

97 FERC - 61, 290
 UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company,
 Complainant,

v. Docket Nos. EL00-95-
 048
 and EL00-95-049

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

ORDER DENYING REHEARING AND DENYING MOTION
 TO SUPPLEMENT FILING

(Issued December 19, 2001)

In this order, we deny the requests of Williams Energy Services Corporation (Williams) and Reliant Energy Services, Inc. (Reliant) for rehearing of the Commission's September 7, 2001 order rejecting cost justifications submitted by Williams and Reliant for wholesale sales in the California Independent System Operator Corporation's (ISO) and Western Systems Coordinating Council markets in excess of the proxy market clearing price

1

(mitigated price) in June 2001. We also deny Reliant's motion to supplement its cost justification filing for June transactions. Further, we deny the requests of Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC (Dynegy), Williams and Reliant for rehearing of the Commission's October 5, 2001 order rejecting cost justification filings submitted by Dynegy,

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Williams and Reliant.

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San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 96 FERC - 61,254, clarified, 97 FERC - 61,061 (2001) (September 7 Order).

2

San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California
 (continued...)

Docket Nos. EL00-95-048 and EL00-95-049

-2-

I. Background

A. The September 7 Order and Pleadings

The September 7 Order rejected Williams's cost justifications for the period June 20 - June 30, 2001 as untimely and unsupported, rejected Reliant's timely filed cost justifications as unsupported, and ordered both companies to make

3

refunds. With respect to timeliness, the September 7 Order found that cost justifications for June were due by July 9, 2001, but that Williams's cost justifications were not filed until July 10, and were thus untimely under the procedures established by

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the Commission's April 26, 2001 order in this proceeding. With

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Independent System Operator Corporation and the California Power Exchange, 97 FERC - 61,012 (2001) (October 5 Order).

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96 FERC at 62,001-02. All spot market transactions that occurred from June 1 through June 20, 2001, including all non-reserve deficiency hours during that period, are subject to refund, and refunds for those hours will be determined in the evidentiary hearing before Administrative Law Judge Bruce L. Birchman pursuant to the Commission's July 25, 2001 order in this proceeding. See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 96 FERC - 61,120 (2001) at 61,516-17, reh'g pending on some issues (July 25 Order).

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See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 95 FERC - 61,115 (2001) (April 26 Order), order on reh'g, 95 FERC - 61,418 (2001) (June 19 Order), reh'g pending on some issues. Pursuant to the April 26 Order, cost justifications must be filed within 7 days of the end of the month. The September 7 Order found that, because the seventh day after the end of June fell on a weekend, cost justifications for June were due on or before the next business day, which was July 9, 2001. As noted above, Williams did not submit its cost justifications until July 10, 2001.

In the June 19 Order, the Commission modified the April 26 price mitigation plan. See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 95 FERC - 61,418 (2001), reh'g pending on some issues (June 19 Order). An Order on Rehearing resolving

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Docket Nos. EL00-95-048 and EL00-95-049

-3-

respect to cost support, the September 7 Order further found that Williams had not provided any actual cost support for its transactions beyond restating its general objections to the Commission's pricing methodology. It also determined that Reliant had not supported costs above the mitigated price, but merely reflected its attribution of gas transportation and fuel costs to the specific transactions. In particular, Reliant did not identify any significant change in the natural gas markets, and did not document its entire gas portfolio or the allocation

5

among all of its resources during the relevant time. Therefore, the September 7 Order determined that Williams and Reliant must refund amounts in excess of the mitigated price.

On October 9, 2001, Williams filed a request for rehearing, and Reliant filed a request for clarification and rehearing. On October 9, 2001, Reliant also filed a motion for leave to

6

supplement its cost justifications. On October 23, 2001, Southern California Edison Company (SoCal Edison) filed an answer opposing Reliant's motion for leave to supplement its cost justifications.

