

UNITED STATES OF AMERICA 98 FERC 61,327
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator

Corporation

Docket No. ER02-922-
000

California Electricity Oversight Board

v.

Docket No. EL02-51-000
(Not Consolidated)

Williams Energy Services Corporation, AES
Huntington Beach LLC, AES Alamitos LLC,
AES Redondo Beach LLC, Mirant Americas
Energy Marketing L.P., Mirant Delta LLC,
Reliant Energy Services Inc., Reliant Energy
Coolwater LLC, Reliant Energy Etiwanda LLC,
Reliant Energy Mandalay LLC, Reliant Energy
Ormand Beach LLC, Dynegy Power Marketing
Inc., Encina Power LLC, Calpine Corporation,
Geysers Power Company, LLC, Southern
California Edison Company,

All Other Public and Non-Public Utilities Who
Own or Control Generation in California
and Who Sell Through the Markets or Use the
Transmission Lines Operated by the California
Independent System Operator Corporation, and

All Scheduling Coordinators Acting on Behalf of
the Above Entities

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and EL02-51-000

ORDER ACCEPTING IN PART AND REJECTING IN PART
TARIFF AMENDMENT NO. 42 AND DISMISSING COMPLAINT

(Issued March 27, 2002)

On January 31, 2002, the California Independent System Operator Corporation (Cal ISO) filed Amendment No. 42 proposing changes to its Open Access Transmission Tariff (OATT) relating to participation in the ISO markets by Eligible Intermittent Resources, allocation of ISO Settlement Charge Type 487, management of intra-zonal congestion, and the calculation of the target price for incremental and decremental Imbalance Energy bids. As discussed below, we will accept in part and reject in part Cal ISO's Amendment No. 42. On January 16, 2002, the California Electricity Oversight Board (EOB) filed a Complaint in Docket No. EL02-51-000. As discussed below, we will dismiss the EOB complaint.

This order benefits customers by addressing a major obstacle to development of new wind and other intermittent generation. Encouraging the development of intermittent generation will increase diversity in the resource base, thereby improving system reliability as a whole.

I. NOTICES OF FILINGS AND PLEADINGS

Amendment No. 42

Notice of the Cal ISO Amendment No. 42 was published in the Federal Register, 67 Fed. Reg. 6,918 (2002) with comments, interventions and protests due on February 21, 2002.

Timely motions to intervene and reject, requests for suspension, hearing, and modifications, comments and protests were filed by the American Wind Energy Association (AWEA), California Department of Water Resources (DWR), California Electricity Oversight Board (EOB), California Public Utilities Commission (CPUC), Center for Energy Efficiency and Renewable Technologies (CEERT), the Cities of Redding, Santa Clara, and Palo Alto, California and the M-S-R Public Power Agency (Cities/M-S-R), the City and County of San Francisco (San Francisco), the City of Vernon, California (Vernon), Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC (Duke), Dynegy Power Marketing, Inc., (Dynegy), FPL Energy, LLC (FPL), Independent Energy Producers Association (IEP), Modesto Irrigation District (MID), Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC (Mirant), the Metropolitan Water District of Southern California (MWD), Pacific Gas and Electric Company (PG&E), Powerex Corporation (Powerex), Reliant Energy Power Generation, Inc. And Reliant Energy Services, Inc. (Reliant), Southern

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California Edison Company (SoCal Ed), Sacramento Municipal Utility District (SMUD), Transmission Agency of Northern California (TANC), Turlock Irrigation District (Turlock), Williams Energy Marketing & Trading Company (Williams), and Western Power Trading Forum (WPTF).

Duke Energy, Dynegy, IEP, Mirant, Reliant, and Williams filed a joint motion for a technical conference. Additionally, Dynegy filed an untimely protest and motion to reject the Cal ISO's Amendment No. 42. The Cal ISO filed an answer on March 8, 2002. The DWR filed supplemental comments on March 12, 2002.

EOB Complaint

Notice of the EOB's complaint was published in the Federal Register, 67 Fed. Reg. 3,486 (2002) with answers, comments, interventions and protests due on February 5, 2002. On January 30, 2002, the Commission issued a notice of extension of time to file until February 12, 2002.

