

102 FERC ¶ 61,285
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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
Docket Nos. EL00-95-071

Investigation of Practices of the California
Independent System Operator and the
California Power Exchange
Docket Nos. EL00-98-060

Public Meeting in San Diego, California
Docket Nos. EL00-107-013

Reliant Energy Power Generation, Inc.,
Dynergy Power Marketing, Inc., and
Southern Energy California, L.L.C.,
Complainants,
v.
California Independent System Operator
Corporation,
Respondent
Docket Nos. EL00-97-007

California Electricity Oversight Board
Complainant,
v.
All Sellers of Energy and Ancillary Services
Into the Energy and Ancillary Services Markets
Operated by the California Independent System
Operator and the California Power Exchange,
Docket Nos. EL00-104-012

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Respondents

California Municipal Utilities Association,
Complainant,

Docket Nos. EL01-1-013

v.

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

Californians for Renewable Energy, Inc. (CARE),
Complainant,

Docket Nos. EL01-2-007

v.

Independent Energy Producers, Inc., and All
Sellers of Energy and Ancillary Services Into
Markets Operated by the California Independent
System Operator and the California Power
Exchange; All Scheduling Coordinators Acting
on Behalf of the Above Sellers; California
Independent System Operator Corporation; and
California Power Exchange Corporation,
Respondents

Investigation of Wholesale Rates of Public
Utility Sellers of Energy and Ancillary
Services in the Western System Coordinating
Council

Docket No. EL01-68-026

ORDER ON COMPLIANCE FILING

(Issued March 13, 2003)

1. In this order, we accept in part and reject in part the California Independent System Operator's (ISO's) December 2, 2002 Compliance Filing (December 2 Compliance Filing) which was submitted in response to an order issued on October 31,

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2002.¹ This acceptance in part and rejection in part reflects the appropriate implementation of our previous findings regarding the California markets and will promote a more efficient operation of the wholesale electricity markets in California to the benefit of all customers.

Background

A. Previous Compliance Filings

2. In a series of orders, the Commission has directed the ISO to refine its tariff provisions related to the Must-Offer requirement, procedures for generators to obtain an exemption from the Must-Offer Obligation, and Minimum Load Cost recovery.² Most recently, the October 31 Order accepted in part and rejected in part a compliance filing submitted by the ISO on June 24, 2002, and directed the ISO to submit a new compliance filing. In response, the ISO submitted the December 2 Compliance Filing.

B. Notice of Filings and Interventions

3. Notice of the December 2 Compliance Filing was published in the Federal Register, 67 Fed. Reg. 77249, with motions to intervene and protests due on or before January 2, 2003. Timely protests were filed by Williams Energy Marketing & Trading Company (Williams); Reliant Energy Power Generation, Inc., and Reliant Energy Services, Inc. (collectively, Reliant); and Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (collectively, Duke Energy).

¹San Diego Gas & Electric Co., et al., 101 FERC ¶ 61,112 (2002) (October 31 Compliance Order).

²See San Diego Gas & Electric Co., et al., 97 FERC ¶ 61,293 (2001) (December 19 Compliance Order); San Diego Gas & Electric Co., et al., 99 FERC ¶ 61,158 (2002) (addressing the ISO's January 25 compliance filing). Additional history regarding related ISO compliance filings is provided in the December 19 Compliance Order, 97 FERC ¶ 61,293 at 62,360-61.

Discussion**A. Treatment of Generators Running at Minimum Load and Dispatched for Instructed Energy**

4. In the October 31 Compliance Order, the Commission directed the ISO to clarify how it will treat generators running at minimum load and dispatched for instructed energy.

5. In its December 2 Compliance Filing, the ISO proposes new Section 5.11.6.1.5 to its tariff, to be effective July 1, 2002, which clarifies that all Must-Offer Generators running at minimum load are required to make available to the ISO Real Time Imbalance Energy Market all available capacity above the minimum generating output level up to the maximum generating output level. The Must-Offer Generator may bid such capacity into the ISO Real Time Imbalance Energy Market, but if this capacity is not bid, the ISO will insert proxy bids for such capacity. If the ISO dispatches the unit, the ISO will pay the generator the Market Clearing Price (MCP) for the Instructed Imbalance Energy dispatched; for energy injected into the grid to maintain minimum load, the ISO proposes to change the compensation from a Minimum Load Cost payment to an Uninstructed Imbalance Energy payment.

6. Williams, Reliant and Duke Energy (collectively, Protesters) argue that the ISO's new proposed Section 5.11.6.1.5 is unjust and unreasonable, and should be rejected. The Protestors argue that the ISO's proposal (1) shifts the risk of cost recovery to the generator rather than assuring cost recovery as required by the Commission; (2) punishes generators running under the Must-Offer requirement by reducing the minimum load payment for their minimum load energy when their bids above minimum load are accepted and dispatched; (3) necessitates changes in bidding behavior so that a seller's Minimum Load Costs can be recovered through bids if dispatched since the ISO's decision to withhold Minimum Load Payments based on an ISO dispatch leaves suppliers with no option but to incorporate these costs into their bids to provide real time imbalance energy; and (4) fails to ensure that a Must-Offer generator will be compensated for its actual costs during each hour when the generator is operating at minimum load status. Lastly, the Protestors state that the ISO's new compensation proposal should be rejected because it would be applied retroactively to past bids, and since generators did not have the opportunity to conform their bids to reflect this rule, retroactive application is unfair and inconsistent with the Commission's prior decisions.

