

**THE UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Williams Power Company, Inc.,</b>	)	
	)	
<b>Complainant</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL05-57-000</b>
	)	
<b>California Independent System Operator Corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**ANSWER OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
TO THE COMPLAINT OF WILLIAMS POWER COMPANY, INC., AND  
REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §385.213, and the Notice of Filing issued in the above-captioned proceeding on January 18, 2005, the California Independent System Operator Corporation (“ISO”) respectfully submits this answer to the complaint of Williams Power Company, Inc. (“Williams”) dated January 14, 2005 and, pursuant to Rule 604, requests that the matter be directed to alternative dispute resolution.<sup>1</sup>

**I. Summary**

The ISO applies a tolerance band as a measure to monitor a generating unit’s performance in order to determine its compliance with the must-offer obligation and eligibility for Minimum Load Cost recovery. After an ISO Dispatch

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings set forth in the ISO Tariff, Master Definitions Supplement, Appendix A.

instruction has expired and the unit is supposed to be ramping back to its prior Minimum Load level, the ISO calculates the amount of energy that the unit should be producing if it returned to that Minimum Load level at the ramp rate established in the ISO Master File. If the amount of energy produced by the unit in these subsequent intervals exceeds the sum of 1) the residual energy determined by this calculation, 2) the tolerance band, and 3) the Minimum Load level, the ISO rescinds Minimum Load Cost compensation in those intervals because the unit is not ramping in accordance with the established ramp rate

Williams' complaint in this matter alleges that the ISO's application of the tolerance band in this manner is an extra-Tariff procedure and is contrary to Commission orders.

The ISO submits that those allegations are without merit and that Williams' complaint should be dismissed on grounds that:

- The ISO's application of the tolerance band and determination of a generating unit's eligibility for Minimum Load Cost compensation is consistent with Commission Orders and the ISO Tariff.
- The tolerance band is a reasonable means to encourage Williams' to ramp its units down promptly and to ensure that other ISO Market Participants are not required to pay Minimum Load Cost compensation when the units engage in bilateral contracts or uninstructed deviation.
- Williams' own actions caused unit performance in certain instances to fall outside of the tolerance band and Minimum Load Cost compensation to be revoked.

Pursuant to Rule 604, the ISO requests that the Commission hold this matter in abeyance and direct the parties to engage in an alternative dispute resolution process, such as mediation under the Commission's Dispute Resolution Service.

## **II. Background**

On April 26, 2001, the Commission established the must-offer obligation as part of its comprehensive Mitigation and Monitoring Plan for the California Wholesale Electric Markets. 95 FERC ¶61,115 (2001). The must-offer obligation was intended to make uncommitted energy available to the market, moderate the disparity between demand and supply, and reduce the opportunity for suppliers of electricity to exercise market power and charge unjust and unreasonable rates for withheld capacity. Under the must-offer obligation, sellers with Participating Generator Agreements are required to offer all of their available capacity to the ISO in real time, if it is available and not scheduled to run, and are to be compensated for their actual costs during each hour when a unit runs in compliance with a must-offer obligation. 95 FERC ¶61,115 (2001); 97 FERC ¶61,293 (2001).

On January 25, 2002, the ISO proposed a method for compensating Generators for start up and Minimum Load Costs they incur under the must-offer obligation and a process to be used to grant units temporary waivers from the obligation. 97 FERC ¶61,293 (2001)(“January 25 Compliance Filing”)<sup>2</sup>. The

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<sup>2</sup> The January 25 Compliance Filing was made in compliance with the Commission's December 19, 2001 Order Accepting in Part and Rejecting in Part Compliance Filings, 97 FERC ¶61,293 (2001), the December 19, 2001 Order On Clarification and Rehearing, 97 FERC ¶61,275 (2001), and the December 19, 2001 Order Temporarily Modifying The West-Wide Price Mitigation

tolerance band at issue in this complaint was an element of the ISO's proposal.

