

UNITED STATES OF AMERICA 105 FERC ¶ 61,322
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation	Docket No.	ER01-889-014
California Independent System Operator Corporation	Docket No.	ER01-3013-006
San Diego Gas & Electric Company	Docket No.	EL00-95-072

v.

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

ORDER DENYING REHEARING

(Issued December 22, 2003)

1. In this order, we deny rehearing of an order issued November 25, 2002¹ in which we clarified the creditworthiness requirement under the California Independent System Operator Corporation (CAISO) Tariff, rejected compliance filings in part, and denied rehearing of an order issued March 27, 2002.² This order benefits the CAISO's customers by ensuring timely payment to the CAISO's energy suppliers and, thus, preventing future difficulties for the CAISO in obtaining adequate supplies.

¹California Independent System Operator Corporation et al., 101 FERC & 61,241 (2002) (November 25 Order).

²California Independent System Operator Corporation et al., 98 FERC & 61,335 (2002) (March 27 Order).

Background

2. The CAISO Tariff imposes a creditworthiness requirement on utility distribution companies (UDCs), scheduling coordinators, and metered subsystems. Under that requirement, Southern California Edison Company (SoCal Edison), the California Department of Water Resources (DWR) and Pacific Gas and Electric Company (PG&E), among others, must either maintain an approved credit rating or post security in an amount sufficient to cover their outstanding liability for transactions through the CAISO grid.

3. In a February 14, 2001 Order on creditworthiness, the Commission provided third-party suppliers assurances of a creditworthy buyer for all energy delivered to the loads throughout the CAISO.³ Because neither PG&E nor SoCal Edison had sufficient resources to satisfy their load service obligations, the Commission required these companies to obtain a creditworthy party for their net short position, *i.e.*, power that is not self-supplied by the UDCs. On April 13, 2001, the CAISO posted a "Market Notice Re Credit Issues" on its web-site in which it stated that DWR would "assume financial responsibility for all purchases by the CAISO in its ancillary services and imbalance energy markets based on bids or other offers determined to be reasonable."⁴

³California Independent System Operator Corporation, et al., 94 FERC & 61,132 (2001).

⁴In response to an April 6, 2001 FERC order, DWR authorized the CAISO to make the following statement:

To the extent (and only to the extent) that a purchase is not otherwise paid by any party or payable by another party meeting the credit standards set forth in the [CA]ISO Tariff (another "Qualified Party"), DWR will assume financial responsibility for all purchases by the [CA]ISO in its ancillary services and imbalance energy markets based on bids or other offers determined to be reasonable. Such determination of reasonableness will be made by DWR on a case by case basis and communicated to the [CA]ISO. All bids into the ancillary services and imbalance energy markets will be deemed to be contingent on the acceptance of financial responsibility by DWR, to the extent not paid or payable by another Qualified Party. . . . In addition to the foregoing, DWR will assume financial responsibility for all purchases resulting from the issuance by the [CA]ISO of emergency dispatch instructions, to the extent not paid or payable by another Qualified

4. In the March 27 Order, the Commission, among other actions, accepted a CAISO request that it be allowed to deviate from its tariff by allowing it to employ an "out of sequence" settlement calendar to pay past due amounts, rather than to pay these debts in the order in which they were incurred. The CAISO stated that this deviation from its tariff was necessary to ensure that DWR funds are not applied to debts that accrued prior to enactment of legislation authorizing DWR to cover the non-creditworthy UDCs' net short positions.⁵ The CAISO contended that Commission approval of this deviation from the CAISO Tariff would facilitate its settlements and billing process.⁶

5. In the November 25 Order, the Commission, among other actions, responded to two motions: (1) a Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC (jointly, Dynegy) motion requesting emergency action to ensure that Dynegy is paid \$29.6 million it alleges that it was owed for power it sold to DWR between January 17-31, 2001; and (2) a Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (jointly, Reliant) motion requesting that the Commission require the CAISO to "reapply" the payment it received from DWR for the period January 17-31, 2001 so that third party suppliers who provided power during that period are paid in full.

6. In the November 25 Order, we found that the CAISO misapplied the payment it received from DWR for the period January 17-31, 2001 when it used this payment to pay the outstanding debts for the entire month of January 2001. We stated that subsequent to DWR's agreement to provide credit support for the non-creditworthy UDCs' transactions as of January 17, 2001, the CAISO represented to the Commission in a filing that it intended to limit payments from these DWR funds to transactions that occurred after January 17, 2001. Specifically, the CAISO, in its November 21, 2001 Compliance Filing, proposed a "modification to the billing and settlement procedures set forth in the [CA]ISO Tariff to ensure that CDWR funds are not applied to debts accrued prior to enactment of legislation authorizing CDWR to cover the IOUs' net short positions."⁷ (emphasis added) In fact, the Commission relied on this representation in the March 27 Order when we allowed the CAISO to implement an "out of sequence" settlement

Party.