The AES Corporation, Arizona Electric Power Cooperative, Inc., Automated Power Exchange, Inc., Calpine Corporation and Geysers Power Company, LLC (collectively, Calpine), Edison, Exelon Corporation, the Metropolitan Water District of Southern California, Mirant, the City of Santa Clara, California, Reliant Companies, Southern California Edison Company, the Northern California Power Agency (NCPA), Dynegy, the City of Pasadena, California, the Transmission Agency of Northern California, and Williams Energy Marketing &

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Edison includes Edison Mission Energy, Edison Mission Marketing & Trading, Inc. And Sunrise Power Company, LLC.

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Exelon Corporation filed on behalf of its subsidiaries, Exelon Generation Company, LLC, Commonwealth Edison Company and PECO Energy Company.

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Mirant includes Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC.

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Reliant Companies includes Reliant Energy Services, Inc., Reliant Energy Coolwater, LLC, Reliant Energy Ellwood, LLC, Reliant Energy Etiwanda, LLC, Reliant Energy Mandalay, LLC, and Reliant Energy Ormond Beach, LLC.

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Dynegy includes Dynegy Power Marketing, Inc., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC.

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Trading Company filed timely answers, responses and comments to the complaint.

The Public Service Company of New Mexico, the Turlock Irrigation District, Pacific Gas and Electric Company (PG&E), and Constellation Power Source, Inc. filed timely motions to intervene.

II. PROCEDURAL MATTERS

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely motions to intervene, answers, responses and comments in the dockets in which they intervened, serve to make those who filed a party to that proceeding.

Due to the early stage of the proceeding in Docket No. ER02-922-000, its interest in the proceeding, and the lack of undue prejudice or delay, we find good cause to grant Dynegy's untimely motion to intervene, as well as DWR's untimely supplemental comments.

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits the filing of an answer to a protest or answer unless permitted by the decisional authority. We will accept the Cal ISO's answer in Docket No. ER02-922-000 because it will aid our decision in these proceedings.

III. AMENDMENT NO. 42

The Cal ISO seeks an April 1, 2002 effective date for the Amendment 42 modifications to its OATT.

A. Intermittent Resource Proposal

Background

The special operating characteristics of intermittent energy resources can act as a barrier to those resources participating in the Cal ISO energy market. Wind generators and other intermittent resources generally are unable to adjust their generation output to ISO Dispatch instruction. In addition, "as-available" Energy from intermittent resources is difficult to forecast accurately for more than one or two hours into the future due to the significant variability of the fuel source, e.g, wind, sunlight. The Cal ISO presents its intermittent resource proposal as a solution to these barriers.

The proposal requires eligible intermittent resources to execute the ISO's Participating Generator Agreement, install an ISO-approved meter, and install an ISO-approved Data Processing Gateway to permit the real-time telemetry of operation and

meteorological date. In addition, Scheduling Coordinators for participating intermittent resources must submit schedules that are consistent with an hourly energy forecast that is developed under ISO supervision, and will be assessed a fee to defray the ISO costs of the forecasting service.

Summary of Protests

Most interveners support the Cal ISO's proposed modification for Intermittent Resources. The EOB supports the Intermittent Resources Proposal, but recommends that uninstructed deviations for intermittent resources should be treated the same way other generating resources are treated when deviations are the result of anything other than the Cal ISO forecast errors. IEP strongly supports the Intermittent Resource Proposal, but suggests that, in the event there are "residual" uninstructed deviation costs associated with Intermittent Resources generation, such costs be allocated to Scheduling Coordinators with net negative uninstructed deviations on the basis of total metered Demand.

Other interveners, including Mirant, MWD, SoCal Ed and TANC, oppose certain aspects of the proposed modification, such as the proposal to exempt participating Intermittent Resources from charges for uninstructed deviations except where there are aggregate negative uninstructed deviations over a calendar month. Intervenors note that other generating resources are charged for such deviations on a ten-minute settlement basis. Mirant requests the Commission provide comparable treatment to all other generating resources whose output varies as a result of ambient environmental conditions.

Discussion of Intermittent Resource Proposal

Most interveners support the Intermittent Resource Proposal, but some express concerns about the allocation of costs, specifically the proposed methodology for settling Participating Intermittent Resources' negative uninstructed deviations. In its Answer, the Cal ISO argues that since intermittent resources have special constraints that preclude operational control of the units to prevent uninstructed deviations, that "it is patently clear that a one-size-fits-all approach will not suffice" (Cal ISO Answer at 7). The Cal ISO explains that the settlement procedure is consistent with the settlement of uninstructed deviations for any type of generating unit. "[T]he only difference between settlement of uninstructed deviations for Participating Intermittent Resources and those by other types of generating units is the summation of such deviations across the month, to account for intermittent resources' lack of operational certainty due to environmental conditions. The proposed design is neither designed nor expected to create any subsidy for settlement of Uninstructed Imbalance Energy by Participating

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Intermittent Resources." (Cal ISO Answer at 9). The Commission agrees that monthly netting of energy imbalances allows a level playing field without subsidizing Intermittent Resources.

