

UNITED STATES OF AMERICA 105 FERC ¶ 61,196
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company Docket No. EL00-95-082

V.

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

Docket No. EL00-95-082

Investigation of Practices of the California Independent System Operator and the California Power Exchange

Docket No. EL00-98-070

ORDER ON COMPLIANCE FILING

(Issued November 14, 2003)

1. In this order, we accept in part and reject in part the California Independent System Operator Corporation's (ISO's) April 14, 2003 Compliance Filing (April 14 Compliance Filing), which was submitted in response to an order issued on March 13, 2003 (March 13 Order).¹ The 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

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

¹ San Diego Gas & Electric Co., et al., 102 FERC ¶ 61,285 (2003).

exemption from the Must-Offer obligation, and Minimum Load Cost recovery.² Most recently, the March 13 Order accepted in part and rejected in part a compliance filing submitted by the ISO on December 2, 2002, and directed the ISO to submit a new compliance filing. In response, the ISO submitted the April 14 Compliance Filing.

Notice of Filings and Interventions

3. Notice of the April 14 Compliance Filing was published in the Federal Register, 68 Fed. Reg. 22,371 with motions to intervene and protests due on or before May 14, 2003. Timely protests were filed by Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC, and Williams Energy Marketing & Trading Company (collectively “Dynegy and Williams”); Mirant Americas Energy Marketing, LP; Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC (collectively “Mirant”); and Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (collectively “Reliant”).

Discussion

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

4. In the March 13 Compliance Order, the Commission directed the ISO to revise its tariff (and remove proposed language from Section 5.11.6.1.5 of the tariff) 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.³

5. In its April 14 Compliance Filing, the ISO deleted language from Section 5.11.6.1.5 of the tariff. In addition it proposes new language in Section 5.11.6.1 of the tariff, Eligibility for Recovery of Minimum Load Costs by Must-Offer Generators, to be effective July 1, 2002, under which the ISO proposes to apply a tolerance band to a unit’s dispatch operating point as the corresponding eligibility requirement for a unit to receive Minimum Load Cost Compensation when operating above minimum load in

² See *id*; San Diego Gas & Electric Co., *et al.*, 101 FERC ¶ 61,112 (2002); San Diego Gas & Electric Co., *et al.*, 99 FERC ¶ 61,158 (2002); San Diego Gas & Electric Co., *et al.*, 97 FERC ¶ 61,293 (2001).

³ March 31 Order, 102 FERC ¶ 61,285 at P 7.

compliance with an ISO Dispatch Instruction.⁴ Thus, the ISO proposes to not compensate Must-Offer Generators for Minimum Load Costs when they are generating outside the tolerance band if the unit is operating above minimum load in compliance with an ISO dispatch instruction.

6. Reliant, Mirant and Dynegy and Williams all protest this revision. They argue that the proposed tolerance band is beyond the scope of the March 13 Order. They also contend that the ISO has not provided support for the need to withdraw Minimum Load Compensation of an instructed unit that deviates outside the tolerance band. Rather, the protestors contend that the provision amounts to a double penalty and expands the penalties for excessive uninstructed deviations beyond that approved by the Commission in the MD02 Order.⁵ They also argue that the tolerance band currently in place is fundamentally different from the proposed tolerance band, and that the proposal runs counter to the Commission's directive that the ISO pay generators their Minimum Load Costs during each hour when the generator is operating under the Must-Offer requirement. Further, they protest the ISO's requested effective date for the provision, arguing that the proposal is a significant change of which generators had no prior notice and no opportunity to conform their conduct to meet the requirement.

Commission Determination

7. The ISO deleted language from Section 5.11.6.1.5 of the tariff as directed, and that revision is accepted. However, the Commission rejects the ISO's proposal to create a new tolerance band that would apply to a dispatched unit when operating above minimum load. We find that the ISO's proposal is outside the scope of this compliance filing. Moreover, the ISO's proposed tolerance band was addressed in an order in Docket No. ER03-1046-000.⁶ As noted in that order and our previous orders regarding payment of Minimum Load Costs,⁷ the ISO must compensate a generator under the Must-Offer Obligation for that generator's Minimum Load Costs for all hours that the generator is

⁴ The Commission previously accepted a tariff revision that allows the ISO to deny Minimum Load Cost recovery for units that have imbalances of energy that varies by more than the greater of 5 MWh or an hourly energy amount equal to 3% of the unit's maximum operating output. San Diego Gas & Electric Co., *et al.*, 99 FERC ¶ 61,158 at 61,631-32. This provision applies to units operating at minimum load pursuant to the Must-Offer Obligation (but not dispatched by the ISO).

⁵ San Diego Gas & Electric Co., *et al.*, 100 FERC ¶ 61,060 at 61,255 (2002).

⁶ California Independent System Operator Corp., 105 FERC ¶ 61,091 at P 107 (2003).

⁷ *E.g.*, San Diego Gas & Electric Co., *et al.*, 99 FERC ¶ 61,158 at 61,632.

operating at minimum load status. Accordingly, the ISO is directed to submit new tariff sheets that delete the language relating to the proposed tolerance band.

B. Minimum Load Costs – Operations and Maintenance Adder

8. The ISO's April 14 Compliance Filing includes a revised tariff Section 5.11.6.1.2, Minimum Load Costs, that would revise the Operation and Maintenance component of the calculation to strike the stated \$6/MWh and replace it with "the FERC-approved Operations and Maintenance adder (\$/MWh) in effect at the time." Reliant protests that the proposed change is outside the scope of the March 31 Order and, further, that the ISO provides no explanation for the change nor even acknowledges the change in its transmittal letter.

