

UNITED STATES OF AMERICA 94 FERC ¶ 61,265
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

California Independent System Operator
Corporation

Docket No. ER01-991-000

ORDER ACCEPTING PROPOSED TARIFF AMENDMENT

(Issued March 14, 2001)

In this order, we accept proposed Amendment No. 37 to the California Independent System Operator Corporation (ISO) Tariff for filing to become effective January 18, 2001. The proposed amendment modifies the ISO Tariff to exempt owners of Reliability Must-Run (RMR) Units from the requirement that they bid RMR Contract Energy into the California Power Exchange Corporation (PX) Day-Ahead Market in certain situations. The exemption would also apply if the PX market is no longer available.¹

Background

The ISO Tariff provides that the ISO will notify Scheduling Coordinators of its energy requirements from specific RMR Units prior to the close of the PX Day-Ahead Market. RMR Owners may elect to receive payment for energy delivered according to an RMR dispatch notice either from the PX market or through the RMR contract. RMR Owners choosing to be paid under the terms of the RMR Contract (rather than at market prices) must bid the RMR energy requirements into the PX Day-Ahead Market at zero cost. Under the ISO Tariff, an RMR owner that fails to bid the RMR energy as required is not paid.

The ISO explains that the instant filing is necessitated by events in the California electricity markets. For example, credit-rating agencies have downgraded the rating of one RMR Owner, Pacific Gas & Electric Company (PG&E). As a result of this

¹On January 30, 2001, shortly after the instant filing, the PX notified its market participants that its Day-Ahead and Day-Of Markets would be suspended as of the end of January 2001.

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downgrade, and under the terms of the PX Tariff , PG&E is precluded from bidding into the PX. Consequently, the ISO Tariff prohibits payment to that RMR Owner for failing to comply with the bidding and scheduling requirements. Amendment No. 37 provides that such an RMR Owner would be exempt from the requirement to bid RMR energy into the PX Day-Ahead Market if precluded by law, regulation, or the terms of the PX Tariff such as the credit-worthiness requirement. The exemption would also apply if the PX market is no longer available. The ISO requests waiver of the Commission's 60-day prior notice requirement to allow the amendment to become effective on January 18, 2001.

Finally, the ISO remarks that the Commission's December 15, 2000 order² (December 15 Order) has directed the termination of the mandatory PX Day-Ahead Market, after which no RMR Owner would be able to comply with the requirement to bid in that market which would in turn call for revisions to all RMR contracts to modify the RMR procedures.³

Notice, Interventions, and Responsive Pleadings

Notice of the ISO's filing was published in the Federal Register, 66 Fed. Reg. 8215 (2001), with comments, protests, and interventions due on or before February 8, 2001. The California Department of Water Resources, The California Electricity Oversight Board, Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC, Sacramento Municipal Utility District, Southern California Edison Company, and Turlock Irrigation District filed timely motions to intervene. The Public Utilities Commission of the State of California (California Commission) filed a notice of intervention. Northern California Power Agency (NCPA) filed a motion to intervene and request for summary ruling. Mirant California, LLC (Mirant) filed a motion to intervene and comment. Williams Energy Marketing & Trading Company (Williams) filed a motion to intervene and motion for prompt termination. Dynegy Power Marketing, Inc., Cabrillo Power I LLC and Cabrillo Power II LLC, (jointly Dynegy) filed a motion to intervene out-of-time, protest and motion to reject.

NCPA states that its concern with the instant filing is not so much for what it does, which is to correct a problem created by PG&E's inability to use the PX because of its credit problems, as for what it does not do, which is that it fails to correct the inability of all other RMR Owners to use the PX because the PX no longer exists. In a sense, events have rapidly overtaken this filing. Accordingly, NCPA requests that the Commission order the ISO to propose modifications to all the RMR contracts.

²San Diego Gas & Electric Company, et al., 93 FERC ¶ 61,294 (2000), reh'g pending.