The tolerance band was proposed as a measure to monitor a unit's performance in order to determine its compliance with the must-offer obligation and eligibility for Minimum Load Cost recovery. It originated from a concern by the ISO that a Generating Unit being compensated for its Minimum Load Costs should be on line operating at minimum load during a Waiver Denial Period and should be available for ISO Dispatch In Real Time, and not be engaged in bilateral contracts or uninstructed deviations. As a reasonable means to address this concern, the ISO proposed to apply a tolerance band to monitor unit performance. Specifically, the ISO proposed Tariff Section 5.11.6.1 to provide that if a Generating Unit engages in uninstructed deviations with output during an hour outside the tolerance band -- defined as the greater of plus or minus 5 MW or 3% of the unit's maximum operating output -- then the unit would be denied Minimum Load Cost compensation for all hours of the Waiver Denial Period.<sup>3</sup>

By order dated May 15, 2002, the Commission determined that this eligibility restriction on Minimum Load Cost recovery was reasonable, and approved the parameters of the band. 99 FERC ¶61,158 at p. ¶61,632 (2002) ("May 15 Compliance Order").

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Methodology, 97 FERC ¶61,294 (2001).

<sup>3</sup> The ISO proposed the tolerance band as one of three limitations on Minimum Load Cost recovery, as follows: If any such unit, during any hour of the Waiver Denial Period or a period beyond the Waiver Denial Period that is within the end of the last self-committed period preceding the Waiver Denial Period plus the unit's minimum down time: 1) submits an Hour-Ahead Energy Schedule; 2) self-provides or is awarded Hour-Ahead Ancillary Services Capacity; or 3) engages in uninstructed deviations over an entire operating hour that is outside a tolerance band equal to the greater of plus or minus 5 MW or 3% of the unit's maximum operating output, then any such unit shall be denied minimum load cost compensation for all hours of the Waiver Denial Period. January 25 Compliance Filing, p. 15.

Following its initial adoption, ISO Tariff Section 5.11.6.1 has undergone a series of revisions to refine the limitations on Minimum Load Cost recovery.<sup>4</sup> As discussed in the subsequent section of this Answer, several of those orders are pertinent to the practices that are the subject of Williams' complaint, and together with the May 15 Compliance Order, support the ISO's application of the tolerance band.

In current practice, and consistent with the Commission's orders, the ISO does not apply the tolerance band to condition the payment of Minimum Load Costs in intervals in which the ISO dispatches Imbalance Energy from a unit operating during a Waiver Denial Period. However, in subsequent intervals, after the instruction has expired and the unit is supposed to be ramping back to its prior Minimum Load level, the ISO calculates the amount of energy that the unit should be producing if it returned to that Minimum Load level at the ramp rate established in the ISO Master File. If the amount of energy produced by the unit in these subsequent intervals exceeds the sum of 1) the residual energy determined by this calculation, 2) the tolerance band, and 3) the Minimum Load level, the ISO rescinds Minimum Load Cost compensation in those intervals because the unit is not ramping in accordance with the established ramp rate.<sup>5</sup>

In October 2003, Williams initiated a dispute under the ISO's settlement dispute process to protest the ISO's practice of applying the tolerance band in

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<sup>4</sup> See, e.g., the Commission's October 31, 2002 Order on Compliance Filing and Compliance Report, 101 FERC ¶61,112 (2002); March 13, 2003 Order on Compliance Filing, 102 FERC ¶61,285 (2003); October 22, 2003 Order on Proposed Tariff Amendment No. 54, 105 FERC ¶61,091 (2003); November 14, 2003 Order on Compliance Filing, 105 FERC ¶61,196 (2003); and August 5, 2004 Order on Rehearing and Compliance on Proposed Tariff Amendment No. 54, 108 FERC ¶ 61, 142 (2004.)

<sup>5</sup> *California Independent System Operator Corporation*, Docket No., ER04-835, Amendment No. 60 to the ISO Tariff, p. 30 (May 11, 2004).

intervals following an ISO Dispatch Instruction and denying Minimum Load Cost compensation to Williams' generating units. The parties thereafter in 2003 and 2004 engaged in limited discussion and communications about the dispute, and did not reach resolution of the matter.

On January 14, 2005, Williams filed the instant complaint with the Commission in which it alleges that the ISO's application of the tolerance band to a generating unit's performance in intervals following an ISO Dispatch Instruction and denial of Minimum Load Cost compensation if the unit operates outside of that tolerance band is an extra-Tariff procedure and is contrary to Commission orders.

### **III. Answer**

#### **A. The ISO's Application of the Tolerance Band and Determination of a Generating Unit's Eligibility for Minimum Load Cost Compensation is Consistent with Commission Orders and the ISO Tariff.**

Contrary to the allegations in Williams' complaint, the ISO's application of the tolerance band and determination of a generating unit's eligibility for Minimum Load Cost compensation in intervals after an ISO Dispatch Instruction has ended is consistent with Commission orders and the ISO Tariff provisions the Commission has approved.

