UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Dynegy Power Marketing, Inc.,	**)**	
Mirant America Energy Marketing, L.P.,	**)**	
Mirant California, LLC, and	**)**	
Williams Energy Marketing & Trade	**)**	**Docket No. EL02-42-000**

Answer Of The California Independent System Operator Corporation To The Complaint and Request for Fast Track Processing Of Dynegy Power Marketing, Inc., Mirant America Energy Marketing, L.P., Mirant California, LLC, and Williams Energy Marketing & Trade

Pursuant to Rules 206 and 213 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure[1] and the Notice of Complaint issued December 19, 2001, the California Independent System Operator Corporation ("ISO")[2] respectfully hereby submits this answer to the Complaint and Request for Fast Track Processing Of Dynegy Power Marketing, Inc., Mirant America Energy Marketing, L.P., Mirant California, LLC, and Williams Energy Marketing & Trade ("Dynegy Complaint") in the above-referenced docket.

For the reasons set forth below, the Dynegy Complaint is without merit in its assertion that the ISO has violated Section 205 of the Federal Power Act in the modifications made to the ISO operating procedure M-403, "Balancing Energy and Ex-Post Pricing." With respect to operating procedure M-401, "Real-Time and Forward Intra-Zonal Congestion Management," the ISO acknowledges that it included certain language that may have given the impression that the ISO determines what is and what is not a reasonable and/or competitive bid in the version posted on December 12, 2001. Additionally, the ISO acknowledges that

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1 18 C.F.R. §§ 385.206 and 385.213 (2001)
2 Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

the December 12, 2001 version of the procedure, which calls for the exclusive use of Reliability Must-Run (RMR) units in areas the ISO has deemed to be noncompetitive, conflicts with the requirements of Section 4.1 of the Must-Run Service Agreement ("MRSA"). The ISO has revised operating procedure M-401 to clarify the ISO's intent and role in real-time and forward intra-zonal congestion management to make clear that the ISO does not make a determination regarding the competitiveness or reasonableness of any bid and as to whether that bid is in conformance with the Commission's market power mitigation program. The ISO has also revised operating procedure M-401 to reflect the requirements of Section 4.1 of the MRSA. To the extent that in the future the ISO may propose modifications to operating procedure M-401, the ISO will, as in the past, provide public notice and, if appropriate, submit a filing with the Commission seeking Tariff revisions in support of the any such changes to the current version of M-401.

I. BACKGROUND

A. Operating Procedure M-403 "Balancing Energy and Ex-Post Pricing"

The Commission's November 7 and November 20, 2001 orders[3] required the ISO, among other things, to halt preferential reliance on the California Department of Water Resources Energy Resource Scheduler ("CDWR") for procurement of generation to meet system demands in the ISO Control Area. To ensure sufficient resources were available to meet system demands, CDWR had

[3] *California Indep. Sys. Operator Corp.,* 97 FERC ¶61,151 (2001); Reliant Energy Power Generation, et al.,., 97 FERC ¶61,215 (2001), respectively.

been providing creditworthy backing to the ISO's Real Time Imbalance Energy Market and engaging in certain out-of-market ("OOM") purchases.

In the November 20, 2001 order, the Commission stated that the ISO was the only entity authorized under the ISO Tariff to engage in OOM transactions. *Reliant Energy Power Generation et. al.*, slip op. at 10. Inasmuch as imports of electricity from outside the ISO Control Area constitute, at times, twenty-five percent (25%) of the power needed to meet ISO Control Area Demand, the ISO was concerned about the need to engage in significant OOM transactions. Indeed, the stress that such purchases have placed on the ISO operators and system reliability have been noted previously by the Commission.[4]

To provide an additional incentive for out of state resources to participate in the ISO's Imbalance Energy Market, the ISO revised operating procedure M-403 to provide clarification as to how it would dispatch such units given the limitations on inter-Control Area scheduling protocols. As detailed below, the modifications are minor, specific to long-standing requirements of inter-Control Area scheduling practices and are consistent with the ISO Tariff.

B. Operating Procedure M-401 "Real-Time and Forward Intra-Zonal Congestion Management"

The ISO, and the Commission, long have recognized the need for modifications to the ISO's congestion management system. The ISO regularly has filed Status Reports[5] with the Commission detailing the ISO's efforts to modify the existing procedures and describing the advent of new challenges to congestion management, including the addition of new generation interconnected

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4 *San Diego Gas & Electric Company, et al*, 97 FERC 61,172 at 61,608 (2000).

5 Filed in Dockets Nos. EL00-95-000, *et. al.*

to the ISO Controlled Grid that increases the incidences of intra-zonal congestion in certain portions of the grid. As the ISO continues to work to develop a comprehensive long-term redesign of congestion management, from time to time modifications to the existing procedure are in order to help the ISO resolve congestion and maintain system reliability.

