103 FERC ¶ 61, 078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company, Complainant,
v.
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents

Docket No. EL00-95-045

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

Docket No. EL00-98-042

ORDER CLARIFYING FUEL COST ALLOWANCE

(Issued April 22, 2003)

1. In this order, we clarify the fuel cost allowance described in an order issued on March 26, 2003 concerning refunds for California.[1] This order benefits customers by further clarifying the method for calculating refunds for purchases made in the organized spot markets in California during the period October 2, 2000 through June 20, 2001 (the refund period).

Background

2. In the California Refund Order, the Commission adopted in part and modified in part the presiding administrative law judge's Proposed Findings issued on December 12,

[1] See San Diego Gas & Electric Company, et al., 102 FERC ¶ 61,317 (2003) (California Refund Order).

20030422-3054 Issued by FERC OSEC 04/22/2003 in Docket#: EL00-95-045

2002.[2] In that order, the Commission also allowed generators to receive an additional fuel cost allowance to recover costs for high spot gas prices. In granting this additional fuel cost allowance, the Commission relied on a staff report that recognized that market manipulation was not the sole cause of high California spot gas prices and that the effects of scarcity can not be separated from those of market dysfunction and price manipulation.[3]

3. In order to verify that generators paid spot gas prices, the Commission required that each generator base its additional fuel cost allowance on its actual daily cost of gas incurred to make spot power sales in the California Power Exchange (PX) and California Independent System Operator Corporation (CAISO) spot markets. This approach required that a generator determine what portion of its daily gas supply portfolio it used for spot power sales versus longer term bilateral sales. The Commission would assign the shortest term gas to the spot power sales by requiring each generator to rank its gas supplies by term and allocate its gas supply to its spot power fuel requirement starting with the shortest term gas supply, proceeding sequentially to the next shortest term supply, until a generator's spot power demand for gas is met. The average cost of this portion of the generator's gas supply portfolio would serve as the cost of gas for the additional fuel cost allowance.[4]

4. On April 2, 2003, the California Parties[5] filed a request for rehearing described as a motion for expedited clarification relating to the additional fuel cost allowance and a request for a shortened response period. Pursuant to a Commission notice for the filing of answers by April 10, 2003, the following parties filed timely answers to the California Parties' request for rehearing: Arizona Electric Power Cooperative, Inc. (AEPCO);

---

[2]See San Diego Gas & Electric Company, et al., 101 FERC ¶ 63,026 (2002)

[3]See Staff Final Report on Price Manipulation in Western Markets, Docket No. PA02-2-000, March 26, 2003. This report is available on the Commission's website at http://www.ferc.gov/electric/bulkpower.htm

[4]While the Commission found it reasonable to grant generators an allowance to recover certain fuel costs, we did not impose this charge in the calculation of the mitigated market clearing price paid to all suppliers because we intended this calculation to reflect a competitive market free from manipulation.

[5]The California Parties are the People of the State of California ex rel. Bill Lockyer, Attorney General; the California Electricity Oversight Board; the California Public Utilities Commission; Pacific Gas & Electric company (PG&E); and southern California Edison Company.

20030422-3054 Issued by FERC OSEC 04/22/2003 in Docket#: EL00-95-045

California Generators;[6] CAISO; City of Anaheim, California (Anaheim); City of Los Angeles Department of Water and Power (LADWP); Cities of Redding and Santa Clara, California (Redding/Santa Clara); Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); and Sacramento Municipal Utility District (SMUD).

Discussion

5. The California Parties request clarification concerning ten issues. Several parties contend that the California Parties have filed an "inappropriate" request for rehearing because the California Parties seek to receive more than just a clarification of the California Refund Order on several issues. The California Generators and some commenters state that the California Parties, in their motion, attempt to have the Commission "prejudge" some issues prior to the soon-to-be scheduled technical conference to discuss the additional fuel cost allowance data submissions. These issues include the following: whether financial and contractual commitments impacting a generator's gas costs should be factored into the additional fuel cost allowance; whether affiliate transactions should be included in calculating the additional fuel cost allowance; and whether generators should be permitted to seek an additional fuel cost allowance for intervals in which the market clearing price was lower than the MMCP. Furthermore, NCPA states that the California Parties' requests to modify the California Refund Order will add needless layers of complexity and burdens on the Commission and the parties without adding to the accuracy of the results.