In its May 15 Compliance Order in *San Diego Gas & Electric Co., et al.*, 99 FERC ¶61,158 (2002), the Commission approved the implementation of the tolerance band as a reasonable eligibility restriction on Minimum Load Cost recovery. 99 FERC ¶61,158 at p. ¶61,632 (2002). Further, the Commission expressly held that:

We agree with the ISO that units at minimum load should not have significant changes in output and that units partially committed to bilateral contracts that may have variability are not eligible for recovery of Minimum Load Costs. 99 FERC ¶61,158 at p. ¶61,632 (2002).

This determination is significant. It establishes from the outset that units operating outside of the tolerance band and units engaging in bilateral contracts are not eligible for Minimum Load Cost compensation.

The Commission next considered the tolerance band in its October 31, 2002 Order on Compliance Filing and Compliance Report in *San Diego Gas & Electric Co., et al.*, 101 FERC ¶61,112 (2002), in which it accepted the ISO's proposed amendment to Tariff Section 5.11.6.1 to provide that:

- when a Must-Offer Generator is awarded Ancillary Services in the Hour-Ahead Market or has a Final Hour-Ahead Schedule, the Must-Offer Generator shall not be eligible to recover Minimum Load Costs for any such hours within a Waiver Denial Period; and 2) Must-Offer Generators shall not be eligible to recover Minimum Load Costs for those hours within a Waiver Denial Period when they produce a quantity of energy outside of the tolerance band.
- subject to the above eligibility restrictions, the ISO will pay Minimum Load Costs for each hour within a Waiver Denial Period that the generating unit runs at Minimum Load in compliance with the Must-Offer Obligation. 101 FERC ¶61,112 at p. ¶61,450 (2002).

The import of this decision is that the Commission clearly conditioned a Must-Offer Generator's eligibility to recover Minimum Load Costs during a Waiver Denial Period on that unit running at Minimum Load and not producing energy outside of the tolerance band.

In its November 14, 2003 Order on Compliance Filing in *San Diego Gas & Electric Co., et al.*, 105 FERC ¶61,196 (2003), the Commission rejected the

ISO's proposed amendment to Tariff Section 5.11.6.1 to extend the tolerance band to a unit's Dispatch Operating Point as the corresponding eligibility requirement for the unit to receive Minimum Load Cost compensation during an hour when it is operating above Minimum Load in compliance with an ISO Dispatch Instruction. Under this amendment, the ISO would have compensated a Must-Offer Generator for Minimum Load Costs for all hours it operated at Minimum Load during a Waiver Denial Period or operated above Minimum Load in compliance with an ISO Dispatch Instruction, provided, *inter alia*, that its generation was not outside of the tolerance band of the absolute value of 5 MW or 3 percent of the maximum output capacity of the unit as applied to the unit's Minimum Load operating level if operating at Minimum Load or as applied to the unit's total expected hourly Energy output if operating above Minimum Load in compliance with an ISO Dispatch Instruction. Simply put, during each hour of an ISO Dispatch Instruction, a Must-Offer Generator would have been eligible to receive Minimum Load Cost compensation if it operated at its dispatch point, plus or minus the tolerance band. Although the Commission did not approve this amendment, the decision only rejected use of the tolerance band during the period of an ISO Dispatch Instruction. Neither the proposal nor the decision addressed application of the tolerance band to a unit's performance in the hour following a dispatch instruction, which is the subject of Williams' complaint.

The Commission's decisions on the ISO's Amendment No. 54 filing reached a similar result. Through Amendment No. 54, the ISO proposed numerous changes and clarifications to the Real Time Imbalance Energy Market



design element in Phase 1 of the ISO's Comprehensive Market Design 2002, including a revision to determine Minimum Load Cost compensation at 10-minute Settlement Intervals, rather than on an hourly basis. More specifically, the ISO proposed to monitor a unit's performance over 10-minute intervals and revoke 1) Minimum Load Cost compensation during a Waiver a Denial Period when energy production within an interval varies by more than the tolerance band or 2) Minimum Load Cost compensation and bid cost recovery when energy production within an interval varies from the total expected output of the unit by more than the tolerance band.