⁵See March 27 Order at 62,432.

⁶See Id.

⁷See CAISO November 21, 2001 Compliance Filing at 13.

process.⁸

7. Despite the CAISO's clear language in its November 21, 2001 Compliance Filing that it intended to ensure that DWR funds would not be applied to debts incurred prior to January 17, 2001, the CAISO asserted that "[n]owhere has the [CA]ISO ever contemplated a split within a Trade Month for disbursement of funds to [CA]ISO Creditors." In the November 25 Order, we rejected this CAISO assertion because we found it to be inconsistent with the CAISO's November 21, 2001 Compliance Filing. Finally, to the extent that the CAISO was concerned that its tariff does not allow a split month disbursement, we noted in the November 25 Order that the CAISO could have requested clarification rather than disburse DWR funds to the wrong parties. For all of the above reasons, we directed the CAISO to reallocate its pro rata disbursements for the entire month of January 2001, and disburse funds from DWR allocated for January 2001 to those that supplied power for the period January 17-31, 2001.

8. On December 19, 2002, Modesto Irrigation District (Modesto) filed a request for rehearing of the November 25 Order. Modesto states that the Commission erred in finding that the CAISO misapplied the payment it received from DWR for the period January 17-31, when the CAISO used this payment to pay the outstanding debts for the entire month of January 2001. Modesto contends that the Commission should not have directed the CAISO to reallocate its pro rata disbursements for the entire month of January 2001, and disburse funds obtained from DWR allocated for January 2001 to those that supplied power for the period January 17-31, 2001. Specifically, Modesto makes the following arguments and request: (1) if the Commission stands by its ruling in the November 25 Order, then it should create a mechanism by which market participants are assured to recover the amounts owed to them from the CAISO for the period January 1-16, 2001; (2) to reallocate January 2001 payments would prejudice market participants that have an equal claim to amounts that are owed for transactions through the CAISO markets; (3) the Commission should not have permitted the CAISO to deviate from its tariff when it allowed the CAISO to pay market participants out-of-sequence, rather than to pay these debts in the order in which they were incurred; and (4) the Commission's direction that the CAISO reallocate January 2001 payments "undermines certainty for market participants."

Discussion

9. As an initial matter, we note that Modesto's argument that the Commission should not have permitted the CAISO to deviate from its tariff when it allowed the CAISO to pay

⁸See March 27 Order at 62,432.

market participants out-of-sequence, rather than to pay these debts in the order in which they were incurred is an untimely request for rehearing of the March 27 Order and we must reject it. The Commission considered and addressed this identical Modesto argument in the March 27 Order. As the courts have repeatedly recognized, the time period within which a party may file an application for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the FPA, and the Commission has no discretion to extend that deadline.⁹ Similarly, the Commission has long held that it lacks the authority to consider requests for rehearing filed more than 30 days after issuance of a Commission order.¹⁰

10. Furthermore, we find no merit to Modesto's argument that the Commission's November 25 Order directing the CAISO to reallocate January 2001 payments would "undermine certainty" and prejudice market participants. As discussed above, DWR assumed financial responsibility for all of the CAISO purchases in the CAISO's ancillary services and imbalance energy markets for a limited period of time, with the effective date of this financial responsibility beginning upon the enactment of legislation authorizing DWR to cover the IOU's net short positions. Given the fact that DWR's financial responsibility only began after California enacted legislation on January 17, 2001, the Commission found that the CAISO should not have allocated funds it received from DWR to pay debts for which DWR had not assumed any financial responsibility. We find that if we were to hold otherwise, as Modesto suggests, this would create more uncertainty and prejudice for market participants who rely on the CAISO to perform its fiduciary responsibility to ensure that DWR backed funds will be properly paid to parties who transacted business during the DWR backed time period. Finally, we find no need at

⁹See *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) ("The 30-day time requirement of [the FPA] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing."); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-78, 979 (1st Cir. 1978) (same; describing identical rehearing provision of Natural Gas Act as "a tightly structured and formal provision. Neither the Commission nor the courts are given any form of jurisdictional discretion."). See also *Sierra Association for Environment v. FERC*, 791 F.2d 1403, 1406 (9th Cir. 1986).

¹⁰See, e.g., *New England Power Pool*, 89 FERC & 61,022 at 61,076 (2000); *Arkansas Power & Light Co.*, 19 FERC & 61,115 at 61,217-18 (1982), reh'g denied, 20 FERC & 61,013 at 61,034 (1982). See also *Public Service Company of New Hampshire*, 56 FERC & 61,105 at 61,403 (1991); *CMS Midland, Inc.*, 56 FERC & 61,177 at 61,623 (1991).

this time to describe a mechanism by which market participants will recover the amount owed to them from the CAISO for the period January 1-16, 2001. Accordingly, we will reject these Modesto rehearing arguments and request.

The Commission orders:

The Modesto request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.