Indicated Generators argue that the CAISO's proposed FCA Template is inconsistent with the Commission's orders or prior filings in the refund proceeding and provide two examples in support. First, they state that the FCA Template incorrectly specifies the operating level at which the heat rate is to be determined for use in calculating actual gas costs (*i.e.*, the Acknowledged Operating Target). They argue

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<sup>33</sup> See *May 12 Order* at P 76.

that actual metered operating heat rate level should be used instead. Second, Indicated Generators argue that the template incorrectly calculates the FCA as the difference between a seller's actual fuel costs and the MMCP. They argue that the Commission has directed sellers to calculate the difference between their actual fuel costs and the gas proxy price used to calculate the MMCP. Anaheim, Cities, AEPCO, and LADWP identify the same problem with the proposed FCA Template.

73. At the October 7, 2004 technical conference, parties came to general understanding that two changes should be made in the FCA Templates. Several parties supported these two changes in their comments.<sup>34</sup> First, the incremental heat rate of units should be based on the metered operating level of each unit, rather than the Acknowledged Operating Target as was done in the calculation of the MMCPs used in calculating refunds. Second, that the fuel cost allowance should be based on the difference between the generator's daily average fuel costs as compared to the fuel price index used to calculate the MMCP. The CAISO has revised its templates to incorporate these changes, and has included these templates in its October 15, 2004 submission.

74. LADWP asserts that the CAISO's template, as filed with the Commission on October 5, 2004, contains two errors. LADWP states that the CAISO's templates incorrectly calculate the FCA by multiplying the MWh quantity of a claimant's mitigated sale—instead of the amount of gas the claimant consumed—by the difference between actual and proxy fuel prices. Additionally, LADWP states that the template still requires submissions of data on a ten-minute basis even though the Commission has directed generators to submit their FCA data to the CAISO on an hourly basis.

75. SMUD contends that it has spent considerable time previously compiling its FCA submission in a horizontal format, while the CAISO's templates require submission of data in a vertical format. SMUD argues that to re-run all of its data simply in order to comply with the format preferred by the CAISO when the substance of the submission will match the CAISO's requirements is an unnecessary expenditure of SMUD's limited resources. SMUD therefore requests that it be able to submit its FCA data in a horizontal format.

76. In response, the CAISO argues that the burden of reformatting data should be placed on SMUD and not the CAISO. Furthermore, the CAISO suggests that the actual burden to SMUD of conforming to the template's format may be minimal, given that SMUD will need to update its submission to reflect modifications and requirements established by the Commission since SMUD's original 2003 filing.

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<sup>34</sup> These parties are California Parties, LADWP, Puget Sound, and Enron.

77. Reliant & Mirant suggest that the CAISO's revised template, as filed with the Commission on October 15, 2004, should be approved subject to a few minor corrections.<sup>35</sup> These corrections include: (1) "E\_Type" in Table 2 should also consider replacement reserve energy and residual energy; and (2) price conditions stated for "QTY\_M" and "REV\_M" in Table 2 do not apply for Charge Type 481.

78. AEPCO maintains that while the FCA calculation formula used in the template allows most generators to fully recover their actual costs because their gas prices were higher than the Harris price series, it does not allow AEPCO to fully recover costs that are a result of a higher heat rate than that used to calculate the MMCP.<sup>36</sup> AEPCO therefore requests that it be allowed to use its own methodology to calculate its FCA claim. AEPCO provides the following example to illustrate its case. In an interval where the ISO marginal heat rate is 10 and the Harris series gas price is 4, the MMCP gas cost is 40. If the generator had a heat rate of 11 and a gas cost of 5, its actual gas cost would be 55. According to the formula, the generator's recovery after the fuel cost allowance would be  $40 + [(5-4)*11]$ , or 51, which would still result in an under recovery of 4. In response, California Parties argue that if AEPCO's overall costs are in excess of the FCA formula, AEPCO has the option to file for cost-based recovery. California Parties maintain that AEPCO should not be permitted to use the FCA mechanism to recover costs that have nothing to do with the fuel cost allowance.

### **Commission Determination**

79. We accept the two revisions the CAISO made to its FCA Template to reflect the consensus reached at the October 7, 2004 technical conference.