IEP raises the concern that the proposed tariff language addressing "residual" uninstructed deviation costs after the monthly netting calculation may not properly allocate any "residual" costs to scheduling coordinators with net negative uninstructed deviations on the basis of their total metered demand (IEP at 4). It appears to the Commission that IEP may

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have misread the tariff. Moreover, the overall benefit of having intermittent resources able to schedule will outweigh any

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residual costs, which are expected to be small.

SMUD is concerned that participating intermittent resources should be specifically required to take "best efforts" to avoid deviations, and the EOB raises concerns that intermittent renewable resources may seek to manipulate energy output by withholding during peak load periods, or over-generating during low load periods. In its answer, Cal ISO states that failure of a Participating Intermittent Resource to schedule in accordance with the forecast results in the withdrawal of the risk mitigation provided by the instant proposal. Cal ISO contends that since these resources are, by their nature, non-Dispatchable, the opportunity for manipulating output is limited. Consequently, the Cal ISO's proposal neither increases nor decreases any existing incentive for such behavior. The Cal ISO

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Moreover, in its Answer the Cal ISO highlights the extra costs intermittent resources will have to incur in order to participate, and states that the proposal "is far from a 'free ride' for intermittent resources." See Cal ISO Answer at 7.

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The tariff language states that the residual balance "shall be assigned to each Scheduling Coordinator in the same proportion that such Scheduling Coordinator's aggregate Net Negative Uninstructed Deviations in that month bears to the aggregate Net Negative Uninstructed Deviations for all Scheduling Coordinators in the Control Area in that month." See ISO proposed tariff section 11.2.4.5.1.

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According to the Cal ISO and other stakeholders who filed comments in this proceeding, any such residual amounts are expected to be zero or close to zero. Moreover, the Cal ISO has committed to continually work to improve forecast accuracy to ensure that the residual costs remain small. Finally, in light of the ISO's commitment to entertain improvements to the system, we believe Scheduling Coordinators will have an adequate forum to raise issues to the Cal ISO if they believe the residual balance is becoming a significant amount.

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maintains that there is no evidence of intermittent resources currently seeking to manipulate output. As such, the Cal ISO believes it is sufficient to closely monitor uninstructed deviations and, if systematically undesirable behavior is

observed, the Cal ISO will consider modifications to the proposed treatment of such resources (Cal ISO Answer at 8).

The Commission finds Cal ISO's argument to be reasonable. EOB's concern is based on speculation of possible future abuses, and it is premature for the Commission to address such possibilities. We expect the Cal ISO and its market monitor to monitor for withholding or overgeneration by intermittent resources and propose corrective measures to the Commission for approval.

Reliant and SoCal Ed request a review of the new scheduling and settlement procedures after a trial period, for example after 16 months. The Cal ISO asserts in its Answer that it will be monitoring the program for costs and forecast accuracy, and has pledged to file an update and request additional modifications as appropriate. The Cal ISO also has no objection to Reliant's suggestion that the Cal ISO provide a report to the Commission detailing the performance of the proposed program, 16 months after the Commission's adoption of the program (Cal ISO Answer at 9-10). The Commission will accept the Cal ISO's proposal to file a report after 16 months.

TANC states that while it supports the need to encourage renewable resource development, it expresses "cautious concern" that the proposal contains obvious discriminatory provisions which favor intermittent resources" (TANC at 10). Similarly, Mirant wants the proposal to be eliminated as "an unjust subsidy for renewable resources" unless it is modified to include Mirant's Delta thermal steam units (Mirant at 17). The Commission notes that the proposed allowances for the unique operating characteristics of intermittent resources (such as wind and solar energy) are not dissimilar from the accommodations currently built into the Cal ISO Tariff Dispatch Protocols to reflect the ramping requirements of thermal units. The proposal presented here seeks to balance general principles of charges based on cost-causation with the public's interest in encouragement of diverse sources of power, and the Commission finds the proposal to be reasonable.