In its October 22, 2003 Order on Proposed Tariff Amendment No. 54 in *California Independent System Operator Corporation*, 105 FERC ¶61,091 (2003), the Commission rejected the provision that would have denied payment of Minimum Load Costs and bid costs for energy dispatched above Minimum Load when a unit generates outside of the tolerance band within a Settlement Interval.

The Commission affirmed that decision in its August 5, 2004 Order on Rehearing and Compliance on Proposed Tariff Amendment No. 54, 108 FERC ¶61,142 (2004). Notably, the Commission on rehearing stated that:

The October 22 Order did not alter the Commission's previous decision in a May 15, 2002 Order regarding revocation of MLCC. In that order, the Commission found it reasonable to deny MLCC when a generator varies from its minimum load by more than the tolerance band when running at minimum load pursuant to a waiver denial. 108 FERC ¶61,142 at p. ¶ 61,835 (2004).

The ISO contends that its application of the tolerance band in a Waiver Denial Period following the end of an ISO Dispatch Instruction is consistent with this series of orders. It is consistent with the Commission's directive in the

October 22, 2003 and November 14, 2003 Orders (that directed the ISO not condition Minimum Load Cost Compensation on performance within the tolerance band during those intervals in which the ISO dispatched the unit for Imbalance Energy) and with the Commission directive in the May 15 Compliance Order that authorized the ISO to apply the tolerance band to condition Minimum Load Cost recovery around the Minimum Load level. Accordingly, Williams' arguments to the contrary are without merit and its complaint should be denied.

**B. The Tolerance Band is a Reasonable Means to Encourage Williams' Units to Ramp Down Promptly and to Ensure ISO Market Participants are Not Required to Pay Minimum Load Cost Compensation for Williams' Units When They are Engaged in Bilateral Contracts or Uninstructed Deviations.**

Without the tolerance band in place to encourage generating units to return to Minimum Load levels after a Dispatch Instruction has expired, a unit has no incentive to promptly ramp back down, other than the uninstructed Imbalance Energy price, which, if high enough, could be an incentive to generate above Minimum Load. It is the tolerance band, and reasonably conditioning payment of Minimum Load costs on unit performance within that range, that provide the appropriate incentive.

In addition, the tolerance band fairly balances the interests of Generators and ISO Market Participants who pay Minimum Load Cost compensation. It is designed to allow Generators operational flexibility, and the range of acceptable energy output it establishes is specific acknowledgement that generating units may not be able to precisely match their ramp rate or run exactly at Minimum Load level. The tolerance band is a reasonable means to assure that generating

units are running at minimum load to be available for ISO Dispatch In Real Time, are not engaged in bilateral contracts or engaged in uninstructed deviations, and are appropriately compensated for complying with the must-offer obligation.

At the same time, the tolerance band recognizes that ISO Market Participants should not be required to pay Minimum Load Costs for generating units that are unresponsive or undertake uninstructed deviations. Positive uninstructed deviations in real time may be evidence of a bilateral transaction, for which the Commission has ruled no Minimum Load Cost recovery is permissible.

In instances where Williams did not receive Minimum Load Cost compensation during an hourly or 10-minute interval following an ISO Dispatch Instruction, the payment was rescinded because Williams' unit did not operate within the acceptable range and was not eligible for cost recovery. Rescission of Minimum Load Cost compensation in those instances falls squarely within the design of the tolerance band and within the Commission's orders approving the implementation and application of that eligibility criteria.<sup>6</sup>

Ultimately, the tolerance band allows for realistic operational flexibility while protecting Market Participants from payments for Energy and products not delivered. It is the position advocated by Williams that would lead to the imposition of unjust and unreasonable costs on consumers and which is inconsistent with Commission's orders implementing the must-offer requirement.

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<sup>6</sup> See, e.g., the Commission's October 31, 2002 Order on Compliance Filing and Compliance Report, 101 FERC ¶61,112 (2002); March 13, 2003 Order on Compliance Filing, 102 FERC ¶61,285 (2003); October 22, 2003 Order on Proposed Tariff Amendment No. 54, 105 FERC ¶61,091 (2003); November 14, 2003 Order on Compliance Filing, 105 FERC ¶61,196 (2003); and August 5, 2004 Order on Rehearing and Compliance on Proposed Tariff Amendment No. 54, 108 FERC ¶ 61, 142 (2004.)

