

PROPERTY OF THE
PUBLIC REFERENCE ROOM
DO NOT REMOVE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

FILED
OFFICE OF THE
SECRETARY
200 OCT 21 AM 11:14
FEDERAL ENERGY
REGULATORY COMMISSION

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

San Diego Gas & Electric Company,
Complainant,

Docket Nos. EL00-95-063 and
EL00-95-064

v.

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

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

Docket Nos. EL00-98-052 and
EL00-98-053

Public Meeting in San Diego, California

Docket Nos. EL00-107-011 and
EL00-107-012

Reliant Energy Power Generation, Inc.,
Dynergy Power Marketing, Inc., and
Southern Energy California, L.L.C.,
Complainants,

Docket Nos. EL00-97-005 and
EL00-97-006

v.

California Independent System Operator
Corporation,
Respondent

California Electricity Oversight Board
Complainant,

Docket Nos. EL00-104-010 and
EL00-104-011

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,
Respondents

Docket No. EL00-95-063, et al. -2-

California Municipal Utilities Association,
Complainant,

Docket Nos. EL01-1-011 and
EL01-1-012

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. EL01-2-005 and
EL01-2-006

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. EL01-68-015 and
EL01-68-016

ORDER ON COMPLIANCE FILING AND COMPLIANCE REPORT

(Issued October 31, 2002)

1. In this order, we accept in part and reject in part the California Independent System Operator's (ISO's) June 24, 2002 Compliance Filing (June 24 Compliance Filing). Additionally, we accept the ISO's June 24, 2002 Compliance Report (June 24 Compliance Report). Both the June 24 Compliance Filing and the June 24 Compliance Report were submitted in response to an order issued on May 15, 2002.¹ This acceptance in part and

¹San Diego Gas & Electric Co., et al., 99 FERC ¶ 61,158 (2002) (May 15

(continued...)

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. On January 25, 2002, the ISO submitted a compliance filing in response to an order issued on December 19, 2001.² The January 25 compliance filing addressed, among other things, procedures for generators to obtain an exemption from the Must-Offer Obligation and Minimum Load Cost recovery. The May 15 Compliance Order accepted in part and rejected in part the January 25 compliance filing, and directed the ISO to submit a new compliance filing. The May 15 Compliance Order also directed the ISO, in collaboration with generation owners, to ascertain the appropriate level of, and the specific generators entitled to, Minimum Load Costs during the retroactive period³ and to submit a compliance report on the issue.⁴ In response to these directives, the ISO submitted the June 24 Compliance Filing and June 24 Compliance Report.⁵

B. Notice of Filings and Interventions

3. Notices of the June 24 Compliance Filing and June 24 Compliance Report were published in the Federal Register, 67 Fed. Reg. 44,823 and 67 Fed. Reg. 45714, respectively, with motions to intervene and protests due on or before July 15, 2002. Timely protests were filed by Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC (collectively, Mirant); Williams

¹(...continued)
Compliance Order).

²San Diego Gas & Electric Co., et al., 97 FERC ¶ 61,293 (2001) (December 19 Compliance Order).

³The retroactive period begins on May 29, 2001 and continues through the ISO's implementation of the Commission's May 15, 2002 Compliance Order.

⁴May 15 Compliance Order, 99 FERC ¶ 61,158 at 61,633.

⁵Additional history regarding related ISO compliance filings is provided in the December 19 Compliance Order, 97 FERC ¶ 61,293 at 62,360-61.

Energy Marketing & Trading Company (Williams); Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (collectively, Reliant); and Dynegy Power Marketing, Inc., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC (collectively, Dynegy).

Discussion

A. Must-Offer Obligation

1. Exemption of Must-Offer and Recovery of Minimum Load Costs

a. Self-Commitment Period

4. Under the ISO's Tariff provisions regarding the Must-Offer Obligation, Section 5.11.6 (Waiver of Must-Offer Obligation) provides that Must-Offer Generators may seek an exemption of the obligation to offer all available capacity for one or more of their generating units for periods other than Self-Commitment Periods.⁶ If a generator's exemption request is not granted, the ISO defines this as a "Waiver Denial Period".⁷ Self-Committed units are not eligible for recovery of Minimum Load Costs. The May 15 Compliance Order affirmed earlier Commission orders requiring the ISO to 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.