³Application at 2-3.

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Mirant requests that the Commission include in its order language stating that the Commission approves the filing only because there is "no advantage or substantive disparate treatment for any party." Mirant asserts that this language will prevent the ISO from favoring a class of market participants in future actions. Mirant also notes that because the PX markets are no longer functioning, the predispatch protocols of the ISO Tariff require modification.

Similarly, Williams requests that the Commission terminate the predispatch procedure, or alternatively, revisit the predispatch issue on a comprehensive basis, in light of changed circumstances. Williams raises a number of related issues including the lack of a meaningful stakeholder process prior to the instant filing.

Dynegy urges the Commission to reject the unilateral filing by the ISO and direct the parties to negotiate, through a stakeholder process, a comprehensive revision to RMR Contracts in recognition of the suspension of the PX spot markets and as provided for in the Stipulation and Settlement approved in Docket Nos. ER98-495-000, *et al.*⁴ Finally, on February 23, 2001, the ISO filed an answer in which it explained that it is examining the issue of permanent reform of the RMR contracts in the Congestion Management Reform process.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the California Commission's notice of intervention and the timely, unopposed motions to intervene of the movants listed above serve to make them parties to this proceeding. We find good cause to grant Dynegy's motion to intervene out-of-time, given the early stage of the proceeding, its interest in the proceeding and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits the filing of an answer to a protest unless otherwise permitted by the decisional authority.⁵ We find the ISO's February 23, 2001 answer to the motions to intervene to be helpful in the development of the record in this proceeding, and accordingly we accept it.

Given the suspension of the PX spot markets, effective January 31, 2001, we find that there is a need to comprehensively change the RMR protocols. The ISO also recognizes that additional changes are needed to accommodate the absence of the PX

⁴California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999).

⁵18 C.F.R. § 385.213(a)(2) (2000).

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markets as a vehicle for scheduling RMR Contract Energy. Accordingly, the ISO is working with stakeholders to develop additional revisions of the RMR procedures. However, this ongoing effort to develop further changes to RMR procedures does not justify rejection of the revisions in Amendment No. 37. Since Amendment No. 37 specifically addresses the PG&E default situation which precludes the utility from bidding into the PX, there remains a need for its provisions. In addition, no party objected to the filing as it applies to this narrow situation. Accordingly, we will accept Amendment No. 37, and permit it to become effective on January 18, 2001, as requested.⁶

Several of the comments raise broader issues relating to modifications of the RMR contracts. However, these comments are beyond the scope of this proceeding. Many of these comments relating to RMR contract modifications were influenced by events involving the PX that occurred after the filing. Since these recent events involving the PX clearly demonstrate that there is a need for further tariff modifications, we direct the ISO and interested stakeholders to work to negotiate a comprehensive revision to RMR Contracts in recognition of the suspension of the PX spot markets.

With respect to Williams' request that the Commission promptly terminate the ISO's predispatch authority, or in the alternative, revisit the predispatch issue in light of changed circumstances, we find this to be outside the scope of this proceeding. We are considering here only the disposition of the ISO's proposed Tariff Amendment No. 37. Finally, since Amendment No. 37 does not prejudice any RMR owner or constitute any undue discrimination because all RMR Owners unable to bid into the PX markets are treated the same, we find that Mirant's proposed language is unnecessary.

⁶See Central Hudson Gas & Electric Corporation, 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

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The Commission orders:

(A) The proposed RMR Amendment No. 37 is hereby accepted to become effective January 18, 2001 as discussed in the body of this order.

(B) The ISO's request for a waiver of the Commission's 60-day prior notice requirement is hereby granted.

(C) The ISO and interested stakeholders are directed to develop revisions to RMR contracts to recognize the suspension of the PX spot markets.

(D) Consistent with our prior orders, we hereby direct the ISO to promptly post its revised tariff sheets, as designated, on the Western Energy Network.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.