Commission Determination

9. The Commission agrees with Reliant that the ISO's proposed change is outside of the scope of the March 13 Order. Accordingly, the Commission rejects this proposed revision and the ISO must submit a compliance filing within 30 days from the date of this order that reinstates the \$6/MWh adder and removes the proposed language.

C. Waiver Denial and Self-Commitment Period

10. In the March 13 Order, the Commission noted that Section 5.11.6 of the ISO tariff states that "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," and elsewhere in the same provision states that the "Waiver Denial Period shall be extended as necessary to accommodate generating unit minimum up and down times."⁸ The Commission directed the ISO to explain the operation of these two tariff provisions in the context of the ISO definition of minimum up and down times.

11. In the April 14 Compliance Filing, the ISO provides examples to illustrate how generating unit minimum up and down times are accommodated. As one example, the ISO states that, for a unit with a minimum run time of six hours, if the unit is on-line under a Waiver Denial Period that began at 8:00 A.M., the ISO will not end the Waiver Denial Period before 2:00 P.M.

12. Dynegy and Williams ask that the Commission clarify, based on the examples provided by the ISO, that the ISO must deliver the start/stop instructions before the start of the minimum up/down time period. They are concerned that, otherwise, the ISO could issue instructions without sufficient time to start or stop the unit as instructed.

⁸ March 13 Order, 102 FERC ¶ 61,285 at P 11-13.

Commission Determination

13. In response to a Staff data request asking for a step-by-step explanation of the exemption process, the ISO explained that it usually contacts Generating Units beginning about 1800 but no later than 2100 when granting or denying a Generating Unit's request for a Waiver of the Must-Offer Obligation and, while the ISO may vary from this as needed to ensure reliability, the ISO "always tak[es] into consideration a Generating Unit's Minimum Down, Start-Up and Minimum Run Times."⁹ The ISO's statement provides the assurance that Dynegy and Williams seek and no further clarification is required on this issue.

D. ISO Implementation of Minimum Load Cost Compensation

14. Dynegy and Williams contend that the ISO has wrongfully withheld Minimum Load Cost payments. For example, they state that the ISO has denied recovery in the hour following a dispatch when a unit, running pursuant to the Must-Offer obligation, is ramping down from a dispatch instruction.

15. Mirant states that it was informed that the ISO will not compensate sellers that forward schedule their minimum load obligations because, according to the ISO, when minimum load is scheduled it is self-committed under the methodology for determining whether a unit is under the must-offer waiver. Mirant, however, argues that the ISO's action is inconsistent with the Commission's conclusion in an earlier order that "Scheduling Coordinators should forward schedule energy from those units under the Must-Offer Obligation that are running at minimum load."¹⁰ Mirant requests that the Commission direct the ISO: (1) to compensate a generator for its minimum load costs when that generator forward schedules the minimum load energy under the Must-Offer Obligation and (2) to make a compliance filing to specifically modify the tariff to ensure that minimum load energy is forward scheduled and that the ISO will compensate generators for those costs.

Commission Determination

16. Regarding Dynegy and Williams' contention that the ISO has wrongfully withheld Minimum Load Cost payments, we find that this compliance proceeding is not the proper forum to raise such issue. To the extent that Dynegy and Williams believes the ISO has withheld Minimum Load Cost payments, they should file a complaint with the

⁹ ISO's March 25, 2003 Responses to Staff March 10, 2003 Data Requests, Response to Data Request No. 2. The ISO makes similar representations in its response to Data Request No. 1.

¹⁰ San Diego Gas & Electric Co., et al., 101 FERC ¶ 61,112 at 61,451.

Commission detailing the circumstances under which those payments have been withheld.

17. With respect to Mirant's concern regarding compensation for Minimum Load Costs when Scheduling Coordinators forward schedule their minimum load energy from units that are under the Must-Offer Obligation, we reiterate that the ISO must compensate a generator for its Minimum Load Costs for all hours that it is under the Must-Offer Obligation, including when the generator forward schedules the minimum load energy. Accordingly, the ISO must submit in its compliance filing a modification to its tariff to show that minimum load energy that is forward scheduled will still be compensated for its Minimum Load Costs.

E. Other Tariff Revisions

18. Our review indicates that the remaining tariff revisions comply with our March 13 Order and are accepted for filing.

F. Mirant Bankruptcy

19. On September 12, 2003, the Bankruptcy Court for the Northern District of Texas issued a "Temporary Restraining Order Against the Federal Energy Regulatory Commission" ("TRO") in In re Mirant Corp. (Mirant Corp. v. FERC), Adversary Proceeding No. 03-4355, which enjoins the Commission "from taking any action, directly or indirectly, to require or coerce the [Mirant] Debtors to abide by the terms of any Wholesale Contract [to which a Mirant Debtor is a party] which Debtors are substantially performing or which Debtors are not performing pursuant to an order of the Court unless FERC shall have provided the Debtors with ten (10) days' written notice setting forth in detail the action which FERC seeks to take with respect to any Wholesale Contract which is the subject of this paragraph."

20. Should the TRO be converted into a preliminary injunction, an action that the Commission opposes, the Commission will appeal that order. Despite the Commission's disagreement with the validity of the TRO and its expectation that the TRO (or a preliminary injunction) will be vacated on appeal, the Commission must comply with it until vacated. The TRO requires ten days' written notice before the Commission takes a proscribed action with respect to a covered Mirant Wholesale Contract. Accordingly, to the extent that this Order requires Mirant to act in a manner proscribed by the TRO, the Order will provide written notice to Mirant of the action that FERC will take with respect to a covered Mirant Wholesale Contract, which action will not become effective until ten (10) days after issuance of this Order. In all other respects, this Order is effective immediately.

The Commission orders:

(A) The ISO's compliance filing submitted on April 14, 2003 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.