II. Pre-Dispatch of Inter-ties Recognizes that the ISO Will Pay Such Deliveries the Instructed Energy Price for All Ten-Minute Intervals in the Dispatch Instruction

In Amendment No. 29, the ISO proposed and the Commission accepted Tariff revisions to implement the original design of the Imbalance Energy market, under which the obligations of Scheduling Coordinators participating in the Imbalance Energy market would be settled over the same interval in which resources supplying Imbalance Energy are Dispatched. *California Independent System Operator Corporation*, 91 FERC ¶ 61,324 (2000), request for rehearing pending. As a result, both Instructed Imbalance Energy and uninstructed deviations are priced on the basis of the market clearing price during the BEEP Interval (currently ten minutes) during which the Energy is supplied or the deviation occurs.

As detailed in operating procedure M-403 and in accordance with operational practice within the Western Systems Coordinating Council ("WSCC") and Section 3.8.2 of the Dispatch Protocol of the ISO Tariff, the ISO pre-dispatches (or pre-schedules), over the ISO's various interconnections with adjacent Control Areas, energy supplied from resources located outside the ISO Control Area. Because these resources supplying this pre-dispatched energy are subject to the direct operational control of their respective Control Area operator and not the ISO, these System Resources cannot respond to within-the-hour ISO instructions to change their Dispatch.

The ISO, in modifying operating procedure M-403, acknowledged this operational constraint. To provide a greater incentive for these System Resources to participate in the ISO Imbalance Energy Market, the ISO committed in the revised operating procedure M-403 not to issue revised Dispatch Instructions within the hour to adjacent Control Area Operators for such resources. Thus, the out-of-state resources, and therefore, the adjacent Control Area Operators, will not be subject to Uninstructed Energy Charges for failure to respond to Dispatch Instructions, *i.e.,* to modify a previously agreed-upon, static interchange transaction schedule in mid-hour.

Clearly, this is a change from the ISO's position with respect to System Resources in its Answer to protests on Amendment No. 29. The ISO believes that the change is warranted by current circumstances and by the limitation that these out-of-state resources will not set the market clearing price.[6] Moreover, the ISO is not in violation of ISO Tariff Section 2.5.22.6, which generally provides for the ISO to select the "least-cost Generating Unit, Load, System Unit or System Resource to meet Imbalance Energy requirements in real time. . ." because elsewhere in the ISO Tariff the ISO has broad authority to exercise good utility practices[7] to ensure, among other things, that the ISO can meet Dispatch

[6] The ISO recognizes that in its December 19, 2001 Order accepting in part and rejecting in part compliance filings, the Commission has rejected the ISO's proposed requirement that a PGA must be signed in order to set the mitigated Market Clearing Prices. San Diego Gas & Electric Company, et al. 97 FERC ¶ 61,293 , slip op at 18. (2001). As discussed below, the ISO is evaluating the effect of this ruling and will address the issue in its upcoming compliance filing.

[7] Dispatch Protocol 2.4 and as "Good Utility Practice (Standards)" are defined in the ISO Tariff Master Definitions Supplement, Appendix A, to include, in part, practices, methods, an acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable

Protocol 1.1 Objectives, including objective (e), which obligates the ISO to meet the operational requirements of North American Electric Reliability Council and WSCC guidelines. More importantly, as price-takers these out-of-state resources will always be running consistently with the merit order dispatch by the ISO. Additionally, the ISO is obligated, under Dispatch Protocol 3.8.2, acting with each adjacent Control Area Operator to "check and agree on actual MWh net interchange after the hour for the previous Settlement Period" wherein "One Control Area shall change its actual number to reflect that of the other Control Area in accordance with WSCC standard procedures." Thus, the ISO can accommodate operational constraints inherent in inter-tie bids and make reasonable adjustments to ensure equity in settlement while reaping the benefits of enhanced inter-tie participation in the ISO Imbalance Energy Market. To the extent the Dynegy Complaint alleges the ISO can not so act, the Complaint is incorrect.

The Commission frequently has recognized that it is not unreasonable to impose different requirements on differently situated entities and has remarked "[U]due discrimination can only occur when two similarly situated customers are treated differently, and there is no justification for the differing treatment." *PacificCorp Electric Operations and Arizona Public Service Company*, 54 FERC ¶61,855 (1991), citing *Cities of Newark, et al., v FERC*, 763 F.2d 533, 546 (3d Cir, 1988); *Cities of Alexandria v. FPC*, 55 F.2d 1020, 1027-28 (D.C. Cir. 1977); *St. Michaels Utilities Comm'n v. FPC*, 377 F.2d 912, 915 (4th Cir. 1967). Additionally, the Commission, in *Southern California Edison Company*, 46 FERC

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judgement in lights of the facts known at the time the decision was made, could have been

¶61,243 (1989) found that the “particular showing required [to prove undue discrimination] will necessarily turn upon the facts of each case, including the characteristics of the customer class involved and the service requested, as well as myriad other potentially relevant factors.”

