

99 FERC 61, 161  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Investigation of Wholesale Rates of Public

Docket No.  
EL01-68-  
010

Utility Sellers of Energy and Ancillary Services  
in the Western Systems Coordinating Council

ORDER DENYING REHEARING

(Issued May 15, 2002)

In this order, we deny rehearing of an order issued

1

December 19, 2001 (December 19 Order) in which the Commission required the California Independent System Operator (CA ISO) to recalculate the price mitigation for spot market transactions if the average of the three gas indices increased 10 percent from the level last used for calculating the mitigated price. This order benefits customers in the Western Systems Coordinating Council because it encourages competitive markets while helping to maintain a reliable power supply.

Background

In the December 19 Order, the Commission considered numerous possible modifications to the price mitigation methodology. The Commission chose to implement temporary measures to help the West through the winter season (until May 1, 2002). Because of the stability in the Western energy market in December 2001, more significant changes were not needed. In addition to requiring the CA ISO to recalculate the price for spot market transactions if the average of the three gas indices increased 10 percent from the last level used for calculating the mitigated price, the Commission chose to retain the 10 percent credit adder it had imposed for sales into California.

Comments

1

Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council, 97 FERC 61,294 (2001).

Docket No. EL01-68-010

- 2 -

The CA ISO; the California Public Utilities Commission (the California Commission); the California Electricity Oversight Board (CEOB); Reliant Energy Services, Inc. and Reliant Energy Power Generation, Inc. (collectively, Reliant); and jointly, Southern California Edison and Pacific Gas & Electric (SoCal

2

Edison/PG&E) filed timely requests for rehearing of the December 19 Order. Williams Energy Marketing and Trading Company (Williams) filed a motion for clarification, or alternatively, a request for rehearing. Midway Sunset Cogeneration Company (Midway) filed an untimely request for clarification and for declaratory order. Clark Public Utilities and Idacorp Energy L.P. filed motions to intervene out of time. Californians for Renewable Energy (CARE) submitted comments and a "notice of objection."

Several parties contend that the Commission should revoke the December 19 Order and reimplement the price methodology of San Diego Gas & Electric Co., et al., 95 FERC 61,418 (2001) (June 19 Order). The CA ISO and the CEOB argue that the Commission's temporary measures are unsupported and could lead to unjust and unreasonable prices. Reliant contends that the December 19 Order is "wholly arbitrary" and exhibits a lack of due consideration and reasoned decision-making concerning several proposals it offered to significantly change the West-wide mitigation methodology. The California Commission generally argues that the Commission acted in an arbitrary and capricious manner when it instituted the winter season changes to the mitigation methodology and when it failed to eliminate the 10 percent credit adder. SoCal Edison/PG&E generally state that the Commission failed to adequately explain and/or justify the need for the temporary modifications and that these modifications could be detrimental to the West-wide energy market.

Williams states that it need not seek rehearing of the December 19 Order to preserve its right of appellate review of related Commission orders issued on April 26, 2001 and June 19, 2001. However, Williams adds that, should it be required to file a request for rehearing to preserve its right of appellate review of these orders, it requests rehearing of the related December 19 Order. Williams incorporates by reference its July 19, 2001 Motion for Clarification of the June 19 Order and its August 17,

2

On February 6, 2002, El Paso Natural Gas Company and El Paso Merchant Energy, L.P. filed a letter in this proceeding in which these parties state that, while they take "no position" on the merits of the SoCal Edison/PG&E filing, the record needs to be made clear concerning a "flagrant misstatement of the record in the Docket No. RP00-241-000, et al. case, to which PG&E and Edison are also parties." Since this alleged misstatement of the

record is irrelevant to this proceeding, we need not address it in this order.

Docket No. EL01-68-010 - 3 -

2001 "Comments to the June 19 Order" to support its rehearing request.

Midway requests that the Commission clarify how a generator's must-offer obligation "would be affected by a derating of the generator's capacity due to ambient conditions." CARE states that it objects to "the characterization of these proceedings or any part thereof as 'procedural' rather than 'substantive' in nature."

#### Discussion

As an initial matter, we note that Idacorp Energy L.P. is already a party to this proceeding by virtue of its status as a

3

party in Docket No. EL00-95-000, et al. With regard to Clark Public Utilities motion for intervention, we note that when late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention. Clark Public Utilities has not met its burden of justifying late intervention.

We will also dismiss Midway's untimely request for clarification. Because Midway is not a party to this proceeding, Midway lacks standing to seek clarification of the Commission's

4

December 19 Order. Furthermore, since Midway did not submit the fee required in order to file a Petition for Declaratory Order, this portion of its filing is procedurally deficient. We also find that since the Commission never characterized this proceeding or any part of it as procedural rather than substantive in nature, CARE's objection is irrelevant to this proceeding.

Despite the protesters' concerns that our temporary mitigation measures would be detrimental to the West-wide energy market, since the issuance of the December 19 Order, the energy market in the West has continued to remain fairly stable. Weather conditions have contributed to more favorable hydroelectric reserves in the Northwest region as compared to 2001, and spot prices for electricity at the major non-California trading hubs (California Oregon Border, Mid-Columbia, Palo Verde) have been consistently below \$40/MWh and well below the current \$92/MWh mitigated price. In fact, since December 19, 2001, the

3

See San Diego Gas & Electric Company, et al., 97 FERC

61,275 at 62,179 and Appendix A (2001).

4

Furthermore, even if Midway was a party to this proceeding, its request for clarification concerning a generator's must-offer obligation is beyond the scope of this rehearing.

Docket No. EL01-68-010 - 4 -

winter season procedures for changing the price mitigation levels were not triggered, nor would the temporarily-superseded procedures have been triggered. This continued stability is what we hoped to achieve when we issued the December 19 Order.

As we explained in the December 19 Order, the Commission carefully considered all of the comments submitted in this proceeding and concluded at that time that it would be unwise to make major changes to the price mitigation measures. While the Commission valued the opportunity to review the various proposals seeking comprehensive changes to the price mitigation measures, such as those Reliant submitted, we very clearly stated that major changes during that time could disrupt the stability that had only been recently achieved in the California market. In order to maintain this stability and address specific winter season needs, the Commission chose to implement only minor changes rather than overhaul its price mitigation plan during the time that this plan was in effect. Moreover, as we clearly stated in the December 19 Order, the Commission considered the fact that suppliers were not being paid for services rendered and other creditworthiness problems when it required the retention of the 10 percent credit adder. For all of these reasons, we find no merit to the arguments that the December 19 Order demonstrates that the Commission acted in an arbitrary or capricious manner or that the December 19 Order reflects a lack of due consideration.

The Commission orders:

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

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

( S E A L )

Linwood A.

Watson, Jr.,

Deputy Secretary.

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Investigation of Wholesale Rates of Public  
Utility Sellers of Energy and Ancillary Services

Docket No.  
EL01-68-

010

in the Westerns Systems Coordinating Council

(Issued May 15, 2002)

MASSEY, Commissioner, dissenting:

I dissented from the December 19 Order, and today's order provides no reasoning to change my mind. I was not convinced that changes to our Western market mitigation program were necessary, and I was concerned that the temporary changes could lead to higher prices. In their rehearing pleadings, the California ISO, the California Electricity Oversight Board, Southern California Edison and PG&E raise similar issues. In response, the order says "no harm no foul" - - the market remained stable and neither the temporary nor the original procedures for changing the mitigated price were triggered. While that may be, the decision to modify our Western mitigation program was misguided. I would have granted rehearing.

For these reasons, I must respectfully dissent from this order.

William L. Massey  
Commissioner