Which staff option is the Commission adopting to use for computing the additional fuel cost allowance?

6. AEPCO and the California Generators commented on the California Parties' request that the Commission clarify which staff option the Commission is adopting to use for computing the additional fuel cost allowance. AEPCO supports the California Parties' request for clarification. However, the California Generators state that the Commission is not limited to a particular staff option because the Commission set forth its own process for computing the additional fuel cost allowance.

[6]The California Generators are Duke Energy Trading and Marketing, L.L.C. and Duke Energy North America, LLC; Dynegy Power Marketing, Inc; Mirant Americas Energy Marketing, LP; Reliant Energy Power Generation, Inc.; and Williams Energy Marketing & Trading Company.

20030422-3054 Issued by FERC OSEC 04/22/2003 in Docket#: EL00-95-045

7. In the California Refund Order, the Commission did not rely on a particular staff option. Instead, we provided a methodology for computing the additional fuel cost allowance.

Is the data series submitted by Dr. Harris consistent with the Commission's determination regarding the appropriate basin plus transportation proxy price calculation for use in the mitigated market clearing price (MMCP)?

8. Several parties state that there is no justification for adopting at this time the position of the California Parties' witness, Dr. Harris, concerning the use of his data series to calculate the MMCP. Generally, these parties argue that the Commission should allow all parties to provide further input into this calculation before the Commission clarifies this issue.

9. As directed in the California Refund Order, the Commission will hold a technical conference concerning the additional fuel cost allowance data and procedural issues in May 2003. We will not make a finding on the appropriate data series for use in calculating MMCP until after the technical conference.

Must financial and contractual commitments that impact a generator's gas costs be factored into the additional fuel cost allowance?

10. The CAISO supports the California Parties' position that financial and contractual commitments that impact a generator's gas costs should be considered in the additional fuel cost allowance. However, the California Generators contend that the Commission found in the California Refund Order that the additional fuel cost allowance should only include spot gas purchases.

11. As we stated in the California Refund Order, generators must base their claims for additional fuel cost allowances on their actual daily cost of gas incurred to make spot power sales.[7] To the extent that any financial and contractual arrangements these generators may have had in place for the purchase of gas impacted their actual cost of gas incurred to make spot power sales, generators must take into account any such arrangements in making their claims. As we stated in the California Refund Order, the Commission will assign the shortest term gas to the spot power sales by requiring each generator to rank its gas supplies by term and allocate its gas supply to its spot power fuel requirement starting with the shortest term gas supply, proceeding sequentially to the next shortest term supply, until a generator's spot power demand for gas is met.

[7]California Refund Order at paragraph 61.

20030422-3054 Issued by FERC OSEC 04/22/2003 in Docket#: EL00-95-045

Following this ranking, a generator that relied on financial and contractual commitments for gas purchases to meet its spot power sales will factor the impact of these commitments into the calculation of its additional fuel cost allowance.

Will all sales and purchases relating to a delivery period be consistently reflected in the generators' cost calculations?

12. In essence, the California Parties request that the Commission standardize an accounting method for all generators to follow to remove significant variables that could prolong reconciliation of the data filings. Specifically, the California Parties suggest that each generator be required to aggregate and net all of its gas purchases and sales relating to a delivery date, irrespective of the term of the purchase or sale, and then calculate the resulting weighted average cost of gas per MMBtu to determine the additional fuel cost allowance based on that aggregated and netted amount. Some commenters state that the California Parties' suggestion fails to recognize generators' already established different accounting methods and may penalize generators that bought inexpensive gas for sales not subject to mitigation. LADWP states that gas purchases in transactions of varying duration should not be averaged together, but separated based on term classification. Other parties state that the Commission clearly articulated a uniform method for determining the additional fuel cost allowance.