80. LADWP indicates that there are two additional errors in the CAISO's template, as filed on October 5. We find that that the CAISO's revised template, as filed on October 15, addresses LADWP's first concern by correctly multiplying the amount of gas consumed by the difference between the actual fuel price and the gas proxy price. The revised October 15 template, however, still requires data submissions on a 10-minute basis. Our September 24 Order concurred with the CAISO's recommendation that sellers submit data in their FCA claims on an hourly basis.<sup>37</sup> Unless the CAISO can explain

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<sup>35</sup> Reliant & Mirant's Reply Comments following the October 7, 2004 Technical Conference, Docket No. EL00-95-000, at 12 (October 20, 2004).

<sup>36</sup> AEPCO states that the MMCP heat rate is set by the most inefficient unit selling to the ISO and does not reflect AEPCO's PX sales generated using even higher heat rates.

<sup>37</sup> See *September 24 Order* at P 85.

otherwise, we thus see no reason why 10-minute interval data is necessary and direct the CAISO to remove the variable from its template.

81. We agree with the CAISO that the burden is on SMUD to conform its FCA claim to the format of the template. We remind parties that the Commission continues to emphasize a standard approach in submitting, verifying and processing the FCA claims. Accordingly, we direct SMUD to use the CAISO's template in submitting its FCA claim. With regard to the corrections requested by Reliant & Mirant, it appears that most of them are indeed minor oversights. We direct the CAISO to address these concerns.

82. AEPCO requests that it be allowed to use a different formula in the template to calculate the FCA on account of the high heat rates associated with its mitigated sales. We deny AEPCO's request; it is a collateral attack on prior Commission orders. We again emphasize that the purpose of the template is to standardize the submission, verification, and processing of the FCA claims. Accordingly, we will not allow AEPCO to use a different methodology to calculate its FCA claim. As noted elsewhere in this order, AEPCO has the opportunity to file for cost-based recovery if it believes that the refund methodology does not provide sufficient compensation for its costs.

#### **H. Transmission Losses**

##### **Comments and CAISO's Answer**

83. AEPCO states that, in selling power into the PX market as an out-of-state supplier, its transmission losses were treated as purchases in order to reconcile the difference between the power AEPCO generated and the power actually imported into the CAISO system. AEPCO argues that it should not be assessed any share of the FCA to cover these transmission losses. The CAISO responds that excluding such transmission losses would unfairly shift the FCA amounts actually associated with these losses to other participants. The CAISO states that such exclusion would not change the fact that the CAISO relied upon additional purchases of imbalance energy to compensate for these losses, nor would it reduce the amount of imbalance energy for which generators will recover FCA amounts.

84. In its comments following the technical conference, AEPCO again raised the issue of treatment of transmission losses it incurred between Apache and Mead. It proposes to evaluate the cost of transmission losses on the basis of the MMCP, at which AEPCO could have bought the power from the CAISO at Mead to deliver to Western to offset the transmission losses.

### **Commission Determination**

85. The Commission has addressed this issue in its November 18, 2004 order.<sup>38</sup> Specifically, we denied AEPCO's request to include power transmission costs in the determination of MMCP. The November 18, 2004 order stated in pertinent part:

The Commission has previously determined that it will not allow any additional costs to be included in the MMCP. Furthermore, the power transmission costs for which AEPCO seeks recovery are the costs of transmitting electricity and have nothing to do with fuel costs (which go to the cost of generation and electricity sold into the California markets). Thus, it would be inappropriate to include power transmission costs in the fuel allowance.<sup>39</sup> (*footnotes omitted*).

#### **I. Extension of Time**

##### **Comments**

86. Indicated Generators, Anaheim, Cities, SMUD, AEPCO, Nevada Companies, Modesto, LADWP, and Puget Sound request an extension of time for the submission of their FCA claims. Enron and California Parties also argue that to the extent any extension of time is granted, there should be an equal extension of time to dispute FCA claims after they are submitted to the CAISO.

87. E&Y argues that more time will be needed to complete the audit for two reasons. These are the need to adjust the claims to reflect changes in the methodology and the presentation format, and the retention of E&Y by multiple parties. E&Y states that it will need 90 to 120 days from the date the Commission provide clarification on the CAISO's proposed FCA Template.

88. California Parties state that in light of the CAISO's statement at the technical conference that the refund rerun will be completed in February 2005, they do not object to an extension of time to submit FCA claims, as long as there is still a meaningful opportunity for parties to review and protest specific claims in response to the CAISO's refund rerun compliance filing.

