

UNITED STATES OF AMERICA 91 FERC ¶ 61,026
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
William L. Massey, Linda Breathitt,
and Curt Hébert, Jr.

California Independent System
Operator Corporation

Docket No. ER00-555-001

ORDER DENYING REQUESTS FOR CLARIFICATION AND REHEARING

(Issued April 12, 2000)

The California Independent System Operator Corporation (ISO) filed a motion for clarification, or in the alternative, request for rehearing of the order issued in this proceeding on January 7, 2000.¹ In addition, Dynegy Power Marketing, Inc. (Dynegy) and Southern California Edison Company (SoCal Edison) filed requests for rehearing of the January 7 Order. As we explain below, we will deny the requests for clarification and rehearing.

I. Background

When the ISO has not received bids from generators that must operate in order to resolve a real-time system problem, the ISO has the authority to issue dispatch orders to those generators and pay them for the energy they produce at the real-time market price. In Docket No. ER00-555-000, the ISO filed Amendment No. 23 to the ISO Tariff. The primary purpose of Amendment No. 23 was to expand the ISO's out-of-market (OOM) dispatch authority to also apply in instances in which generators have submitted bids but, in the determination of the ISO, the markets for such bids are not competitive.

In the January 7 Order, the Commission accepted for filing in part and rejected in part Amendment No. 23. In pertinent part, the Commission rejected the ISO's proposal to expand its OOM dispatch authority. In addition, the Commission directed the ISO to conduct a comprehensive reevaluation of its approach to addressing intra-zonal congestion. However, the Commission accepted the parts of Amendment No. 23 that

¹California Independent System Operator Corporation, 90 FERC ¶ 61,006 (2000) (January 7 Order).

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would: (1) establish an additional payment option for ISO dispatch orders; and (2) change the method used to allocate the costs of ISO dispatch orders.

The ISO filed a motion for clarification or, alternatively, a request for rehearing, and Dynegy and SoCal Edison filed requests for rehearing.

Answers opposing the ISO's motion for clarification or rehearing were filed by: Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC; Independent Energy Producers Association; Southern Energy California, LLC, Southern Energy Potrero, LLC, and Southern Energy Delta, LLC; Dynegy; Sacramento Municipal Utility District; and Williams Energy Marketing & Trading Company.² Answers supporting the ISO's motion for clarification or rehearing were filed by: the California Electricity Oversight Board; California Power Exchange Corporation; and SoCal Edison.

On February 28, 2000, Western Power Trading Forum (WPTF) filed a late motion to intervene and motion to file comments out of time to the motion for clarification.³

On March 6, 2000, the Public Utilities Commission of the State of California (California Commission) filed an answer to those answers that oppose the ISO's motion for clarification or rehearing. The California Commission supports the ISO's motion.

On March 9, 2000, Williams filed an answer opposing the California Commission's answer.

²Williams also moves to strike the ISO's motion for clarification.

³In the same pleading, WPTF also protests the ISO's February 7, 2000 compliance filing in Docket No. ER00-555-002. The ISO's compliance filing will be addressed in a future order.

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II. Discussion

A. Procedural Matters

We deem the ISO's motion for clarification to be essentially a request for rehearing in part, *i.e.*, it is a request for rehearing of the January 7 Order except to the extent that the ISO commits to undertake a comprehensive reevaluation of its approach to congestion management. Accordingly, we also deem the answers to the ISO's motion for clarification or rehearing to be impermissible answers to a request for rehearing, and we will deny them.¹ We also will deny the California Commission's motion to file an answer to the answers.² We will dismiss Williams' answer to the California Commission's answer as moot.

Due to the absence of any undue prejudice or delay, we will grant WPTF's unopposed late motion to intervene.

We will deny Williams' motion to strike the ISO's motion for clarification since we deem the ISO's pleading to be a permissible request for rehearing.

