

98 FERC 61, 204  
 UNITED STATES OF AMERICA  
 FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company, Docket No. EL00-95-  
 052

Complainant,

v.

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

Investigation of Practices of the California Docket No.  
 Independent System Operator and the EL00-98-046

California Power Exchange

ORDER DENYING REHEARING

(Issued February 27, 2002)

In this order, we address requests for rehearing of the 1 Commission's order issued on October 23, 2001 (October 23 Order) filed by the Public Utilities Commission of the State of California (California Commission), Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (collectively, Reliant) and Cogeneration Association of California (CAC) and Energy Producers and Users Coalition (EPUC) (collectively, CAC/EPUC). This order denies rehearing.

I. Background

On May 11, 2001, the California Independent System Operator Corporation (ISO) submitted an initial compliance filing (May 11 Compliance Filing), with proposed tariff revisions, in response

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San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 97 FERC 61,066 (2001).

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<sup>2</sup>

to the Commission's order issued on April 26, 2001. In the October 23 Order, the Commission accepted in part and rejected in part the May 11 Compliance Filing with respect to issues related<sup>3</sup> to outage coordination and directed a further compliance filing. The California Commission, Reliant and CAC/EPUC filed timely requests for rehearing of the October 23 Order.

## II. Discussion

### A. California Commission's Request for Rehearing

In its May 11 Compliance Filing, the ISO proposed to include in its tariff revision of Section 2.3.3.1 a reference to state law, which provided, in relevant part:

The ISO outage coordination office shall be established by the ISO and shall coordinate and approve maintenance outages of: (I) all facilities that comprise the ISO controlled grid and (ii) participating generators. The ISO shall coordinate outages of other resources within the ISO control area or the State of California in accordance with applicable law.

The October 23 Order rejected this provision, determining:

Our review indicates that this reference to applicable state law is unnecessary and should be removed to prevent possible conflicts between our jurisdiction and that of the state. As the ISO noted in its June 6 Answer, it will file an amendment to its tariff at the time it seeks to implement any

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San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 95 FERC 61,115 (2001).

<sup>3</sup>

On November 7, 2001, as modified on November 8, 2001, in Docket Nos. EL00-95-051 and EL00-98-045, the ISO submitted revised tariff provisions in response to the October 23 Order. In an order being issued concurrently with this order, the Commission accepts the ISO's proposed tariff revisions, and it directs the ISO to submit a further compliance filing. San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al., 98 FERC \_\_\_\_\_ (2002) (Compliance Order).

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state law regarding its outage coordination program. At that time, the Commission will  
<sup>4</sup>  
consider the merits of that amendment. [ ]

On rehearing, the California Commission argues that the Commission does not have authority over outage coordination, because the Commission does not have jurisdiction over generation facilities. Consequently, the California Commission argues, the October 23 Order's requirement that the ISO delete the reference to state law was erroneous. Instead, the California Commission suggests that the Commission should take joint action with the  
<sup>5</sup>

state pursuant to Federal Power Act section 209 to address the flow of information about generator maintenance practices and outages and to prescribe an appropriate regime, including enforcement and penalties, that addresses the Commission's and the state's respective regulatory interests.

#### Commission Response

The California Commission previously made the same jurisdictional argument in its request for rehearing of a  
<sup>6</sup> Commission order issued on April 26, 2001 (April 26 Order). The Commission denied that rehearing request, and the California Commission appealed that decision, which is currently pending  
<sup>7</sup> before the United States Court of Appeals for the Ninth Circuit. Since the California Commission reiterates the same jurisdictional argument which the Commission has previously denied, we deny its request for rehearing for the same reasons given in our prior order.

#### B. Reliant's Request for Rehearing and Clarification

On rehearing, Reliant argues that: (1) the ISO's authority over generator outages should be conditioned upon restoration of an independent ISO board of governors; (2) the October 23 Order did not address its arguments that the ISO failed to provide clear and objective criteria for its outage coordination decisions; (3) the October 23 Order did not address Reliant's

<sup>4</sup>

97 FERC at 61,358.

<sup>5</sup>

16 U.S.C. 824h (1994).

<sup>6</sup>

See San Diego Gas & Electric Co., et al., 95 FERC 61,115 (April 26 Order), order on reh'g, 95 FERC 61,418, order on reh'g, 97 FERC 61,275 (2001) (December 19 Order).

<sup>7</sup>

Public Utilities Commission of the State of California v. FERC, No. 01-71051.

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concerns that the ISO was eliminating the requirement to provide timely decisions and explanations for those decisions and that the ISO should provide at least three days notice of a cancellation instead of the one-day notice proposed by the ISO, in order to provide all market participants a meaningful opportunity to take disputes to the Commission; (4) the ISO's proposals to apply new restrictions to non-Reliability-Must-Run (RMR) generation in California exceeded the authority granted the ISO by the April 26 Order; and (5) the ISO's definition of direct costs for outage cancellation fails to adequately compensate generators losses.