13. The California Refund Order does not require clarification on this point. In the order, we stated that generators must rank their gas supplies by term and allocate their shortest-term gas supplies to spot power sales, moving up in contract term only until the generator's spot power demand for gas is met.[8] Accordingly, only the gas supplies actually allocated to spot power sales, as impacted by any financial or contractual arrangements that may apply, should be considered in generators' fuel cost claims. As noted at paragraph 61, the average cost of this entire portion of a generator's gas supply portfolio, i.e., the portion allocated to spot power sales as described above, would serve as the cost of gas for the additional fuel cost allowance. We find that no additional accounting guidance is applicable or necessary.

14. Furthermore, regarding the California Parties' request that generators should be required to aggregate and net all purchases and sales of gas related to a given delivery date, irrespective of the term of the purchase or sale, and to calculate the additional fuel cost allowance based on that aggregated and netted amount, we find that this proposal would not be fair or equitable. As discussed in the previous section, the California Refund Order requires generators to base their claims for additional fuel cost allowances

[8] Id.

on their actual daily cost of gas incurred to make spot power sales. Because there exists variety in the types of financial and contractual arrangements that may apply for each generator, for each delivery date, the Commission finds that the actual daily cost of gas determination must be case specific. This case-specific actual daily cost of gas determination reflects what a generator paid for spot gas, which is not necessarily the result that would occur from the California Parties' aggregate and netting proposal. Accordingly, we will not grant the California Parties' request to aggregate and net all purchases and sales. Rather, consistent with the California Refund Order, generators will be permitted to make and support claims for additional fuel cost allowances reflecting their actual cost of gas incurred to make spot power sales.

Will only arm's-length, non-affiliate transactions be considered in calculating the additional fuel cost allowance?

15. The CAISO supports the California Parties' request that only arm's-length, non-affiliate transactions be considered in calculating the additional fuel cost allowance. Several parties state that there should be no automatic exclusion of affiliate transactions because the generator in some cases charged the same price to a third-party as it did to its affiliate.

16. We find that the California Parties have not supported their request for a blanket prohibition on the consideration of gas purchases from affiliates. On balance, we find that generators need to be given the opportunity to support the appropriateness of any affiliate gas transactions included in their additional fuel cost allowance claims. Parties may challenge the appropriateness of including such transactions on a case-by-case basis.

Will the additional fuel cost allowance be calculated based on MWh of energy actually generated and sold into the CAISO and PX?

17. The CAISO supports the California Parties' request that the Commission base the additional fuel cost allowance on MWh generated and sold into the CAISO and PX markets. However, the California Generators state that they should be allowed to submit their actual daily costs of gas and they should not be limited to being reimbursed for the costs of the gas consumed in the CAISO and PX markets. AEPCO states that the California Parties' suggestion that the allowance be based only on PX and CAISO sales is inconsistent with the California Parties' suggestion to use all gas purchases for a given day. LADWP states that the Commission should reject the California Parties's suggestion that generators should be required to use incremental heat rates of the generation units utilized to sell energy in the CAISO or PX to determine their gas costs.

20030422-3054 Issued by FERC OSEC 04/22/2003 in Docket#: EL00-95-045

LADWP suggests instead that the Commission should allow the use of average heat rates instead of incremental heat rates in these calculations.

18. We clarify that the additional fuel cost allowance should be based upon the MWh actually sold into the CAISO and PX markets, and the gas used to fuel that generation. The additional fuel cost allowance is meant to reimburse generators for any unrecovered cost of gas incurred to make spot power sales beyond that recovered under the MMCP calculation. The use of incremental heat rates in the determination of the additional fuel cost allowance would be consistent with the calculation of the MMCP.