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<sup>38</sup> See *San Diego Gas & Electric Co. v. Seller of Energy and Ancillary Services*, 109 FERC ¶ 61,218 (2004).

<sup>39</sup> *Id.* at P 96.

### **Commission Determination**

89. Because we require certain modifications to the CAISO's FCA Template, we will grant extension of 90 days from the date of issuance of this order to submit FCA claims directly to the CAISO. We will also change the deadline for resubmitting to the CAISO the FCA claims reflecting resolved disputes to 30 days after the initial submission of the FCA claims

### **J. Miscellaneous**

#### **California Parties' Request for Certain Information**

90. The California Parties request that the Commission require claimants that are seeking an FCA to notify the Commission within 10 days or those who are not seeking an FCA to file a notice to withdraw their claim. The California Parties argue that this requirement will eliminate uncertainty and "make the process more efficient by ensuring that analysis is not undertaken of companies that no longer intend to claim a FCA."<sup>40</sup>

91. We will deny California Parties' request to require parties to inform the Commission of their decision to forgo an FCA claim. We do not believe this requirement is justified or has a practical purpose. The deadline for submitting FCA claims is the same for all parties involved. No FCA will be allocated prior to that deadline and the names of the parties who have decided to forgo their FCA claims will become known at that time. To require otherwise will impose pressure on claimants and might influence their decision as to whether to proceed with FCA claims. For these reasons, the California Parties' request is hereby denied.

#### **Heat Rate Issues**

92. Puget Sound, California Parties and others raised additional issues pertaining to the use of heat rates in the calculation of FCA claims. These issues are more appropriately addressed as part of the rehearing requests of the September 24 Order, and therefore will be addressed in a future order.

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<sup>40</sup> See California Parties Comments in Response to Technical Conference on Fuel Cost Allowance and Allocation Issues, Docket No. EL00-95-000, at 14, Docket No. EL00-95-000, (October 15, 2004).

### Further Procedures

93. At the technical conference, the Commission Staff proposed a procedure for addressing questions that E&Y might have regarding the auditing process. Specifically, the Commission Staff suggested that E&Y should submit questions in the form of a formal filing with the Commission; subsequently, the Commission Staff will have a properly noticed telephone conference in the presence of all interested parties. The California Parties state their support the Commission Staff's proposed procedure for dealing with issues raised by E&Y in the process of auditing FCA claims. E&Y also states that it would submit its questions to the Commission in writing to initiate the clarification process. In their response, California Parties state that E&Y's submittals should be served on all parties to this proceeding.

94. On December 8, 2004, E&Y submitted a filing requesting clarification of certain issues pertaining to E&Y's task of verifying the claimants' data and calculations of FCA amounts. The issues raised in E&Y's filings are substantive in nature and thus cannot be resolved in a Staff technical conference. For this reason, we will address E&Y's filing in a formal order at a later date. We note here that on December 13, 2004 the Commission issued a notice inviting answers to E&Y's filing to be submitted no later than December 20, 2004.

95. To the extent E&Y might have further questions regarding the FCA auditing process it may file with the Commission a motion requesting a technical conference with the Commission Staff. For those issues the Commission determines to be procedural in nature, the Commission will issue a notice of Staff technical conference to put all interested parties on notice of the time, place, and other details of the conference. The Commission Staff will then convene a technical conference by telephone to discuss the procedural issues raised by E&Y's motion to the extent these issues pertain to the auditing process. If the Commission determines any of the issues raised by E&Y to be of a more substantive nature, the Commission will issue a notice inviting comment by all parties, after which the Commission will issue a formal order in the proceeding.

#### The Commission orders:

(A) The CAISO's compliance filing is hereby conditionally accepted for filing, subject to modifications directed in the body of this order.

(B) The CAISO's proposed FCA Template, as revised on October 15, 2004, is hereby conditionally accepted for filing, subject to modifications directed in the body of this order.

(C) Parties are hereby directed to work together to develop appropriate templates for the submission of FCA claims.

(D) Indicated Generators' motion to reject the CAISO's proposed FCA Template is hereby granted in part and denied in part.

(E) The deadline for the submission of FCA claims is hereby extended to 90 days from the date of issuance of this order, as requested.

(F) The deadline for the resubmission of FCA claims reflecting the resolved disputes regarding the content of the fuel cost data and calculations is set 30 days after the original submission of FCA claims.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Magalie R. Salas,  
Secretary.