Reliant also requests clarification that the October 23 Order's rejection of the ISO's proposal to cancel previously scheduled outages based on unduly significant market impacts also applies to ISO decisions to approve or reject an outage plan or a change to that plan. Further, Reliant argues that the ISO's proposal to use market concerns and market impacts as criteria in these capacities suffer from the same faults identified by the October 23 Order and that they should be rejected as well.

#### Commission Response

##### 1. Request for Rehearing

###### a. Independence

In the December 19 Order, the Commission found it more appropriate to address governance issues in the context of other, more recently filed proceedings. As we stated in the December 19 Order, the Commission will address the arguments and concerns about the ISO's governance in a future order.<sup>8</sup>

###### b. Outage Coordination Criteria

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See December 19 Order, 97 FERC at 62,228-29, where we stated:

There are a number of pending proceedings that implicate the ISO's current governance structure and the extent of its independence. The context for approaching ISO governance has changed dramatically since issuance of the December 15 Order. The Commission finds it more appropriate to address governance issues in the context of these other, more recently filed proceedings. In addition, a Commission-initiated operational audit of the ISO is currently underway. Therefore, the arguments and concerns raised herein will be addressed in a future order.

With respect to the argument that the ISO has failed to provide sufficiently detailed criteria for outage coordination, we note that, in the Compliance Order, the Commission accepts the ISO's proposed list of ten specific factors that the ISO considers relevant for purposes of its preliminary screen to evaluate whether a Forced Outage may have been the result of gaming or other questionable behavior. Further, we note that the ISO's outage coordination protocol provisions comprise approximately 18 pages of its tariff sheets, which explain, in detail, how its outage coordination program will be implemented. Consequently, we find that the ISO has provided sufficiently detailed criteria for outage coordination.

c. Timely Notice/One-Day Notice Period for Cancellations

We conclude that the ISO's proposed one-day notice period for cancellations is necessary to ensure that the ISO can meet

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its reliability obligations. Further, in response to protests that sought special dispute resolution procedures for outage coordination disputes, the October 23 Order determined that the ISO's current tariff provisions were sufficient to resolve disputes. The October 23 Order further noted that the April 26 Order did not require the ISO to change its dispute resolution procedures, and therefore, the ISO's dispute resolution procedures were beyond the scope of this proceeding. Reliant makes no new arguments that persuade us to change our decision.

d. Proposals Affecting Non-RMR Generation

With respect to the ISO's proposals concerning non-RMR generation, Reliant argues that the Commission's blanket acceptance of these provisions fails to give due consideration of the arguments raised by Reliant and others. Specifically, Reliant reiterates that the ISO did not provide sufficient justification for its proposed revisions to: (1) change from 30 days to 90 days the deadline for making changes to an approved outage plan (Outage Coordination Protocols (OCP) 2.2.3); (2) require final approval for every outage instead of just for those

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See, e.g., April 26 Order, 95 FERC at 61,355 (The ISO must be provided the authority to achieve greater systematic control over all units (including those of the IOUs) that the ISO must dispatch . . . . The ISO must continue its daily and weekly reports to the Commission on outages. It must also alert the Commission immediately when disputes arise over planned outages, so that disputes can be expeditiously reviewed. In addition, unplanned outages must continue to be closely monitored by the ISO and questionable outages should be immediately reported to the Commission. ).

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outages that are changed within the seven days prior to commencement of the outage (OCP 4.2); (3) create an obligation

to provide five-day and/or one-day prior confirmation of all outages (OCP 4.3.1, 5.3.2); and (4) eliminate its prohibition on disclosing the identity of individual generators or generating units associated with a particular congestion condition caused by an outage (Tariff 5.5.2).

Our review indicates that Reliant has not proffered any new arguments in its rehearing request. We continue to believe that the ISO's outage coordination provisions strike a reasonable balance between the needs of the ISO and the generators.

Additionally, we disagree with two of Reliant's characterizations. While Reliant takes issue with the ISO's OCP

2.2.3 requiring notification of changes to unit outages scheduled to occur within 90 days, OCP 2.2.4 permits a participating generator to submit changes to its planned maintenance outage schedule at any time. Thus, while the ISO has increased the time required for notification so as to aid in its planning procedures, this change is not a "deadline" for making changes as evidenced by OCP 2.2.4. Furthermore, section 5.5.2 of the ISO's Tariff states that the ISO will publish forecast aggregate available generation capacity and forecast demand on an annual, quarterly and monthly basis. In publishing these forecasts, the ISO must identify any expected congestion conditions caused by planned outages of participating generators. Thus, section 5.5.2 does not state that the identity of individual generators will be disclosed but rather only that there may at times be congestion due to planned outages.