Regarding Mirant's request to alter the proposal to allow its Delta units to participate, the Commission believes that Mirant's request is outside the scope of this proceeding. The issue before the Commission in the instant filing is the Cal ISO's request for approval of its intermittent resource proposal, and not issues of eligibility of specific units. However, we note that the Cal ISO has stated in its Answer that if another

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generating unit can show it is similarly operationally-constrained by ambient environmental conditions, then the ISO would carefully consider appropriate accommodations for any such units as well.

SoCal Ed requests that the Commission direct the Cal ISO to

remove the exclusion of PURPA or non-PGA intermittent resources from special settlement treatment of uninstructed energy. SoCal Ed argues that Amendment No. 42 should apply to all renewable resources, on a non-discriminatory basis, including PURPA non-PGA generators and solar thermal technology, even if such solar technology uses some amount of natural gas (SoCal Ed at 5). The Cal ISO responds in its Answer that any Eligible Intermittent Resource, "regardless of when built or first on-line, is eligible to be a Participating Intermittent Resource, so long as it meets applicable requirements, including among other things, that such a resource not be under an Existing Contract or other form of pre-existing power purchase agreement." (Answer at 9).

The Commission finds that the Cal ISO has not indicated why this proposal should not be expanded to intermittent resources with existing contracts. Therefore, while we will accept the Intermittent Resource Proposal, we will direct the Cal ISO to file, within 15 days of the date of this order, either 1) a tariff filing to expand the program to include intermittent resources with existing contracts, or 2) an explanation as to why these parties should not be included in the program.

Lastly, SMUD argues that the Cal ISO should include the technical standards for Participating Intermittent Resources in its tariff, rather than posting the standards on its home page. The Commission agrees. Technical standards represent the eligibility requirements for participation in this program. As
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such, they should be included in the tariff.

The Commission commends the Cal ISO's efforts to facilitate entry of intermittent resources, and to develop the Intermittent Resource Proposal through extensive collaborative discussions between the Cal ISO, regulators, utilities, and other market participants. With this proposal, the Cal ISO provides a fair and effective means of accommodating the scheduling needs of intermittent generation, while avoiding imposing additional costs on other market participants.

B. Charge Type 487 Allocation Methodology Modification

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However, to encourage participation in this program, and to provide information about the program, we believe it would be helpful if the Cal ISO would also post these standards on its website.

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Background

The Cal ISO proposes changes to the allocation of ISO Settlement Charge Type 487 (CT487), which represents the

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"Allocation of Excess Costs for Instructed Energy". According to the Cal ISO, under the current mitigation measures, bids above the mitigated price, when Dispatched, are paid as bid, with the

bidder receiving two payments: a CT401 payment based on the Market Clearing Price (MCP) and a CT487 payment that makes up the difference between the MCP and the bid price. The Cal ISO explains that the CT487 payments (i.e., "Above MCP Payments") are allocated to Scheduling Coordinators having negative Uninstructed Energy during the same trading interval (i.e., negative deviations). Above MCP Payments are subject to refund if the corresponding bids are determined by the Commission to be unjust or unreasonable. (See Cal ISO filing at 4-5.)

In the instant filing, the Cal ISO asserts that the proposed changes will account for the reality that the amount of Instructed Energy can sometimes exceed the amount of negative

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deviations. According to the Cal ISO, such over-procurement of Instructed Energy can occur for a number of reasons, including (1) when positive Instructed Energy is needed to balance Unaccounted for Energy (UFE) in the System, (2) when positive Instructed Energy is part of a pre-dispatch of ISO Control Area interties, that cannot be altered during the following operating hour, or (3) when positive Instructed Energy is needed to balance other decremental instructions that may have been pre-dispatched. The Cal ISO proposes to allocate to Negative Instructed Deviations a modified rate equal to the total Above MCP Payments divided by the greater of the total negative deviation in the System or the amount of positive Instructed Energy procured above

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According to the Cal ISO' filing: "Imbalance Energy" is the difference between the Metered Quantity and the Energy that corresponds to the final Hour-Ahead Schedule. "Instructed Imbalance Energy" is the portion of Imbalance Energy that is produced or consumed due to Dispatch instructions. The remaining Imbalance Energy constitutes "Uninstructed Imbalance Energy." See Cal ISO proposed tariff sheets at Section 11.2.4.