**C. Williams' Own Actions Caused Unit Performance in Certain Instances to Fall Outside of the Tolerance Band and Minimum Load Cost Compensation to be Revoked.**

While Williams has couched its complaint as a challenge to the ISO's application of the tolerance band, Williams has completely ignored an underlying cause for the tolerance band to be missed and Minimum Load Cost compensation to be revoked – Williams' operation of the units. In instances where Williams failed to operate its generating units in alignment with their respective ramp rates in the ISO Master File -- which ramp rates Williams itself submitted to the ISO -- and the units' resultant performance fell outside the tolerance band, it was Williams' own actions that caused Minimum Load Cost compensation to be lost.

The tolerance band is one of three components that in the aggregate determine a unit's eligibility to receive Minimum Load Cost recovery. In intervals (hourly or 10-minute) following the end of an ISO Dispatch Instruction, a unit's eligibility to receive Minimum Load Cost compensation is determined by comparing its actual performance to the sum of the residual energy expected under the filed ramp rate for the unit, the tolerance band, and the Minimum Load level. Only when a unit produces energy outside of the range established by these three components is Minimum Load Cost compensation revoked.

Williams should not be heard to complain that it is being denied Minimum Load Cost compensation to the extent that it was Williams' own failure to operate its units in alignment with the ramp rate that occasioned the non-payment. If the ramp rate the ISO was using was operationally infeasible, Williams could have

requested that the ramp rate in the ISO Master File be changed to a more attainable rate.

In instances where Williams' unit failed to achieve the expected ramp rate, whether due to an infeasible ramp rate, participation in bilateral sales, or voluntarily producing energy as an uninstructed deviation, it was Williams' operation of the unit that caused the tolerance band to be missed and the unit to be ineligible for Minimum Load Cost recovery. In these instances, the unit was not operating in compliance with the tolerance band or the Minimum Load requirement and compensation was appropriately revoked.

#### **IV. Request for Alternative Dispute Resolution**

Intermittently during 2003 and 2004, Williams and the ISO exchanged written correspondence and engaged in limited discussions regarding the subject matter of Williams' complaint. These communications explained and clarified the parties' positions, but did not reach the level of formal good faith negotiations under ISO Tariff Section 13 and obviously did not resolve the dispute. Absent progress toward a resolution, Williams concluded that further informal dispute resolution procedures would not be productive<sup>7</sup> and proceeded to file the instant complaint, without objection by the ISO.

Upon further review of this matter, the ISO believes that the lack of formal negotiations between the parties has caused opportunities to reach a mutually acceptable solution to be unexplored. Williams pursued its dispute with the ISO, with limited responsiveness by the ISO, and as result the parties have not undertaken substantive negotiations of the type contemplated in ISO Tariff

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<sup>7</sup> Complaint of Williams Power Company, Inc. at p. 21.

Section 13 in a serious effort to settle the matter. Further, although Williams makes a legal argument that the ISO's application of the tolerance band is unauthorized, it's fair to read the complaint as acknowledging that some limitation during ramp down would be acceptable. The ISO believes this leaves the door open for mediation.

The ISO believes that submitting this matter to an alternative dispute resolution process would be productive and efficient, and we are willing to engage in a meaningful and robust discussion of the matters raised in Williams' complaint and to negotiate in good faith. Pursuant to Rule 604, the ISO accordingly requests that the Commission hold this matter in abeyance and direct the parties to engage in an alternative dispute resolution process, such as mediation under the Commission's Dispute Resolution Service.

## **V. Communications**

Communications regarding this matter should be directed to:

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## **VI. Conclusion**

For the reasons discussed above, the ISO respectfully requests that the Commission deny Williams' complaint, or in the alternative, hold this matter in abeyance and direct the parties to engage in an alternative dispute resolution process, such as mediation under the Commission's Dispute Resolution Service.

Respectfully submitted,

**/s/ Beth Ann Burns**

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Date: February 7, 2005



February 7, 2005

The Honorable Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re: Williams Power Company, Inc. v. California Independent System  
Operator Corporation  
Docket No. EL05-57-000**

Dear Secretary Salas:

Enclosed please find an electronic filing of the Answer of The California Independent System Operator Corporation to the Complaint of Williams Power Company, Inc. and Request for Alternative Dispute Resolution.

Thank you for your attention to this filing.

Respectfully submitted,

**/s/ Beth Ann Burns**  
Beth Ann Burns

Counsel for the California Independent  
System Operator Corporation



## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA, this 7th day of February, 2005.

**/s/ Beth Ann Burns**

Beth Ann Burns