

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER01-889-002

California Power Exchange Corporation Docket No. ER01-902-002

San Diego Gas & Electric Company,
Complainant,

v.

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

Respondents, et al.

Docket No. EL00-95-021
Docket No. EL00-98-020
Docket No. EL00-104-004
Docket No. EL00-107-005
Docket No. EL01-1-005

ORDER GRANTING MOTION

(Issued April 6, 2001)

In this order, we grant a motion filed by a group of California generators¹ to require the California Independent System Operator Corporation (ISO) to comply with the Commission's order on creditworthiness issued February 14, 2001.²

¹This group includes Dynegy Power Marketing, Inc.; Mirant Delta, LLC and Mirant Potrero, LLC; Reliant Energy Power Generation, Inc.; El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC; Duke Energy North America and Duke Energy Trading and Marketing LLC; and Williams Energy Marketing and Trading Company (collectively California Generators).

² California Independent System Operator Corporation, et al., 94 FERC ¶ 61,132 (2001), reh'g pending (February 14 Order).

I. Background

In response to imminent credit downgrades for Southern California Edison Company and Pacific Gas and Electric Company (PG&E), the ISO filed proposed Amendment No. 36 to relax its tariff creditworthiness requirements for the California investor-owned utility distribution companies (UDCs). The February 14 Order, inter alia, accepted Amendment No. 36 in part, subject to modification.³

Specifically, the Commission held that the ISO could not relax the creditworthiness provisions of the ISO tariff in a way that "entails an inappropriate unilateral shifting of unacceptable financial risks" to suppliers that sell into the California market.⁴ The Commission authorized the ISO to waive the creditworthiness provisions of its tariff as applied to UDCs accessing their own transmission facilities to deliver their resources to their loads, but specifically held that the ISO may not relax those creditworthiness provisions where third-party suppliers are affected. For transactions involving third-party suppliers, the Commission required a creditworthy counterparty, such as the California Department of Water Resources (DWR), noting that the DWR had served in this capacity with the backing of state appropriations since January 19, 2001. We found in the February 14 Order that the credit crisis in California is restricting supplies due to the risk of non-payment, which, in turn, places upward pressure on prices. In addition, the February 14 Order was intended to increase the supply in the energy imbalance market and reduce the need for emergency dispatch instructions.

II. The California Generators' Motion

On February 22, 2001, the California Generators filed an emergency motion to compel the ISO to comply with the February 14 Order. The California Generators maintain that the ISO has failed to take any action to comply with the February 14 Order. The California Generators also state that the ISO has argued in various federal court proceedings that the February 14 Order does not apply to "large portions of transactions involving third party suppliers, and specifically excludes all real-time purchases" and

³On March 1, 2001, the ISO submitted a compliance filing revising the tariff creditworthiness provisions. We will address this filing, as well as requests for clarification or rehearing, in a separate order.

⁴February 14 Order at 61,510.

"did not require the ISO to make any changes in its practices of billing power acquired through emergency dispatch instructions to the California utilities." ⁵ The California Generators state that the ISO's decision to ignore the February 14 Order further undermines the fragile California market. The California Generators request that the Commission act to enforce the February 14 Order by again directing the ISO to provide a creditworthy counterparty for all transactions with third-party suppliers.

III. Responses and Positions of the Parties

The Northern California Power Agency (NCPA), the California Electricity Oversight Board (Board), the Public Utilities Commission of the State of California (California Commission), PPL EnergyPlus, LLC and PPL Montana, LLC (PPL Parties), and the ISO filed answers to the California Generators' motion on or before March 9, 2001. ⁶

The ISO maintains that the February 14 Order addressed only the ISO's proposal to continue accepting schedules on behalf of the UDCs, and leaves unresolved the creditworthiness requirements of its real-time imbalance market. Further the ISO states that the February 14 Order was not intended to affect the explicit obligation of suppliers to respond without regard to the creditworthiness of purchasers when the ISO issues an emergency dispatch order. The ISO argues that the California Generators are magnifying out of proportion their risk of nonpayment for real-time energy and indicates that it has recently been able to reduce the frequency of real-time emergency dispatch orders. Finally, the ISO states that it is essential for the Commission to appreciate that the California Generators' request is really an attempt to increase their bargaining leverage in negotiating power supply contracts with the State of California.

⁵Motion at p. 2 and 4.

⁶PG&E also filed an answer in which it requests Commission review of certain issues in light of a recent agreement between the ISO and DWR. We will address PG&E's requests in a separate order.

The Board and the California Commission filed answers supporting the position elaborated by the ISO in its answer. The answers filed by NCPA and PPL Parties support the California Generators' motion.

IV. Discussion

A. Procedural Matters

We will accept the answers of NCPA, the Board, the California Commission, PPL Parties, and the ISO as provided in Rule 213(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(d)(1) (2000).

B. Creditworthiness Standards for Scheduled and Unscheduled Transactions

We will grant the California Generators' motion. The ISO has misinterpreted our order. Contrary to the ISO's interpretation, the February 14 Order did not exempt any transactions from the requirement to have in place a creditworthy buyer. Instead our order provided third-party suppliers assurances of a creditworthy buyer for all energy delivered to the loads through the ISO.⁷

The ISO's interpretation enables continuation of the over-reliance on the real-time market by increasing use of emergency dispatch instructions to serve load, contrary to the Commission's goal of increasing the amount of load that is supplied by schedules in the forward markets. We take administrative notice of the ISO's statement in Docket No. EL01-34-000, that the current real time market supplies approximately 15 percent of the load. This is far higher than our stated goal of limiting the amount of load supplied in the real-time market to no more than 5 percent.⁸

⁷To the extent the February 14 Order references only scheduled transactions, the Commission did not intend to exempt any third-party transactions from requiring a creditworthy buyer. The ISO's creditworthiness requirements apply whether transactions are scheduled or not, and we created no exception in our February 14 Order.

⁸See San Diego Gas & Electric Company, et al., 93 FERC ¶ 61,294 at 62,002 (2000), reh'g pending.

The Commission orders:

The California Generators' motion is hereby granted and the ISO is ordered to comply with the February 14 Order as discussed in the body of this order.

By the Commission. Commissioner Massey concurred with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

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MASSEY, Commissioner, concurring:

I am reluctantly reaching the conclusion that the current ISO creditworthiness standards must apply to all transactions, scheduled as well as unscheduled.

I would agree that, generally, creditworthiness standards are a necessary component of a market and should be viewed as sacrosanct. My concern in this case is that a strict application of the ISO's existing creditworthiness standards may prevent the California ISO from performing its fundamental task of keeping the system in balance and thereby maintaining the reliability of the grid. If the ISO is unable to purchase power for the unscheduled load of the largest utilities in California, I worry that the ISO may not be able to do its job. I am voting for today's order, but am troubled by the seemingly irreconcilable conflict between assuring sellers that they will be paid and precluding the ISO from accomplishing its fundamental mission.

The extraordinary events in California were not foreseen when the present creditworthiness rules were written. No one expected that the two largest utilities in California would have their credit ratings slip below investment grade and be facing

bankruptcy. The Commission relied on this point in our recent order addressing the unreasonableness of applying the California PX's chargeback mechanism in such adverse

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and unforeseen market conditions.¹ The same rationale may have some weight in our evaluation of the creditworthiness issue in this case.

For these reasons, I concur with today's order. I am not completely confident that we reach the correct conclusion.

William L. Massey
Commissioner

¹Pacific Gas & Electric Company, et al v. California Power Exchange Corporation, Docket No. EL01-29-000.