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According to the Cal ISO's filing, under ideal operational conditions, the ISO would procure just enough Instructed Energy to balance the real time Energy requirements of the ISO Control Area. Under such optimal conditions, the Cal ISO states that Market Participants causing negative deviations would pay for all of the resulting Above MCP Payments. However, the Cal ISO asserts that in reality the amount of Instructed Energy can sometimes exceed the amount of negative deviations. See Cal ISO filing at 5.

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the MCP. The Cal ISO states that the modified rate will achieve the following: (1) When the amount of Instructed Energy procured with a cost component above the MCP is less than or equal to the amount of negative deviation, the modified rate is the same as the existing rate and the entire Above MCP Payments are allocated to the Scheduling Coordinators with negative deviations; and (2) When the amount of Instructed Energy procured with a cost component above the MCP is greater than the amount of negative deviation, each Scheduling Coordinator with negative deviations

will be assigned one MWh of weighted average above MCP costs for each MWh of negative deviation.

Summary of Protests

Several intervenors express strong support for the proposed changes in CT487 allocations. IEP states the changes are "consistent with notions of cost causation" (IEP at 4) and Mirant states the changes are reasonable and "will properly align the benefits, i.e., energy reserves, and the burdens, i.e., reserve procurement costs, of the ISO's procurement actions (Mirant at 18).

Cities/M-S-R and SoCal Ed argue that the proposed modification misallocates procurement costs to participants that did not create the need for those costs. The EOB alleges that the modification will encourage participants to withhold energy and force the Cal ISO to accept higher priced bids. Duke seeks a clarification from the Cal ISO that the 487 charges will be calculated in accordance with Commission directives in other Cal ISO compliance filings.

Discussion of Charge Type 487 Allocation Methodology Modification

TANC, Cities/M-S-R, Vernon and SoCal Ed all raise concerns that the proposed change in allocation of CT487 violates the cost-causation principle. In its Answer, the ISO responds that the Cal ISO's procurement of such energy benefits the entire Cal ISO Controlled Grid by balancing supply and demand, thus enhancing reliability for all entities using the grid. The Commission agrees that this proposal is fully in accordance with
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cost-causation principles.

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See e.g., San Diego Gas & Electric Company, 97 FERC 61,293 at 62,370 (2001) where the Commission found: "We agree with the ISO that total gross load is the most appropriate method to assess these costs. As we stated in our December 15 Order, the ISO provides imbalance service needed for transmission service. Additionally, on July 25, 2001, the Commission issued
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Along a similar vein, Vernon objects to the methodology for spreading the costs for one of the components of the CT487, Unaccounted for Energy (UFE). Vernon argues that "any load served by generation resources located behind the city gate of an ISO customer necessarily receives none of the high priced energy acquired by the ISO to make up for this unaccounted for or 'missing' energy... Such load is served by energy that never leaves the city gate to become unaccounted for" (Vernon at 4). Vernon therefore argues that the cost of UFE should be allocated

on the basis of a customer's net load, not its gross load. For the reasons cited above, the Commission rejects Vernon's arguments.

TANC, Cities/M-S-R, and Vernon also protest proposed

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Section 11.2.4.2.2 "Allocation of Above-MCP Costs" because they are concerned that the proposed arrangement would encourage gaming and otherwise provide improper incentives with respect to scheduling. Similarly, the EOB, while giving its support for the proposed changes to allocation of CT487, expresses concern that the proposal "may encourage resources to withhold energy and thereby force the Cal ISO to accept higher-priced bids" (EOB, 5). In its Answer the Cal ISO notes that the Commission's must-offer obligation prevents resources from withholding Energy.

We agree with the Cal ISO that under current operating requirements, the must-offer obligation prevents entities from

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engaging in withholding strategies. The Commission also notes

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an order which stated that ISO market purchases are made in order to procure the resources necessary to reliably operate the grid. We have previously found that the use of gross load is the appropriate billing unit for the ISO's open access transmission access charge. Accordingly, the use of gross load as the basis for the assessment of emissions and start-up fuel costs is appropriate in that all users of the transmission grid will be assigned these costs consistent with the ISO's markets performing a reliability function." (Footnotes omitted.)

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This section reads: "The Scheduling Coordinator shall be exempt from the allocation of above-MCP costs in a BEEP interval if the Scheduling Coordinator has sufficient incremental Energy bids from physically available resources in the Imbalance Energy market to cover the net negative Uninstructed Deviation in the given interval of a resource and the prices of these Energy bids do not exceed the applicable NECPL."