B. The October 5 Order and Pleadings

The October 5 Order rejected Dynegy's cost justifications for the month of July 2001 as untimely and unsupported, rejected Williams's and Reliant's timely filed cost justifications as 7 unsupported, and ordered the three companies to make refunds. With respect to timeliness, the October 5 Order found that cost justification filings were due by August 7, 2001, but that Dynegy's cost justifications were not filed until August 9 and were thus untimely. The October 5 Order also denied Dynegy's request for waiver of the deadlines for filing its cost justifications. With respect to cost support, the October 5 Order further found that Dynegy did not support in detail its actual costs for its transactions. The October 5 Order further found that Williams had not provided any actual cost support for its transactions beyond restating its general objections to the Commission's pricing methodology. It also determined that Reliant had not supported costs above the mitigated price, but merely reflected its attribution of gas transportation and fuel

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a number of issues in the June 19 Order and July 25 Order is being issued contemporaneously with the issuance of this order.

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96 FERC at 62,002.

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Reliant requests confidential treatment for its supplement pursuant to 18 C.F.R. 388.112 (2001).

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97 FERC at 61,053-54.

Docket Nos. EL00-95-048 and EL00-95-049

-4-

costs to the specific transactions, which was not consistent with the requirements of the June 19 Order. In particular, Reliant did not identify any significant change in the natural gas markets, and did not document its entire gas portfolio or the 8 allocation among all of its resources during the relevant time. Therefore, the October 5 Order determined that Dynegy, Williams and Reliant must refund amounts in excess of the mitigated price.

On November 2, 2001, Williams filed a request for rehearing of the October 5 Order. On November 5, 2001, Dynegy and Reliant filed requests for rehearing and clarification of the October 5 Order.

II. Discussion

A. Williams's Requests for Rehearing of the September 7 Order and the October 5 Order

Williams requests that the Commission accept its filings out-of-time. Williams argues that it worked diligently to understand the monthly reporting requirement established for cost justifications, and it states that it did timely serve its report upon the ISO on July 9, as required by the April 26 Order. It further contends that its delay in submitting its cost justifications did not result in any appreciable prejudice to the Commission or any other party to these proceedings. With respect to the Commission's finding that Williams failed to justify its prices above the mitigated price, Williams argues that it believes that it complied with the requirements of the April 26 and June 19 Orders. It further argues that the September 7 Order did not explain why Williams's data was deficient and that the September 7 Order inaccurately described Williams's filing as having provided no data whatsoever in support of its transactions. Williams also renews and incorporates by reference objections to the Commission's refund methodology that it raised in requests for rehearing of the April 26 and June 19 Orders.

Commission Response

When the September 7 Order stated that Williams had not provided any actual support for its transactions, we were referring to the fact that each entry in Williams's cost justification listed only a transaction and one cost figure without any breakdown of components of those costs. Having

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97 FERC at 61,053.

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In its request for rehearing of the October 5 Order, Williams reiterates arguments from its request for rehearing of the September 7 Order.

Docket Nos. EL00-95-048 and EL00-95-049

-5-

provided no cost breakdown, Williams failed to support its claim that its costs satisfied the conditions of the June 19 Order,

10

which were quoted in the September 7 Order. Accordingly, we will deny Williams's request for rehearing.

B. Reliant's Request for Rehearing and Clarification

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of the September 7 Order and the October 5 Order

Reliant argues that the Commission's previous orders requiring cost justification filings failed to give prior notice to sellers as to what data should be submitted and on what basis the Commission will make determinations of sufficiency and that the September 7 Order is the first guidance given by the Commission as to its expectations. Reliant further argues that the September 7 Order provides much-needed clarification as to sellers' obligations in making their cost justification filings and that sellers should be given an opportunity to meet those standards. Reliant claims that it did not know, prior to the September 7 Order, what was required to identify any significant change in the natural gas markets or document its entire gas portfolio or the allocation among all of its resources during the relevant time. Reliant argues that the rejection of its cost justifications without an opportunity for it to supplement its filing or correct any misunderstanding of the Commission's requirements is unfair and is contrary to due process. Further, Reliant argues that newly-compiled data shows that prices above the mitigated price were justified on a portfolio-wide basis and in light of the changing conditions in the California natural gas market. It contends that this new analysis was not available at

12

the time that it filed its cost justifications for June.