Will the additional fuel cost allowance be calculated for intervals in which the generator "beat the proxy," as well as in intervals in which the generator did not "beat the proxy?"

19. Several parties state that the Commission should reject the California Parties' request that the Commission should reduce the additional fuel cost allowance for periods in which a generator's gas cost exceeded the gas proxy price by netting out the "surplus" from periods during which a generator's gas cost was less than the gas proxy. AEPCO states that netting of the additional fuel cost allowance for these price conditions would be appropriate, provided that the interval to make the calculation was for each hour, because a daily interval is too long for units with a commitment period of four to six hours.

20. We will deny this aspect of the California Parties' motion. The additional fuel cost allowance is intended to compensate a generator during intervals when the proxy price does not cover its full fuel costs. Given that we do not allow generators to offset amounts that they were required to refund when their prices exceeded the MMCP against profits they would otherwise have received when their prices were below the MMCP, we find that generators should not now have to net out their fuel cost savings from intervals during which they beat the gas proxy price, from their fuel cost claims for periods during which they did not beat the gas proxy price.[9]

Will the additional fuel cost allowance be disallowed for sales that are not mitigated?

21. The CAISO supports the California Parties' request that the Commission should not allow the additional fuel cost allowance for non-mitigated sales.

[9] See San Diego Gas & Electric Company, et al., 99 FERC ¶ 61,160 at 61,654.

20030422-3054 Issued by FERC OSEC 04/22/2003 in Docket#: EL00-95-045

22. We find that no additional fuel cost allowance is appropriate during intervals where sales were not mitigated. The need to provide an additional fuel cost allowance is tied to the mitigation of the single market clearing price. In intervals where the MCP was lower than the MMCP, there is no need to provide an additional fuel cost allowance. Thus, generators' submissions of their daily costs of gas should exclude gas costs associated with non-mitigated intervals.

Will generators that manipulated the gas market or the gas indices be permitted to collect the additional fuel cost allowance?

23. The California Generators state that there has been no connection established between how any alleged gas market manipulation may have affected prices that generators paid for gas.

24. The California Refund Order addresses gas market manipulation by revising the MMCP calculation. All generators may submit claims through the additional fuel cost allowance to collect their actual gas fuel costs for spot electricity sales over the refund period. The issue of manipulation is beyond the scope of this proceeding.

What procedures will be used to allow parties to evaluate the additional fuel cost allowance? Specifically, will parties be afforded the opportunity for discovery and cross-examination?

25. Several parties contend that the need for discovery and cross-examination can be better addressed at a later time. In light of the fact that we will discuss these additional fuel cost allowance issues at a technical conference, we find no need at this time for discovery or cross-examination.

The Commission orders:

The Commission hereby denies in part and grants rehearing in part of the California Refund Order issued on March 26, 2003, as discussed in the body of this order.

By the Commission. Commissioner Massey concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

20030422-3054 Issued by FERC OSEC 04/22/2003 in Docket#: EL00-95-045

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

San Diego Gas & Electric Company, Complainant,
v.
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents

Docket No. EL00-95-045

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

Docket No. EL00-98-042

(Issued April 22, 2003)

MASSEY, Commissioner, concurring:

I write separately to address one issue: whether any generator that manipulated the gas market or the gas indices will be permitted to collect the additional fuel cost allowance. The California Refund Order addresses the effect of gas market manipulation on the MMCP calculation, but that is not the end of the analysis. The additional fuel cost allowance permits generators to recover the difference between what the MMCP allows for gas costs and the higher prices actually paid for gas. This will reduce the refund amount. The problem is that the higher prices actually paid for gas may have been the product of manipulation of the gas market. Manipulation must be remedied. Nevertheless, I agree that the issue of the appropriate remedy for the influence of gas market manipulation on actual gas fuel costs for spot electricity sales should be addressed in other appropriate proceedings, not here.

For these reasons, I respectfully concur.

William L. Massey
Commissioner