

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

**San Diego Gas & Electric Company v. Sellers** ) Docket Nos. EL00-95-000, *et al.*  
**of Energy and Ancillary Services Into Markets** )  
**Operated by the California Independent** )  
**System Operator Corporation and the** )  
**California Power Exchange** )

**Answer Of The California Independent System Operator Corporation  
To The Emergency Motion Of Duke Energy North America, LLC  
And Duke Energy Trading And Marketing, LLC  
For A Cease And Desist Order Against The California Independent System  
Operator’s Arbitrary And Capricious Implementation Of Its  
Waiver Policy Under The Must-Offer Obligation And Request For A  
Shortened Comment Period And Expedited Resolution**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission’s Rules of Practice and Procedure,<sup>1</sup> the California Independent System Operator Corporation (“ISO”) respectfully hereby submits this answer to the Emergency Motion Of Duke Energy North America, LLC And Duke Energy Trading And Marketing, LLC For A Cease And Desist Order Against the California Independent System Operator’s Arbitrary And Capricious Implementation Of Its Waiver Policy Under The Must-Offer Obligation And Request For A Shortened Comment Period And Expedited Resolution (“Duke Motion”) in the above-referenced dockets. For the reasons set forth below, the Duke Motion is without merit in its allegations of arbitrary and capricious acts by the ISO in the implementation of the several provisions of the Commission’s April 26 and June 19 orders<sup>2</sup> addressing, among other things, economic withholding and market

---

<sup>1</sup> 18 C.F.R. § 385.213 (2001)

<sup>2</sup> *Order Establishing Prospective Mitigation And Monitoring Plan For The California Wholesale Electric Markets And Establishing An Investigation Of Public Utility Rates In Wholesale Western Energy Markets*, 95 FERC ¶ 61,115 (2001) (“April 26 Order”) and *Order On Rehearing Of Monitoring And Mitigation Plan For The California Wholesale Electric Markets, Establishing West-Wide Mitigation, And Establishing Settlement Conference*, 95 FERC ¶ 61,418 (2001) (“June 19 Order”).

power by Market Participants.<sup>3</sup> On the other hand, the ISO concurs with the request in the Duke Motion that the Commission clarify (1) the must-offer obligation as it applies to units with long start-up times, (2) whether or the Commission intends that the must-offer obligation is a must-run obligation with the requirement that units without bilateral schedules and not on planned or forced outages must run to be available to the ISO's real time markets, and (3) whether the ISO must pay minimum load costs for units running in compliance with the must-offer obligation but not Dispatched by the ISO.<sup>4</sup>

## **I. BACKGROUND**

### **A. Commission Orders and ISO Filings**

Beginning with its December 15, 2000 order,<sup>5</sup> the Commission found that the market structures and rules for wholesale markets in California were seriously flawed and that these structures and rules, in conjunction with an imbalance of supply and Demand in California, have created an opportunity for suppliers of electricity to exercise market power and to charge unjust and unreasonable rates. The Commission's April 26 Order reaffirmed the potential for the exercise of market power in the California wholesale markets and mandated, among other things, that sellers, including non-public utilities, that own or control generation (with the exception of hydroelectric facilities) in California must offer all of their available generation to the ISO's real-time market. In compliance with the April 26 Order, the ISO filed, on May 11, 2001, Tariff revisions providing for, among other things, data requirements for the ISO's

---

<sup>3</sup> Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

<sup>4</sup> Duke Motion at, e.g., 2,4,5 and 6.

<sup>5</sup> 93 FERC ¶61,294(2000) ("December 15 Order").

implementation of the must-offer obligation. On June 6, 2001, the ISO filed its answer to comments and protests to the ISO's May 11 compliance filing, explaining why the compliance filing should be accepted without condition.

The June 19 Order, in addition to expanding the Commission's price mitigation scheme to the spot markets throughout the WSCC, extended price mitigation to all hours of the day and affirmed the requirement of the April 26 Order that all generators in California must offer all available generation for sale to the ISO's real-time Energy market. In compliance, the ISO filed tariff revisions on July 10, expressly noting that "to the extent that the June 19 Order does not provide detailed guidance on the implementation of certain of its provisions . . . the ISO has had to determine how best to implement certain aspects of the June 19 Order within the ISO's existing market structure."<sup>6</sup>

The ISO filed a motion for clarification and request for rehearing of the June 19 Order on July 19 ("July 19 Rehearing Request") and, among other things, requested that the Commission ratify the ISO's implementation of the must-offer obligation as reflected in the July 10 Compliance Filing or, to the extent the ISO's implementation is contrary to the Commission's intent, to so clarify for the ISO operation of the must-offer obligation. *Id.* at 37-38.