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With regard to any concern about the elimination of the protection provided by the must-offer requirement, which is
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that if entities engage in such behavior, appropriate compliance and enforcement measures are available. See, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, 95 FERC 61,418, at 62,551-54 (2001).

Duke says it has no objection to the proposed allocation of CT487, but does object to the Cal ISO's characterization of how it calculates the market clearing price (MCP) to arrive at CT487

costs. Duke asserts that the Cal ISO Transmittal Letter is confusing and "seems to indicate ... that the Cal ISO appears to ignore the Commission's clear directive to calculate the MCP using the proxy price of the marginal unit" (Duke at 5). Duke asserts that the Cal ISO should clarify that it is calculating CT487 charges in accordance with the Commission's December 19 Compliance Filings Order rejecting the "lesser of bid or proxy price" approach to the Allocation of Settlement CT487 prices. The Cal ISO in its Answer clarifies that it is calculating CT487 charges in accordance with the Commission's directives.

C. Intra-zonal Congestion Management Modifications

Background

The Cal ISO proposes to modify its intra-zonal congestion management model. Specifically, the Cal ISO seeks Commission authority to limit generators' schedules in the forward market when it determines that congestion will occur. Under the modified procedures, the Cal ISO will determine aggregate intra-zonal transfer limits two days before the operating day and allocate these limits to generators operating in the area based on the generators' operating capability and costs. If generators do not submit schedules that adhere to the limits, the Cal ISO will adjust the generators' schedules with no compensation for the adjustment. The Cal ISO also seeks Commission authority to cap bids when local congestion occurs.

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 scheduled to terminate on September 30, 2002, the Commission notes that the CT487 charges, their allocation, and any modifications of the must-offer requirement will be addressed as part of the Cal ISO's comprehensive market redesign, due May 1, 2002. See *infra* note 16.

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See *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange*, 97 FERC 61,293 at 62,364 (2001).

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Summary of Protests

A number of interveners oppose the modification pointing out that the Cal ISO has been directed to file a comprehensive congestion management proposal in another Commission proceeding. They also argue that this modification is piecemeal and premature; that it is the wrong remedy for a discrete problem; and that it fails to account for network loops which complicate analyzing the power flow across interfaces and make some generators more effective than others in eliminating congestion. They argue further that the Cal ISO's allegations of gaming as justification for the modification are unsupported and

exaggerated.

Intervenors also argue that the proposed tariff revisions associated with this modification are unjust and unreasonable because the modification disregards market solutions, provides disproportionate impacts to market participants, and inhibits forward contracting. Intervenors also argue that the Cal ISO has not provided sufficient detail as to how the intra-zonal congestion management proposal would work.

Discussion of Intra-zonal Congestion Management Modifications

Protestors argue that this is a piecemeal and premature approach to intra-zonal congestion management that should be addressed in the comprehensive congestion management proposal due to the Commission by May 1, 2002. Moreover, intervenors highlight many questions that remain unanswered as to how the proposal would be implemented, and assert that the Cal ISO's procedures are substantially incomplete. Protesters assert that the Cal ISO's filing fails to meet the minimum standard of 18 C.F.R. Part 35 which requires that filings to change tariff provisions be supported by sufficient explanation.

The Commission agrees and restates here, "while the ISO has identified a serious problem in implementing its intra-zonal congestion management mechanism, we are not convinced that this is the appropriate remedy.... and calls out for the design of a comprehensive replacement congestion management approach ... a piecemeal repair to a faulty system is not an adequate response" and moreover, "this redesign should be pursued with input from all stakeholder groups" California Independent System Operator Corp., 90 FERC 61,006 at 61,014 (2000).

As the Cal ISO admits in its Answer, a longer term comprehensive design is to "be filed in the next several months" (Cal ISO Answer at 15). The Commission therefore will reject this portion of Tariff Amendment No. 42. The Commission does not believe another piecemeal approach presented in isolation from

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other respects of the California market design, is just and reasonable. The Cal ISO needs to address this issue in conjunction with other market design problems, and should do so in the impending May 1, 2002, filing of Cal ISO's comprehensive

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market redesign proposal.

D. Target Price Methodology Modifications

Background

The Cal ISO proposes to modify the Target Price methodology for calculating the Uninstructed Deviation Penalty in its OATT to provide market participants flexibility in their Dispatch Operating Point along with operational flexibility for generating

resources. According to the Cal ISO, the proposed modification will allow generators flexibility to deviate from their Dispatch Operating Point by a certain amount without incurring penalties, and allow Metered Sub-System and self-serving Load Market Participants the ability to load-follow, with penalties only applied to the net ISO-expected energy deliveries. Under the proposed modification certain entities such as intermittent resources and units providing regulation will be exempt from the penalty.