5. In its June 24 Compliance Filing, the ISO proposes new Tariff language which provides, in essence, if a Must-Offer Generator has a Final Schedule in the Day-Ahead Market,⁸ that generator will be deemed to be Self-Committed for the ensuing 24-hour

⁶Self-Commitment Periods are defined as the hours when Must-Offer Generators submit Energy Schedules or are awarded Ancillary Service bids or self-provision schedules. The ISO Tariff provides that the ISO can extend Self-Commitment Periods as necessary to accommodate generating unit minimum up and down times such that the scheduled operation is feasible.

⁷Under the ISO's definition of Waiver Denial Period, all hours outside of Self-Commitment Periods for which exemptions are not granted constitute the Waiver Denial Period. Thus, under this definition, all generators that do not seek an exemption of the Must Offer Obligation are covered under the Waiver Denial Period.

⁸The ISO uses the term "Day-Ahead Market" to refer to the next calendar day's
(continued...)

period and not eligible for either an exemption or recovery of Minimum Load Costs until the next Day-Ahead Market in which it is not scheduled. The ISO explains the need for this provision is due to the high degree of operational complexity to forecast system conditions, quantify the amount of capacity it's likely to require in real time from units running under the Must-Offer Obligation, and then notify every eligible unit whether it is granted an exemption or must run at Minimum Load in a Waiver Denial Period. The ISO states that, due to this complexity, it must consider that any unit scheduled to run under a bilateral agreement or Ancillary Services Schedule in the Day-Ahead Market as Self-Committed for the entire relevant Trade Day and not eligible for an exemption or recovery of Minimum Load Costs until the next Day-Ahead Market.

6. Williams, Reliant and Mirant protest the ISO's proposal to deny the payment of Minimum Load Costs during any hour or relevant Trade Day if a generator is Self-Committed. Because Section 5.11.6 provides that units shall be on-line in real-time during Self-Commitment periods or they will be in violation of the Must-Offer Obligation, these intervenors argue that the ISO's proposal to withhold minimum load payments from a generator for a full 24-hour period if there is any hour in which the generator sells energy in a bilateral or ISO market is directly contrary to the Commission's instructions that generators receive compensation for each hour they are operating under the Must-Offer Obligation. They also contend that the proposal is inconsistent with the Commission's statement that the Must-Offer exemption requirements should not serve as a disincentive for generators to either bid in the Energy Imbalance market or to enter into sales in the bilateral spot market. These intervenors argue that, faced with the knowledge that entering into a contract for a time period of as little as one hour will mean forfeiting the ability to recover Minimum Load Costs from the ISO for a potentially longer Waiver Denial Period, generators that bring their units on-line in response to the Must-Offer Obligation will reasonably demand that any prospective buyer make them whole for these forfeited revenues or will elect not to enter into the voluntary forward contract. Also, Mirant protests the ISO's proposal to tie the Self-Commitment period to the submission of Day-Ahead schedules. Mirant states that this arrangement is internally inconsistent with the remainder of section 5.11.6 of the ISO Tariff.

⁸(...continued)
service period.

