

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

San Diego Gas & Electric Company,)	
)	
Complainant,)	
)	
v.)	Docket No. EL00-95-045
)	
Sellers of Energy and Ancillary Service Into)	
Markets Operated by the California)	
Independent System Operator Corporation)	
and the California Power Exchange,)	
)	
Respondents.)	
)	
)	
Investigation of Practices of the California)	Docket No. EL00-98-042
Independent System Operator and the)	
California Power Exchange)	

**BRIEF OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION AS TO THE ELIGIBILITY OF
UNITS OPERATED BY ARIZONA ELECTRIC POWER COOPERATIVE
TO SET THE MITIGATED MARKET CLEARING PRICE
DURING THE REFUND PERIOD**

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**To: The Honorable Bruce L. Birchman
Presiding Administrative Law Judge**

I INTRODUCTION

Pursuant to the procedural schedule adopted in this proceeding, the California Independent System Operator Corporation ("ISO") submits its Brief on the issue of whether units operated by the Arizona Electric Power Cooperative ("AEP CO") "which are outside of the ISO's control area, are eligible to set the [mitigated market clearing

price (“MMCP”)]” for purposes of determining refunds in the present proceeding. Tr. at 3508:9-11. As explained below, AEPCO has not submitted sufficient data for the record to make its units eligible to set the MMCP.

II BACKGROUND

In its December 19, 2001 Order,¹ the Commission stated that it would allow out-of-state generators to *prospectively* set the mitigated reserve deficiency MCP.

December 19 Order at 62,203. The Commission stated that such units would “be treated like in-state generators” and in order to be eligible to set the mitigated price would have to submit to the ISO the same heat rate data that owners of in-state units had been required to submit under the Commission’s April 26 Order.² In its May 15, 2002 Order on rehearing of the December 19 Order³ the Commission clarified that out-of-state generators could set the mitigated price during the refund period:

Our review indicates that if out of state generators bid into the Imbalance Energy market during the refund period and they can provide the heat rate information to the ISO for the unit used to supply the power, that unit should be eligible to set the mitigated market clearing price during the refund period.

Id. at 61,654.

AEPCO is the only out-of-state generator that has presented testimony in this proceeding contending that its units should be included in the ISO’s mitigated price calculation. In its Exhibit No. AEP-13, AEPCO provides single point heat rates for

¹ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 97 FERC ¶ 61,275 (2001).

² *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 97 FERC ¶ 61,293 at 62, 368 (2001).

³ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 99 FERC ¶ 61,160 (2002).

certain units that it states made sales to the ISO during various hours from October, 2000 through January, 2001.

III ARGUMENT - ARE AEPCO'S UNITS, WHICH ARE OUTSIDE THE ISO CONTROL AREA, ELIGIBLE TO SET THE MMCP?

- **Proposed Finding – AEPCO’s units are not eligible to set the MMCP during the refund period because of the inadequacy of the data that AEPCO has submitted with respect to the units that might have made sales into the ISO market, the heat rates of those units, and the gas indexes to be used to calculate the total costs of the sales.**

In light of the Commission’s May 15 Order, AEPCO’s witness, Mr. Bray, is technically correct that out-of-state generators are eligible to act as the marginal unit for purposes of determining the mitigated price for each 10-minute interval during the refund period. However, AEPCO has failed to satisfy two pre-requisites established by the Commission in order for the ISO to consider its units in calculating the mitigated price.

First, AEPCO has not submitted in the record sufficient heat rate data to allow the ISO to calculate heat rate curves for AEPCO’s units that participated in the ISO’s real-time imbalance energy market (i.e., the BEEP stack). Instead, AEPCO has provided only a single point heat rate for the units that it states participated in the ISO’s real-time imbalance energy market. See Ex. No. AEP-13. Moreover, these heat rates represent a mix of average and incremental heat rates. As Mr. Bray explains, Exhibit No. AEP-13 contains incremental heat rates for AEPCO’s combined cycle unit, and average heat rates for its two simple cycle combustion turbine units (GT2 and GT3). Ex. No. AEP-12 at 10:6-10.

The ISO, as well as the California Parties and FERC Staff, have already explained in previous testimony and briefs why the use of incremental, rather than average, heat rates are appropriate, and those arguments will not be repeated herein.⁴ Nevertheless, in its June 19 Order,⁵ the Commission was clear that the ISO's proposal to construct heat rate curves based on eleven operating points was reasonable, *id.* at 62,563, and it was this approach that the Commission adopted in the July 25 Order.⁶ See *id.* at 61,516 ("We will adopt the recommendations of the Chief Judge . . . and apply the methodology set out in the June 19 Order"). This additional heat rate data is necessary because the ISO has been instructed by the Commission to calculate mitigated prices based on the "approximate point on the heat rate curve at which the last unit is dispatched." June 19 Order at 62,563. Because AEPCO has submitted into the record only single point heat rates for all of its units that it alleges made sales to the ISO,⁷ the ISO is unable to perform the required calculations necessary to include AEPCO's units in the determination of the mitigated price.⁸

⁴ Both Dr. Hildebrandt, on behalf of the ISO, and Mr. Sammon, on behalf of FERC Staff, also explained why a "mixed" heat rate approach, such as the one apparently advocated by AEPCO, is inconsistent with the Commission's directives. See Ex. Nos. ISO-19 at 30:2-32:9; S-26R at 32:19-33:11, 56:1-8.