Summary of Protests

Intervenors opposing this modification argue that the modification is premature and that the Cal ISO should first file a comprehensive market redesign proposal. Intervenors also raise specific concerns with the proposed tolerance band arguing that it is inflexible and discriminatory, a prohibited penalty, too narrow, and discriminatory against in-state thermal generators.

Intervenors argue that the proposed modification needs clarification, and suggest that, if the Commission accepts the proposed modification that, the Commission should require the Cal ISO to compensate generators for positive uninstructed deviations outside of the tolerance band at prices that decrease at a reasonable rate as the level of overgeneration increases and to impose a surcharge on energy needed to compensate for negative uninstructed deviations. Other modifications proposed by intervenors include giving Scheduling Coordinators flexibility to substitute units within a portfolio to stay within the tolerance band, providing for 5 percent deviations instead of 3 percent deviations, and allowing the tolerance band to be applied to a single bus aggregation as the sum of the individual unit's maximum operating level. Intervenors also protest proposed

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See San Diego Gas & Electric Company, et al., 97 FERC 61,275 (2001).

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Section 11.2.4.1.2, "Penalties for Uninstructed Imbalance Energy" because it would give the Cal ISO authority to modify the value or method of calculation of the tolerance band without making a filing before the Commission.

Discussion of Target Price Methodology Modifications

Intervenors argue that this modification is premature and that the Cal ISO should first file its comprehensive market redesign proposal. Intervenors again raise concerns about the lack of sufficient procedural detail in the filing as to implementation of this proposal, and contend that the proposed penalties are unreasonable and prohibited.

Similarly to the intra-zonal congestion management proposal, we find the target price methodology modifications and penalty for uninstructed deviation as presented lack sufficient detail

and are premature, and direct the Cal ISO to address these issues in the impending May 1, 2002 filing of its comprehensive market redesign proposal.

E. Related Matters

1. Miscellaneous Modifications

As pointed out by several interveners, the Cal ISO makes a number of modifications to its OATT that are not specifically identified in its transmittal letter or supported with any evidence, including but not limited to modifications to Real-Time Dispatch in Sections 2.5.22.2(c) and 2.5.22.6, Pricing Imbalance Energy in Section 2.5.23, Hourly Ex Post Prices in Section 2.5.23.2.2, Dispatch Instructions in Sections 2.5.22.11 and 11.2.4, Penalties for Failure to Pass Tests in Section 2.5.26.4, Rescission of Payments When Dispatch Instruction Is Not Followed in Section 2.5.26.3, Temporary Exemption From Rescission of Energy Payments for Participating Load in Section 2.5.26.6, and Regulation in Section 2.5.27.1.

The Commission notes that the tariff sheets submitted by Cal ISO contain a number of changes that are not explained or noted in the Cal ISO's transmittal letter. We remind the Cal ISO that any and all proposed tariff modifications filed with the Commission must be accompanied by appropriate explanation and

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support pursuant to Section 35.13 of the Commission's
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regulations.

2. Request for a Technical Conference

Several interveners requested the Commission to sponsor a technical conference to review and discuss the modifications proposed in Amendment No. 42 and to facilitate ongoing market redesign efforts in California. They argue that Commission participation will promote communication and ensure stakeholder review and consideration of the Cal ISO's market proposals. In its Answer, the Cal ISO agrees that the Commission should sponsor a technical conference on market design issues, but argues that Commission approval of Amendment No. 42 should not be delayed by such conferences.

In light of our rejection of those portions of Tariff Amendment No. 42 that relate to market design, it is unnecessary to address intervenors request for a technical conference on these issues in this proceeding.

IV. THE EOB COMPLAINT

Background

On January 16, 2002, the EOB filed a complaint requesting the Commission to issue an order prohibiting what it perceives to be anti-competitive decremental energy bids. The EOB also requested the Commission to expand the "must-offer" obligation to include a requirement that suppliers with a Participating Generator Agreement and scheduled to run submit decremental bids based on avoided cost methodology. In the alternative, the EOB requests the Commission to establish a hearing to resolve these issues and set the earliest allowable refund effective date.

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18 CFR Part 35.