Commission Determination

7. The Commission rejects the ISO's proposed Tariff modification as beyond the narrow scope of the compliance filing as directed by the May 15 Order. Further, the proposed language contravenes our directive that the ISO must compensate a generator for its actual costs during each hour when the generator was operating at Minimum Load status.⁹ Nor has the ISO provided adequate support for its claim that the proposed provision is needed due to the high degree of operational complexity. We reiterate our directive from prior orders 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. However, we are authorizing Staff to issue data requests regarding the ISO's implementation of the Must-Offer requirement, and to convene a technical conference if appropriate.

b. Limitations on Minimum Load Cost Recovery

8. In its January 25 Compliance Filing, the ISO proposed to pay Must-Offer generators Minimum Load Costs if they: (1) do not submit any Energy Schedules, Ancillary Service Schedules, self provision Schedules or bids in the Hour-Ahead markets for any hours during such Waiver Denial Period (any hour exception); and (2) do not, over an hour, produce a quantity of energy that varies by more than 5 MW or is equal to 3 percent of the unit's maximum operating output (tolerance band).¹⁰ The May 15 Compliance Order rejected the ISO's any hour exception, and directed the ISO to pay Minimum Load Costs in each hour when a generating unit is under the Must-Offer Obligation.¹¹ The Commission found reasonable the ISO's tolerance band to deny recovery of Minimum Load Costs for units that produce a quantity of energy that varies by more than the tolerance band.

9. In its June 24 Compliance Filing, the ISO proposes to revise Section 5.11.6.1.1 to state that: (1) 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

⁹December 19 Compliance Order, 97 FERC at 61,356. See also May 15 Compliance Order, 99 FERC at 61,630-31.

¹⁰Proposed ISO Tariff section 5.11.6.1.1.

¹¹May 15 Compliance Order, 99 FERC ¶ 61,158 at 61,632.

Costs for those hours within a Waiver Denial Period when they produce a quantity of energy outside of the tolerance band. Further, its states that, 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.

10. Dynegy argues that the Commission should reject the ISO's proposal to make ineligible the recovery of Minimum Load Costs during a Waiver Denial Period for units awarded Ancillary Services in the Hour-Ahead market or having Final Hour-Ahead Schedules. Specifically, Dynegy appears to argue that as long as a unit is running at minimum load, whether that unit provides Ancillary Services should not be determinative for eligibility for Minimum Load Costs. Dynegy also requests that the ISO's Tariff language be modified to clarify that the tolerance band is limited to minimum load energy. Reliant claims that Section 5.11.6.1.1 is ambiguous and should be clarified to the extent that the qualifications for Must-Offer cost recovery may exclude certain times when generating units are operating at the ISO's instruction in compliance with the Must-Offer Obligation.

11. Mirant requests the Commission to direct the ISO to modify its compliance filing to require that Scheduling Coordinators that control units under the Must-Offer Obligation that are running at minimum loads to forward schedule the energy from these units. Mirant also requests the Commission to direct the ISO to clarify how it will treat generators that are at minimum load when the ISO dispatches a unit for instructed energy.

Commission Determination

12. We accept the ISO's proposed changes to Section 5.11.6.1.1. Consistent with the Commission's directive in the May 15 Compliance Order, the provision makes clear that a unit will be paid for Minimum Load Costs for each hour that the unit runs at minimum load. We find that, once a unit is awarded Ancillary Services for any hour, it is ineligible for Minimum Load Costs for that hour because the output of that unit is now reserved for use. We will not allow a unit receiving compensation for providing Ancillary Services to also receive payment for Minimum Load Costs, as such payment would constitute double recovery of Minimum Load Costs for that interval. With respect to the 5 MW or 3% limitations, the provision is sufficiently clear that it refers to units operating at minimum load and no further revision is necessary.

13. With regard to Mirant's protest, we agree that the Scheduling Coordinators should forward schedule energy from those units under the Must-Offer Obligation that are running at minimum load. Additionally, we also agree with Mirant that the ISO has not

explained how it will treat generators that are running at minimum load and dispatched for instructed energy. Therefore, the ISO should clarify, in a further compliance filing, how it will treat generators in this situation.

2. Procedures for Exemptions

14. In its June 24 Compliance Filing, the ISO revised its Tariff to state that the it will inform a generator that its exemption request has been accepted, denied, or revoked including a reason for the decision, stating that such "reasons shall be non-discriminatory."