B. The ISO's Motion for Clarification or Rehearing

In its motion for clarification, the ISO commits to undertake a comprehensive review of its congestion management scheme. According to the ISO, the effort will include all stakeholder groups as well as the ISO's Market Surveillance Committee (MSC). The ISO anticipates filing with the Commission a revised congestion management approach by October 31, 2000. However, during the interim period prior to congestion management reform, the ISO requests that it be permitted to expand its OOM authority to apply in the limited instances when there may be an outage of a transmission facility (or other transmission equipment) or an outage of a Reliability Must-Run (RMR) unit which the ISO would otherwise rely upon to assure local reliability.³

The ISO argues that the January 7 Order is silent as to what measures the ISO can use in the interim to manage intra-zonal congestion and to constrain the exercise of market power. The ISO interprets the January 7 Order to permit it to apply an approach that gives effect to market bids during normal operating conditions, while protecting against the

¹See 18 C.F.R. § 385.213 (1999) (denial of motions to file answers to requests for rehearing).

²Id.

³ISO Motion at 5.

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exercise of market power when unusual system conditions limit the transfer capability of intra-zonal facilities. For the interim period, the ISO is proposing that in the limited circumstances involving a transmission line or other transmission equipment outage or the outage of a RMR unit upon which the ISO would normally rely upon to assure local reliability, the ISO should be allowed to dispatch units out-of-market as proposed in Amendment No. 23. In addition, the ISO requests that the Commission confirm that the ISO must pay resources as-bid when the resources are called upon to mitigate intra-zonal congestion under normal operating conditions (even when it is possible that those bids reflect the exercise of market power).

The ISO believes that its proposed interim approach is consistent with the January 7 Order and requests clarification from the Commission to confirm this interpretation. The ISO argues that the January 7 Order recognizes that several market power problems exist with respect to its ability to manage intra-zonal congestion. However, the ISO argues that the Commission did not distinguish between the need to manage intra-zonal congestion during normal operations versus unusual system events that create local reliability problems. The ISO contends that its interim solution is limited in duration and is needed to ensure that California consumers do not incur excessive and inappropriate costs during the interim period. In the alternative, the ISO requests rehearing of the Commission's rejection of its proposal to expand its out-of-market authority to apply in instances where generators have submitted bids but, in the determination of the ISO, the markets for such bids are not competitive.

We shall deny the ISO's request for clarification or rehearing to allow it to pay generators the OOM rate instead of their bid price during "unusual system conditions" defined as the outage of a transmission facility or RMR unit. The January 7 Order found that the ISO's proposal was not the appropriate remedy for congestion arising in these or other circumstances. The Commission noted that there is nothing wrong with prices increasing during periods of real scarcity. This could be the case in some instances when a RMR unit or transmission facility is taken out of service. However, the January 7 Order found that there is something wrong with the present intrazonal congestion management approach which allows generators to create artificial scarcity in order to increase congestion revenues. We also noted that the current system allows the ISO to accept transmission schedules that bear no resemblance to physical reality and fails to send price signals to encourage new generators to enter into areas where there are constraints. The January 7 Order emphasized that the problem facing the ISO is that the existing congestion management method represents an approach that is fundamentally flawed and needs to be overhauled or replaced. In this respect, we acknowledge that the ISO has committed to undertake a review of its congestion management scheme. It is our expectation that this will be a comprehensive review of all aspects of the present approach and that all stakeholder groups and the Market Surveillance Committee will be provided a meaningful opportunity to participate. However, the ISO has provided nothing in its

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request for rehearing or clarification that causes us to reconsider our previous determination that its proposed expansion of its OOM authority is not an appropriate remedy. Of course, the ISO retains its pre-existing OOM authority when the ISO deems it necessary to protect system reliability. We reject only the proposed expansion of this authority for the purpose of addressing market conditions, whether or not these conditions are caused by equipment outages.

C. Dynergy's Request for Rehearing

Prior to Amendment No. 23, Participating Generators were compensated for OOM dispatch orders at the market clearing price for imbalance energy. Amendment No. 23 proposed to let Participating Generators choose an alternative payment option, based on fuel-related start-up costs, verifiable gas imbalance charges, a capacity component based on certain market based indicators and an energy component based on other market indicators. The Commission accepted this proposal in the January 7 Order.