Reliant also requests that the Commission provide clarification as to its intended application of the cost justification standards. It contends that the Commission's statements with regard to portfolio-wide justification for gas costs remain ambiguous as to how the portfolio should be defined and allocated and exactly what documentation is required. In addition, Reliant contends that the Commission has not indicated what circumstances may qualify as a significant change in natural gas market conditions. Further, Reliant renews its objections to the Commission's mitigation plan that it raised on rehearing

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96 FERC at 62,001-02 (quoting June 19 Order, 95 FERC at 62,564).

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In its request for rehearing and clarification of the October 5 Order, Reliant incorporates by reference its request for rehearing and clarification of the September 7 Order.

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Reliant requests confidential treatment of its proposed supplemental analysis (see 18 C.F.R. 388.112 (2001)).

Docket Nos. EL00-95-048 and EL00-95-049

-6-

of the April 26 and June 19 Orders. Finally, Reliant requests clarification that any refunds that may be ordered pursuant to the September 7 Order must be offset against amounts owed or unpaid in the ISO market.

Commission Response

As the September 6 and October 5 Orders noted, Reliant's cost justifications failed to link its gas purchases to specific units' usage of gas. We reject Reliant's argument that we did not notify sellers of the requirements for cost justifications prior to the September 7 and October 5 Orders. On the contrary, the September 7 Order quoted the requirements directly from the June 19 Order, and the October 5 Order cited the June 19 Order. Further, the place for Reliant to argue that the mitigation requirements should have more prescriptive was on rehearing of the June 19 Order, and it did not do so.

Finally, we note that the July 25 Order explained that
13
amounts to be refunded may be offset against amounts owed.

C. Dynegey's Request for Rehearing of the October 5 Order

Dynegey argues that rigid enforcement of the seven-day deadline for filing cost justifications is unjustified. It contends that its software problems delayed its filing and that the filing was only two days out of time. Further, Dynegey reiterates its argument from its request for rehearing of the June 19 Order that parties are unable to obtain the data necessary to file completed cost justifications until well after the Commission's seven-day period has lapsed. Specifically, Dynegey asserts that the ISO sends out preliminary settlement statements 38 days after the trade date and that parties will not have received them by the date that justifications are due. It also asserts that it usually receives natural gas cost information within five days of the end of the month, but doubts that it can provide the breakdown, on a portfolio basis, as required by the Commission in two days.

With respect to the October 5 Order's denials of its requests for waiver of the filing deadline for filing its cost
14

justifications, Dynegey reiterates its claim that it did not earlier request waiver of the filing deadline, because, when it called Commission staff on July 9, 2001 (the due date for submitting June cost justifications) to inform staff that it was having software problems, staff informed it that the Commission

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96 FERC at 61,519.

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See 97 FERC at 61,053 n.10.

would not waive the seven-day filing requirement. Dynegy claims that, based on that conversation with staff, there seemed to be little reason to file a contemporaneous request for waiver. It further contends that any delay in filing the cost justifications was consistent with some of the difficulties raised in its request for rehearing of the June 19 Order.

Commission Response

The requirement to file cost justifications within seven days after the end of the month was established in the April 26 Order. Dynegy's argument concerning that issue is beyond the scope of this proceeding, which concerns only the cost

15

justifications themselves. Further, in the Order on Rehearing, the Commission denied Dynegy's request for rehearing of the June 19 Order on that issue, determining that Dynegy failed to timely raise the issue on rehearing of the April 26 Order, in which the seven-day filing requirement was established.

Moreover, we reject Dynegy's claim that, when cost justifications were due, it lacked the information required to make the filings. Its claim that it does not receive preliminary settlement statements until 38 days after the end of the month is not persuasive. Those statements would not provide any additional information to sellers that is not already available through their own dispatch logs. Sellers know how much power they sold, they know their own bid information, and the clearing prices are posted on the ISO's web site in advance of the preliminary settlement statements. We also find Dynegy's argument that its true cost of gas is not known until invoices are received after the end of a trading month unpersuasive. Under this logic, a generator would be blindly making bids to generate without the ability to quantify its cost of fuel. Sellers procure their gas portfolio under a combination of forward contracts and spot market purchases. In either event, the cost of gas is known in advance of the final invoice.