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The EOB filed an errata revising Exhibit A of the complaint on January 17, 2002. The EOB contends that no new notice for comment to the complaint is triggered by the January 17 errata filing because the errata is being filed "simultaneously" with the complaint and the parties served with the complaint will not be prejudiced by the one-day delay. The EOB filed a second errata on January 22, 2002, correcting the certificate of service and page 8 of the complaint to correct certain data on that page.

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The EOB argues that negative decremental energy bids result in unjust and unreasonable rates in the Cal ISO energy market. The EOB contends that such bids lack economic justification and create windfall profits for generators. The EOB points out that the Commission's current market mitigation strategy for California's wholesale electric rates includes, among other things, a "must-offer" obligation that requires generators to submit incremental energy (available capacity) bids into the Cal ISO's real-time imbalance energy market, and a price cap on real time energy sales. According to the EOB, generators are exercising market power in the decremental energy market by submitting allegedly anti-competitive decremental bids in spite of the Commission's market mitigation plan. The EOB alleges that generators are taking advantage of California's market structures and infrastructure constraints such as a lack of procedures to address intra-zonal congestion in the forward market.

The EOB therefore requests the Commission to issue a cease and desist order prohibiting anti-competitive negative decremental bids in the Cal ISO's real time decremental energy market. The EOB also requests the Commission to impose a symmetrical must-offer requirement directing generators with resources scheduled in the Cal ISO's day-ahead or hour-ahead

markets to submit unit-specific, cost-based proxy decremental energy bids in volumes equivalent to the difference between the scheduled generation and the units' minimum load capacity. In the alternative, the EOB requests the Commission to set these issues for hearing, and set a refund effective date sixty days from the filing of the complaint.

Summary of Protests

In their answers, interveners argue that the EOB's complaint lacks merit and should be dismissed. Intervenors argue that the complaint is procedurally defective pointing out that the group of respondents identified in the complaint is overly broad. Other intervenors argue that they should not be included in the class of respondents identified in the Board's complaint. Several intervenors contend that the complaint does not provide any specific allegations for the respondents to answer. Most intervenors note that the complaint is mooted by the Cal ISO's Amendment No. 42 in Docket No. ER02-922-000. According to intervenors, the issues raised in the EOB's complaint should be addressed in the Amendment No. 42 proceeding. Intervenors also argue that the complaint is a collateral attack on the Commission's "must offer" orders in Docket No. EL00-95-000, et al.

Discussion of EOB Complaint

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The Commission will dismiss the EOB complaint at this time without prejudice. In its complaint, EOB requested the Commission to issue an order prohibiting "anti-competitive" decremental energy bids. The EOB also requested the Commission to impose a symmetrical must-offer requirement for decremental bids. These proposed remedies are directly related to market design issues under review by the Cal ISO as part of its revised market design proposal which is to be filed by May 1, 2002. We believe it is premature and a potential waste of resources at this time to engage in piecemeal adjusting the current market design when a revised design is imminent. Furthermore, we expect the Cal ISO to address EOB's concerns in the revised market design. The EOB may file comments raising its concerns once the Cal ISO's revised market design proposal is filed.

The Commission orders:

(A) The Commission accepts the modifications proposed for eligible Intermittent Resources, as discussed in this order, to become effective on April 1, 2002.

(B) The Cal ISO is directed to provide a report to the Commission detailing the performance of, and costs associated with, the proposed program, 16 months after the Commission's adoption of the program.

(C) The Commission accepts the modification proposed for allocation of Charge Type 487, excess costs for instructed

energy, as discussed in this order, to become effective on April 1, 2002.

(D) The Commission rejects the modifications proposed for intra-zonal congestion management, the target price for incremental and decremental bids, and the penalty for uninstructed deviations, as discussed in this order.

(E) The Commission hereby rejects any modifications not related to the two proposals we have accepted in ordering paragraphs (A) and (C) above.

(F) Within 15 days of the issuance of this order, the Cal ISO is directed to make a compliance filing that eliminates those tariff changes that have been rejected as discussed in ordering paragraph (E).

(G) Within 15 days of the issuance of this order, the Cal ISO is directed to make either (1) a tariff filing to expand the program to include intermittent resources with existing contracts, or (2) an explanation as to why these parties should not be included in the program.

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(H) Within 15 days of the issuance of this order, the Cal ISO is directed to make a compliance filing that incorporates the technical standards for Participating Intermittent Resources into its tariff.

(I) The Commission denies the request for a technical conference.

(J) The Commission dismisses EOB's complaint.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.