Dynergy seeks rehearing of the Commission's approval of the ISO's alternative payment option. Dynergy argues that the payment option is confiscatory and inconsistent with the Federal Power Act (FPA). According to Dynergy, within the first 30 days after the January 7 Order, the ISO called on El Segundo Power, an affiliate of Dynergy, for emergency service on five occasions. Dynergy argues that the ISO's portrayal of the use of the OOM protocol as infrequent and temporary and the Commission's reliance thereon is thus seriously flawed. Dynergy contends that the alternative payment option does not consider the actual costs imposed on the generator that is providing the service. Dynergy asserts that, in some instances, the market clearing price that Dynergy would receive for providing emergency service is less than its fuel costs.⁴ In addition, Dynergy argues that the alternative payment option allows the ISO to set the rate that it is willing to pay as the buyer of the service. Dynergy contends that this is contrary to the FPA, because a buyer has no authority to set the seller's rate for jurisdictional service.

We will deny Dynergy's request for rehearing. Dynergy reiterates arguments that we previously rejected in the January 7 Order. There we found that the ISO's alternative payment option "is a pragmatic approach to addressing generators' concerns which uses payment methods based, to the extent possible, on market data."⁵ Moreover, Dynergy's example that, in some instances, its marginal cost may be greater than the energy component of the alternative rate fails to account for the additional capacity component (and related start-up payments) that Dynergy would receive if it selects this optional

⁴Dynergy Rehearing at 5.

⁵90 FERC at 61,014-15.

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payment mechanism. We also reject Dynegy's argument that the ISO is effectively setting the sellers' price. The only issue before us is whether to accept a proposal to let Participating Generators choose a pricing method other than the pre-existing Hourly Ex-Post Price method. The latter method is already on file and is not at issue or subject to challenge in this proceeding. We do not see how Dynegy is aggrieved by being offered an additional pricing option, which it may choose to decline. In addition, both pricing options apply only when Dynegy has foregone its opportunity to sell its power bilaterally or through a power exchange. Also, the ISO's OOM authority applies only to participating generators, *i.e.*, generators that have agreed to be bound by the terms of the ISO Tariff. Thus, Dynegy, by signing the Participating Generator Agreement, is bound to accept prices set forth in the ISO Tariff for OOM calls.⁶ The alternative pricing method in Amendment No. 23 merely expands the options available to Participating Generators, and Dynegy may decline this new option if it prefers any of its pre-existing options.

D. SoCal Edison's Request for Rehearing

SoCal Edison initially supported Amendment No. 23. When SoCal Edison sought recovery of Amendment No. 23 costs in Docket No. ER00-845-000, the Commission set SoCal Edison's filing for hearing.⁷ SoCal Edison argues here that if it is not permitted to recover dispatch costs through its Transmission Revenue Balancing Account Adjustment (TRBAA) then Amendment No. 23 would be unreasonable because it would create the potential for cost recovery disallowance. Absent the full recovery of Amendment No. 23 costs in the proceeding in Docket No. ER00-845-000, SoCal Edison requests that the Commission reject Amendment No. 23.

We will deny SoCal Edison's conditional request for rehearing. In setting Docket No. ER00-845-000 for hearing, the Commission expressly determined that it was appropriate for the SoCal Edison to recover Amendment No. 23 costs.⁸ The issues that the Commission set for hearing included the mechanism for the recovery of such costs, *i.e.*, whether it was appropriate for the Amendment No. 23 costs to be recovered through the TRBAA. Thus, while the mechanism for recovery of Amendment No. 23 costs is an issue set for hearing in Docket No. ER00-845-000, SoCal Edison's right to recover these costs is not.

⁶The ISO's OOM authority has been part of its tariff since the beginning of its operations on March 31, 1998.

⁷Southern California Edison Co., *et al.*, 90 FERC ¶ 61,151 (2000) (SoCal Edison).

⁸90 FERC at 61,486 ("[I]t is appropriate for Applicants to recover these costs.").

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The Commission orders:

The requests for clarification and rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.