#### e. Direct Costs

Reliant reiterates its argument that the definition of "direct costs" for outage cancellations fails to adequately compensate generators' for verifiable market costs. Reliant also disputes the October 23 Order's finding that market costs should not be compensated because no intervenors proposed procedures. Reliant also argues that, in its Protest, it suggested that generators be compensated only for verified market costs such as replacement power costs incurred to meet existing bilateral commitments during a scheduled outage, and the ISO's tariff provisions already provide a process for funding compensation based on charges to scheduling coordinators.

Reliant reiterates its protest with regard to the definition of direct costs, and we deny its request for the reasons given in the October 23 Order. Regarding Reliant's request for payment for verifiable replacement power costs incurred as part of a generator's commitment to provide power under bilateral contracts in times of planned outages, we continue to believe that neither Reliant nor any other generator has provided adequate

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justification for payment of costs to these generating resources. Significantly, when the ISO cancels a planned generator outage for reliability purposes, the generator that was contracted to provide replacement power during the anticipated planned outage is not left uncompensated. Because the ISO cancelled the planned

outage for reliability purposes, it is likely to need additional generation to meet its needs. Thus, the replacement generator will have the opportunity to market power that it had originally contracted to provide during the generator's planned outage.

## 2. Request for Clarification

We will deny the request for clarification. In the Compliance Order, we accept the ISO's modification to its Tariff and Outage Coordination Protocol which specifies that the provisions concerning unduly significant market impacts are applicable only with respect to RMR units, which provide reliability to the ISO Controlled Grid, or transmission facilities that form part of the ISO Controlled Grid. The Compliance Order explains that the ISO's proposal concerns generator outages only for RMR Units which provide reliability to the ISO grid in load pockets, i.e., when transmission is limited, and for transmission outages, for which the Commission has previously accepted the use of the "unduly significant market impact" criterion.

## C. CAC/EPUC's Request for Rehearing

CAC/EPUC request that the Commission reconsider its decision that the mitigation measures implemented by the April 26 Order, and in particular the outage coordination protocol, should be

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applied to Qualifying Facilities (QFs). CAC/EPUC argue that:

- (1) QFs have been exempted by the Commission from any regulation under section 206 of the FPA, which has been utilized by this Commission as its authority to institute the mitigation measures in California, including the outage coordination protocol; accordingly, CAC/EPUC conclude that the Commission has no authority to impose such measures on the QFs;
- (2) the outage coordination protocol will interfere with a QF's contract with its thermal host; and
- (3) the outage coordination protocols will interfere with the QFs' contracts with their utility-purchasers.

## Commission Response

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See 97 FERC at 61,357.

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As an initial matter we address CAC/EPUC's argument that the exemption granted by the Commission to QFs from regulation under section 206 of the FPA means that the Commission has no authority to impose outage coordination protocols on QFs. In this regard, QFs are public utilities. Pursuant to the Public Utility

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Regulatory Policies Act of 1978 (PURPA), the Commission has

exempted them from many of the requirements of the FPA and other federal and state legislation. However, when the Commission imposed outage coordination protocols, it chose not to extend the exemptions already granted to QFs to this new requirement. No arguments have been raised on rehearing which would cause us to

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reach a different result.

We believe that CAC/EPUC have overstated the effect of the outage coordination protocols on contracts with their thermal hosts and with their utility-purchasers. The protocols initially require generators to provide the ISO with a schedule of planned outages. Under certain circumstances the ISO may reject a planned outage or may require the outage at another time. There are provisions in the protocols for a generator to refuse the ISO's rejection of a planned outage or a required outage and procedures for resolving any difference. Under the tariff, in the event a QF refuses an ISO request, it must provide written justification for its position. In the December 19 Order, the Commission noted that the Commission had stated that the Commission was not ordering QFs to make sales that were inconsistent with contractual obligations, whether the obligations were to thermal hosts or purchasing utilities. The Commission also stated that the June 19 Order "presents no conflict with delivery obligations either to utilities or thermal hosts." 97 FERC at 62,190. CAC/EPUC have not been explicit on how the outage coordination protocols will conflict with the QFs' contractual obligations. However, given a QF's opportunity to justify its position when its position is contrary to an ISO request, we believe the outage coordination protocols can be administered consistent with the QFs' contractual obligations to thermal hosts and utilities.

The Commission orders:

The requests for rehearing of the October 23 Order are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

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16 U.S.C. 2601, et seq. (1994).

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See December 19 Order, 97 FERC at 62,190.

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Magalie R. Salas,  
Secretary.