Taken in total, inter-tie bids into the ISO Control Area *are* different from bids from generating resources within the ISO Control Area and the ISO can and should ensure the inter-tie bids are scheduled, operated and fairly paid commensurate with their inherent characteristics. Thus, the Dynegy Complaint fails to support its allegation that the ISO has violated Dispatch Protocol 8.6.3(e) that “the ISO shall not discriminate between Generating Units, Curtailable Demands and Interconnection schedules other than based on price, and the effectiveness (location and ramp rate) of the resource concerns to respond to the fluctuation in Demand or Generation.” Dynegy Complaint at 19.

III. The Commission Has Ordered That System Resources Can Set the Market Clearing Price Thus Mooting This Allegation

The ISO also notes that the Dynegy Complaint is without foundation in its assertion that the ISO is improperly excluding System Resources (including inter-ties) from settling the market clearing price. Dynegy Complaint at 20. The ISO, in its July 10, 2001 compliance filing to the Commission’s June 19 , 2001 order [8] establishing that marketers are price-takers and cannot set the Market Clearing Price, explained that the ISO, in the absence of operational data and operational “visability” (*i.e.,* telemetry) on importers, among other generation resources, cannot distinguish such resources, which are permitted to set the Market

expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition.

[8] 95 FERC ¶ 61,418 (2001) in Docket Nos. EL00-95-031, *et al.*

Clearing Price, and to justify and retain prices paid above such a price, from marketers who are not authorized to do so. Accordingly, the ISO proposed in its July 10, 2001 compliance filing to treat importers as marketers, and thereby ineligible to set the Market Clearing Price. This is now, however, mooted by the Commission's December 19, 2001 order, stating,

> out-of-state generators will be treated like in state generators and that out-of-state generators that want to have their marginal costs included in calculating a Proxy Price that may establish the mitigated reserve deficiency MCP can submit the required heat rate and gas source for their units to the ISO.

San Diego Gas & Electric Company, et al, 97 FERC at 18. The ISO will propose, in its compliance filing on January 18, 2001, terms for such a provision. Therefore, the Dynegy Complaint regarding the ability of System Resources to set the Market Clearing Price is mooted entirely.

IV. The revised Operating Procedure M-401, "Real-Time and Forward Intra-Zonal Congestion Management" Should Not Have Been Posted As Written

The ISO regrets the inconvenience caused by its improper posting of this procedure and notes that, perhaps if the complainants had brought this matter to the ISO's attention prior to filing a compliant, the issue could have been resolved more quickly with less expenditure of resources. Nonetheless, the ISO regrets the error and has taken steps to revise and re-post the operating procedure on the ISO Web Site. Along with the instant filing the ISO is posting a Market Notice about the revised operating procedure.

The Complaint faults the revised operating procedure M-401 for: (1) granting the ISO discretion to determine "reasonable" incremental and decremental bids; (2) defining a "competitive market" and (3) adding direction to use RMR units for incremental energy for Intra-Zonal Congestion when the market is deemed by the ISO to be non-competitive. Dynegy Complaint at 8. These elements of the operating procedure were not implemented prior to the draft procedure being revised. This does not mean that the ISO will not be proposing these or other approaches as part of its response to the Commission-directed reform of the ISO's congestion management practice. The ISO will only do so, however, after the appropriate notice and approvals have been given and received.

The Complaint faults the operating procedure for inconsistency with the MRSA for deeming an area to be non-competitive and thereby eliminating the requirement in the MRSA to consider an RMR unit's market bid before instructing the unit under the MRSA. The operating procedure has been revised to eliminate this provision.

The Complaint also states that the ISO seeks to remedy expected Intra-Zonal Congestion prior to the Real-Time Market by notifying affected Market Participants with Generating Units prior to the Hour-Ahead Market, if the ISO determines that Intra-Zonal Congestion will occur in an area due to a scheduled transmission outage or other scheduled work. Dynegy Complaint at 14. Currently, the ISO posts information on scheduled line outages. The ISO does not yet manage Intra-Zonal Congestion in the forward markets. The ISO does contact Generators affected by line outages in an effort to have such Generators voluntarily submit physically feasible schedules and thereby minimize the amount of Intra-Zonal congestion management that must take place in real time.

V. CONCLUSION

For the reasons set forth above, the ISO requests that the Commission reject the Dynegy Complaint.

Respectfully submitted,

Charles F. Robinson
Margaret A. Rostker
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630

Dated: January 11, 2002

January 11, 2002

The Honorable Linwood A. Watson, Jr.
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Complaint of Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Mirant Americas Energy Marketing, LP, and Mirant California, LLC
Docket No. EL02-42-000

Dear Secretary Watson:

Enclosed for electronic filing please find The California Independent System Operator Corporation's Answer to Complaint and Request for Fast Track Processing of Dynegy Power Marketing Inc., Mirant Americas Energy Marketing, LP, Mirant California LLC and Williams Energy Marketing & Trade.

Thank you for your assistance in this matter.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010)

DATED at Folsom, California on January 11, 2002.

Margaret A. Rostker
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