Accordingly, we will deny Dynegy's request for rehearing.

D. Reliant's Motion to Supplement its Cost Justification Filing

15

Further, we fail to see how Dynegy could conclude that there was little reason for it to file a request for waiver of the due date to file its June cost justifications contemporaneously with its conversation with staff, yet file such a waiver request one month late. Dynegy failed to request waiver regarding its May and June justifications in a timely manner. Further, it offered no explanation for filing the July justifications late. Accordingly, we affirm our determination in the October 5 Order.

Reliant contends that its supplement shows that the majority of its transactions above the mitigated price are supported by the actual gas costs to Reliant to produce the associated energy, as assessed on a portfolio-wide average basis and in light of significant changes in the California natural gas market. It contends that its data shows that, as a result of significant downward trends in natural gas prices in California, its "portfolio-wide average gas costs were as much as three times higher than the correlating portfolio gas prices allocated by dispatch sequence (i.e., spot gas for spot energy), and are significantly higher than the gas index monthly proxy price employed by the [ISO] for the relevant time period." Reliant contends, as it also does on rehearing, that it did not realize at the time of its July 9 filing what it was required to show and that it should be afforded an opportunity to attempt to comply with the standards discussed in the September 7 Order. Reliant also argues that allowing its supplement will not cause undue prejudice or delay.

SoCal Edison argues that the June 19 Order spelled out the information that the Commission would consider in evaluating cost justifications. It argues that Reliant failed to provide the required information and that Reliant knew or should have known what information it would have to provide in order to justify rates above the mitigated price. So Cal Edison also disputes Reliant's supplemental analysis, arguing that it is illogical that a drop in the cost of Reliant's inputs justifies an increase in Reliant's prices. It also contends that there was no significant change in the natural gas markets between June 20 and June 30, the relevant period covered by the June 19 mitigation plan. SoCal Edison also contends that Reliant's argument in its Supplement that its long-term gas contracts are higher than the

16

spot price of gas is inconsistent with the thrust of its testimony in the settlement proceeding before the Chief Administrative Law Judge that it does not purchase gas under long-term contracts to make spot sales of electricity. Rather, SoCal Edison contends that Reliant's testimony is that its spot sales to the ISO are made with gas that it purchases in the spot market. Further, SoCal Edison argues that if spot gas prices have dropped precipitously, then, absent market power, Reliant's bids for spot electricity also should have dropped precipitously. Finally, if the Commission does not reject Reliant's supplement, SoCal Edison argues that the Commission should set the factual issues related to Reliant's rates for hearing and afford SoCal Edison the opportunity to see the rates that Reliant seeks to charge. SoCal Edison states that commercially sensitive information may be made subject to a protective order.

Commission Response

16

See Reliant's Motion to Supplement at 8-9.

Docket Nos. EL00-95-048 and EL00-95-049

-9-

We reject Reliant's motion to supplement its July 9 filing. Reliant filed its motion three months after its original filing

and one month after the issuance of the September 7 Order. Further, Reliant now proffers an alternative theory for justifying its costs only after the September 7 Order rejected its original theory. As noted by SoCal Edison, Reliant's proposed supplement reattributes gas prices in a manner inconsistent with its July 9 filing and prior representations. During the period at issue there was no significant change in natural gas market conditions. As opposed to its original assignment of gas purchases in the spot market, Reliant's revised submittal imputes a simple weighted average of gas purchases to the transactions at issue. As we have previously stated, if natural gas markets change significantly and are documented, a seller must document and support its entire gas purchase portfolio and allocation among all generating units during the relevant time. Reliant made no attempt to meet this requirement.

The Commission orders:

(A) Williams's and Reliant's requests for rehearing of the September 7 Order are hereby denied.

(B) Dynegy's, Williams's and Reliant's requests for rehearing of the October 5 Order are hereby denied.

(C) Reliant's motion to supplement its cost justifications is hereby denied.

By the Commission.

(S E A L)

Linwood A.
Watson, Jr.,

Acting
Secretary.