Commission Determination

7. In its October 31 Compliance Order, the Commission instructed the ISO to clarify how it would treat generators that are running at minimum load and dispatched for instructed energy. However, the ISO has not provided any support justifying its proposed payment plan. Additionally, the proposal is inconsistent with our previous orders which provide that the ISO must pay Minimum Load Costs to generators "for each hour that a generator was operating at minimum load status in response to the Must-Offer Obligation."³ Therefore, we reject the ISO's proposal. The ISO should submit revised tariff sheets to reflect that generators operating at minimum load and dispatched for instructed energy will continue to be compensated for their Minimum Load Costs for that energy injected into the grid under minimum load conditions and will be compensated at the instructed energy price for energy dispatched above minimum load amounts.

8. Further, the Commission denies the ISO's request for a July 1, 2002 effective date for this payment plan as set forth in tariff Section 5.11.6.1.5. A "Market Notice" posted on the ISO's website indicates that the ISO has already implemented the proposed tariff provision.⁴ Consistent with our above finding regarding the required payment of minimum load costs, the ISO must make a compliance filing reflecting this finding and must also make additional payments as necessary for the time period that it implemented this change in compensating generators for Minimum Load Costs.

B. Definition of Self-Commitment Period

9. In the October 31 Compliance Order, the Commission repeated its directive that the ISO must pay generators for all hours in which they have operated at minimum load and have not self-committed or received an exemption from the Must-Offer requirement.

10. In its December 2 Compliance Filing, the ISO states that it has complied with the Commission's directive by deleting the offending language in Section 5.11.6 of its tariff.

11. Reliant contends that Section 5.11.6 still contains language contrary to the Commission's instructions. Specifically, it argues that the Commission should reject the

³October 31 Order, 101 FERC ¶ 61,112 at P 4. See also December 19 Compliance Order, 97 FERC ¶ 61,293 at 61,356.

⁴January 24, 2003 Market Notice, titled "Minimum Load Cost Compensation Eligibility Criteria,".

ISO's tariff language which states "Self-Commitment Periods determined from Day Ahead Schedules shall be extended by the ISO as necessary to accommodate generating unit minimum up and down times such that scheduled operation is feasible." Reliant interprets the ISO's language as withholding minimum load costs if a unit has to generate in excess of its minimum load point to ramp up or down to meet bilateral commitments. It argues that under this scenario, the generator will have to either self-schedule this ramping energy or provide it to the ISO as uninstructed energy. According to Reliant, either way, the generator would be ineligible for minimum load costs and, therefore, the tariff language is unnecessary. Reliant contends that the Commission authorized the withholding of minimum load payments only in hours when a generating unit is otherwise scheduled or dispatched by the ISO, and did not give the ISO authority to "extend" this non-payment of minimum load costs to any hours beyond the Self-Commitment Period. Reliant concludes that this tariff language should be rejected so that the ISO correctly implements the Commission's requirement that generators receive compensation for actual costs during all hours when operating under minimum load status.

Commission Determination

12. We will deny Reliant's request that the cited tariff language be rejected. First, we interpret the above-cited tariff language to mean that the ISO will extend the self-commitment period of a generator in a situation where it no longer needs the generating unit to operate at minimum load but operational realities require that the unit remain at minimum load status because of an impending contractual commitment. Specifically, if the ISO required a generating unit to operate at minimum load through midnight of day one but determined that the unit was no longer needed for day two, starting at 12:01 AM but the unit has been committed to a bilateral contract as of 6 AM of day 2 and, further, the unit takes 8 hours to bring on line from shutdown or cold status, then the ISO would extend the self-commitment period from 6 AM back to 12:01 AM. Accordingly, the ISO would not pay minimum load costs for the 6 hours from 12:01AM to 6 AM because the unit is self-committed. Based on this interpretation, we find that the ISO's tariff language is reasonable.

13. However, we note that Section 5.11.6 also states that: "The Waiver Denial Period shall be extended as necessary to accommodate generating unit minimum up and down times." This language appears to require the ISO to pay minimum load costs to the generator for the hours 12:01 AM until 6 AM. Therefore, we direct the ISO, in a compliance filing to be made within thirty days of the date of this order, to explain the operation of these two tariff provisions in the context of their definition of minimum up and minimum down times.

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C. Other Tariff Revisions

14. Our review indicates that the remaining tariff revisions comply with our October 31 Compliance Order and are accepted for filing.

The Commission orders:

(A) The ISO's compliance filing submitted on December 2, 2002 is hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) The ISO is hereby directed to submit a compliance filing, as discussed in the body of this order, within thirty days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.