## **B. ISO Market Notices**

In response to the June 19 Order, the ISO posted a Market Notice on its Home Page on July 2, 2001, notifying Market Participants that (1) the ISO would begin submitting must-offer bids, in relation to the must-offer obligation, for any gas-fired generating unit that had available capacity and had not submitted a

---

<sup>6</sup> July 10 Compliance Filing at 5.

supplemental energy bid on its own behalf, (2) must-offer bids must be submitted for all operating hours (i.e., System Emergency and non-System Emergency hours), and (3) Dispatch Instructions for must-offer bids will be sent through the ISO's computerized ("ADS") communication link with Scheduling Coordinators for Generating Units.

On July 20, 2001, the ISO posted another Market Notice<sup>7</sup> regarding compliance with the must-offer obligation, specifically reminding generators subject to the must-offer obligation of their duty to offer to the ISO all of their available capacity in real time if such capacity is not already scheduled to run under bilateral agreements, needed to support native load or committed to provide Ancillary Services. In the July 20 Market Notice the ISO specifically recognized the "particular problems of compliance with the must-offer obligation for Generating Units with long start-up times and high operational costs that may not be recovered during periods of relatively low Energy prices." *Id.* at 1 –2 . The ISO noted that it was working on a solution and proposed, until a final solution was implemented, an interim procedure whereby the ISO would agree to forebear from deeming a Generating Unit in non-compliance with the must-offer obligation by granting temporary waivers from having to run to make its capacity available in real time. The waivers would be allocated on a first come/first served basis subject to system needs, system capacity, zonal congestion, Load forecasts and related parameters. The ISO clearly stated that the granting of a waiver was "wholly discretionary on the part of the ISO" and set forth certain terms and conditions for the waiver. Thus, requesting a waiver is wholly

---

<sup>7</sup> The July 20, 2001 Market Notice is appended hereto in Appendix A.

voluntary on the part of generators and both the granting and revoking of waivers is discretionary on the part of the ISO. Absent a waiver, a generating unit with available capacity is obligated to comply with the must-offer obligation because the obligation to be on-line and ready to respond to an ISO Dispatch Instruction in real time is the essence of the Commission's solution to the problem of economic withholding by generators. Generators with long start-up times cannot make their capacity available in real time when they are off-line. Furthermore, should generators be able to control if they were available by making unilateral decisions to take generating units off-line, generators could continue to hold hostage the ISO's real time market.

On August 8, 2001, the ISO posted another Market Notice addressing, among other things, multiple instances of non-compliance with the must-offer obligation. In this Market Notice the ISO reminded Market Participants of the need and requirements to comply with ISO Dispatch Instructions and the must-offer obligation.

## **II. THE COMMISSION HAS NOT REJECTED THE ISO'S IMPLEMENTATION OF THE MUST-OFFER OBLIGATION**

The Duke Motion properly references its own and other generators' protests to the Commission regarding both the must-offer obligation and the ISO's implementation of the must-offer obligation. The ISO, as detailed above, also has requested both modifications to the June 19 Order and clarification of a number of provisions, including the must-offer obligation. To date the Commission has not acted on the ISO's, or other parties', requests. The ISO must continue the course initiated with its July 19 Compliance Filing and proposed Tariff revisions until such time as the Commission directs the ISO to do

otherwise. Simply stated, by being directed at the ISO, the Duke Motion misses its target, and in reality the Duke Motion should be aimed at the Commission to seek to obtain clarity, modification or ratification from the Commission as to the proper interpretation and implementation of the must-offer obligation and related issues such as start-up and minimum load costs.