15. Reliant protests that the ISO has not provided specific criteria that would form the basis for its exemption decisions. Accordingly, Reliant argues that notification from the ISO must be timely made, and include an explanation of the reason for the ISO decision, with reference to specific criteria. Mirant requests that the Commission require the ISO to notify a generator (i) within one hour of a request for an exemption if the exemption has been granted or denied and (ii) immediately if an exemption has been revoked. Mirant also requests that the Commission require the ISO to define Waiver Denial Period so that a generator knows exactly how many hours and over what time period the exemption is denied and the generator is under the Must Offer Obligation. Mirant recommends that the Waiver Denial Period be defined as lasting one hour. Dynegy states that the ISO must determine exemptions in a manner consistent with Participating Generator Agreements (PGAs).

Commission Determination

16. The May 15 Compliance Order required the ISO to revise its Tariff to provide that a generator be informed that an exemption request has been accepted, denied, or revoked, including the reason(s) for the decision, and that the reasons must be non-discriminatory.¹² The ISO's proposed tariff language complies with the Commission's directive and is hereby accepted. With respect to the intervenors' protests, we find that the ISO has satisfactorily complied with our directives regarding the basis for accepting, denying or revoking of exemptions. Specifically, regarding the timing of the revocation of exemptions, we will not prescribe time constraints so that the ISO has maximum flexibility to address events that affect system reliability (e.g. forced outages). However, with respect to the acceptance or denial of exemption requests, we direct the ISO to propose, in a further compliance filing, an appropriate time frame within which it will

¹²May 15 Compliance Order, 99 FERC ¶ 61,158 at 61,630.

notify a generator concerning the acceptance or denial of an exemption request, and include such time frame in its Tariff. The ISO is directed to revise its Tariff to include such time frame.

3. Effective Date

17. Mirant objects to the ISO's proposed effective date of July 1, 2002 for Sections 5.11.6 through 5.11.6.1.4 because the ISO's compliance filing does not comport with the Commission's May 15 Compliance Order. Mirant recommends that the methodology set forth in the ISO's June 24 Compliance Report should remain in effect until the ISO submits tariff sheets that comply with the Commission's orders.

Commission Determination

18. With respect to Mirant's concerns regarding the ISO's proposed July 1, 2002 effective date for sections 5.11.6 through 5.11.6.1.4, we note that since we are rejecting the ISO's proposal for non-payment of minimum load costs for the hours that are not self-committed under section 5.11.6, this finding is effective July 1, 2002. With respect to the effective date for sections 5.11.6.1.1 through 5.11.6.1.4, the Recovery of Minimum Load Costs by Must-Offer Generators, the ISO's tariff sheets are also effective July 1, 2002, consistent with the effective date of the compliance report.

4. Other Tariff Revisions

19. Our review indicates that the remaining tariff revisions comply with our May 15 Compliance Order and are accepted for filing.

II. ISO's June 24 Compliance Report

20. The May 15 Compliance Order directed the ISO to work with generators to ascertain both the appropriate level of and the specific generators entitled to recovery of Minimum Load Costs during the retroactive period and make a compliance report detailing such findings. The ISO has submitted its report which includes a methodology for determining the amounts that must be paid to specific generators for the retroactive period. No party has protested this compliance report. Our review of the June 24 Compliance Report indicates that the ISO's proposed methodology is reasonable. Therefore, the ISO's June 24 Compliance Report satisfactorily complies with our May 15 Compliance Order.

The Commission orders:

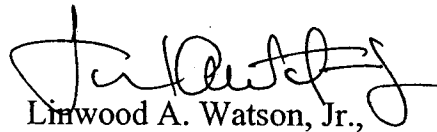
(A) The ISO's compliance filing submitted on June 24, 2002 is hereby accepted in part and rejected in part, as discussed in the body of this order, and Sections 5.11.6 through 5.11.6.1.4 are effective July 1, 2002.

(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.

(C) The Commission hereby accepts the ISO's June 24 Compliance Report.

By the Commission.

(S E A L)



Linwood A. Watson, Jr.,
Deputy Secretary.