⁵ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 95 FERC ¶ 61,418 (2001)

⁶ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 96 FERC ¶ 61,120 (2001)

⁷ It is the ISO's understanding that AEPCO did provide some multiple-point heat rate data to FERC Staff through discovery during the earlier stages of this proceeding. Nevertheless, such data is not in the record, and the Presiding Judge is therefore unable to make findings of fact to the Commission based on that data.

⁸ Additionally, AEPCO has failed to provide in the record data on the operating levels of the units that it claims made sales of energy to the ISO during the refund period. The ISO would need this data, along with multiple-point heat rate data, in order to determine where, on the unit's heat rate curve, the unit was operating at the time that a sale to the ISO was made.

The second flaw in AEPCO's presentation is that AEPCO has failed to establish that any particular units actually provided power to the ISO during the refund period, such that the ISO could include those units in its calculation of the mitigated price. The May 15 Order was clear that out-of-state generators would be eligible to set the mitigated price only if "they can provide the heat rate information to the ISO *for the unit used to supply the power.*" May 15 Order at 61,654 (emphasis added). AEPCO has failed to do this in its evidentiary presentation. Instead, AEPCO uses a post-hoc mechanism by which it assigns the highest heat rate or highest cost unit of all of its units operating at a particular time to its California sales. Ex. No. AEP-12 at 8:7-12. AEPCO contends that this assignment is warranted because Arizona state regulators require that AEPCO use economic dispatch principles to make its lowest-cost generation available to its members. *Id.* at 8:14-9:22.

AEPCO's proposed mechanism is flatly inconsistent with the Commission's directive to "determine the last unit dispatched (the marginal unit) *by selecting from the actual units dispatched in real-time* the maximum heat rate of any unit dispatched each hour in the real-time imbalance market." July 25 Order at 61,517 (emphasis added). AEPCO provides absolutely no evidence that its highest cost units were *actually* producing the power that AEPCO sold into California. In fact, AEPCO's suggestion that all of its California sales should be treated as having been made from its highest priced units is particularly questionable given the fact that AEPCO sold power to the ISO in one-hour blocks and agreed to accept the ex-post price for that hour. See Ex. No. S-26R at 55:6-8. Because the ISO does not have the necessary information to trace imports to specific generating resources, there is every possibility that AEPCO sought

ways to meet its commitments to the ISO by substituting purchased power or some other resource for the highest-price unit that it alleges it associated with the bid. See Ex. No. ISO-19 at 58:14-59:1. Because AEPCO's evidence in the record is completely insufficient to establish which of its units were actually used to supply the power for sales made to the ISO, its units cannot be considered eligible to set the mitigated price.

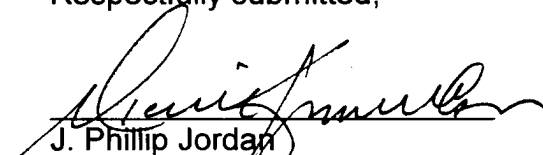
Finally, AEPCO has submitted no gas source data with respect to the units that it claims made sales to the ISO during the refund period. Instead, AEPCO simply used the Southern California gas prices previously provided in the record by the ISO. Ex. No. AEP-12 at 11:9-10; see *also* Ex. No. ISO-9. In the May 15 Order, the Commission did not address what gas price inputs should be multiplied by an out-of-state generator's heat rate to arrive at the total costs for that unit during a particular interval. However, in the July 25 Order, the Commission adopted the Chief Judge's recommendation that the mitigated price calculation use separate gas costs for Northern and Southern California because "simply averaging gas prices in the north with gas prices in the south will not adequately capture the significant effect of gas prices on the cost of electricity during the refund period."⁹ July 12 Order at 65,040. Therefore, it is reasonable to presume that with respect to out-of-state generators during the refund period, the Commission would wish gas inputs to be used that most closely reflect the daily spot market average prices that out-of-state generators such as AEPCO would have incurred.

⁹ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, 96 F.E.R.C. ¶ 63,007 (2001)

IV CONCLUSION

For the reasons stated above, we request that the Presiding Judge adopt the proposed finding in this brief and not any inconsistent proposed findings in the briefs of the other parties or Staff.

Respectfully submitted,



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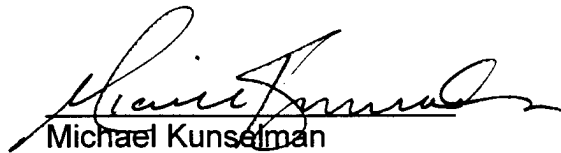
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Dated: June 20, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the restricted service list compiled by the Presiding Administrative Law Judge in this proceeding.

Dated at Washington, DC, this 20th day of June, 2002.



Michael Kunselman