**III. THE ISO VOLUNTARILY IMPLEMENTED THE WAIVER OF MUST-OFFER COMPLIANCE TO HELP GENERATORS UNTIL THE COMMISSION ACTS AND THE ISO IS UNDER NO OBLIGATION TO CONTINUE THE WAIVER PROCESS**

The Duke Motion mistakes the ISO's voluntary and discretionary implementation of the waiver process for the ISO's filed interpretation and implementation of the must-offer obligation. The Commission's orders do not require the ISO to exempt any otherwise eligible generating unit from continuous compliance with the must-offer obligation. The Commission has never provided that generating units with long start-up times are exempted from compliance with the must-offer obligation. The must-offer obligation requires generating units to make available all available capacity (i.e., that capacity not committed under a forward schedule) to the ISO real time market. Units requiring as much 12 or more hours to start-up clearly must be on-line to enable real-time response to ISO Dispatch. If generating units were permitted to control what capacity is "available" by taking units off-line, the problems of economic withholding and improper exercise of market power that the Commission rightly sought to eliminate through the must-offer obligation would be re-created. The only way the must-offer obligation makes sense and can act to remedy economic withholding is for generating units with available capacity to be on-line and capable of responding in real time to Dispatch. To that extent that the ISO can

identify circumstances where system conditions permit certain generating units to go off-line, and thus not be available to the ISO real-time markets pursuant to the must-offer obligation, the ISO voluntarily has endeavored to permit such units to do so. The ISO need not permit generators to go off-line. The Commission has not acted to endorse or repudiate the ISO's formal filed implementation of the must-offer obligation or the ISO interim additional procedures developed to further accommodate generating units.

The Duke Motion correctly notes that it is the Commission that must clarify its intentions regarding the must-offer obligation, not the ISO. The ISO has proposed a procedure and requested the Commission to endorse the procedure or provide guidance on its requisite modification. To the extent that the ISO has crafted a temporary waiver from the ISO's interpretation of the must-offer obligation, generating units benefit from the waiver by avoiding minimum load costs and related expenses. Nothing in any ISO filing or Market Notice prohibits generating units from properly scheduling planned maintenance outages, entering into bilateral forward contracts and bidding available capacity into the ISO's Day- Ahead and Hour-Ahead markets to fully avoid the must-offer obligation and any need for the ISO's waiver process.

**IV. THE INTERIM OPERATING PROCEDURES SET FORTH IN THE JULY 20, 2001 MARKET NOTICE ARE DISCRETIONARY PROVISIONS THAT DO NOT REMOVE GENERATORS' MANDATORY COMPLIANCE WITH THE MUST-OFFER OBLIGATION**

The Duke Motion incorrectly portrays the ISO's Market Notice of July 20, 2001 as a procedure under which generators obtain some form of guaranteed relief from compliance with the Commission's orders. This is incorrect. The Commission has not provided for any temporary relief from the must-offer

obligation for any generating unit subject to the obligation. The ISO has sought to provide discretionary, customized temporary exemption from the must-offer obligation, whenever possible, in recognition of the problems that units with long start-up times may confront in compliance with the must-offer obligation.

Generating units are under no obligation to seek waivers: such units with available capacity always can – and, for the must-offer obligation to have any effect, must -- comply with the must-offer obligation by remaining on-line unless they are in an outage. To the extent that a generating unit does not have a bilateral forward schedule or is experiencing a scheduled or forced outage, such unit must offer its available capacity in real time. The waiver is offered only to afford an opportunity for units to go off-line for some limited period of time and realize savings from not having to continuously run at minimum load instead. Generating units are free to abstain from seeking such savings and may elect to comply with the must-offer obligation by staying on-line instead.

The Duke Motion is not correct that waivers are procedures to which generators are entitled and may otherwise rely upon to help them avoid the must-offer obligation. To the extent that the Duke Motion appears to argue that Duke wants guarantees of waivers, the motion misses the point of the must-offer obligation. Economic withholding and the exercise of market power forced the Commission to order the must-offer obligation. The ISO will not, and can not, implement a process by which generating units can continue to hold the ISO's real time market hostage to generators' unilateral decisions to go off-line.



## V. CONCLUSION

For the reasons set forth above, the ISO requests that the Commission reject the Duke Motion regarding a cease and desist order. The ISO does concur with the instant motion's request that the Commission act expeditiously to clarify the Commission's specific intentions as regard the must-offer obligation, especially the obligation of generating units, including those with long start-up times, to be on-line and available for dispatch into the ISO's real-time markets.

Respectfully submitted,

---

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

Dated: September 21, 2001