

98 FERC - 61, 074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dynegy Power Marketing, Inc.,
Docket No. EL02-42-000
Mirant Americas Energy Marketing, LP,
Mirant California, LLC and
Williams Energy Marketing & Trading Company

v.

California Independent System
Operator Corporation

ORDER ON COMPLAINT

(Issued January 30, 2002)

On December 18, 2001, Dynegy Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Mirant California, LLC, and Williams Energy Marketing & Trading Company (collectively, Complainants) filed a complaint against the California Independent System Operator Corporation (CA-ISO), alleging that CA-ISO is acting unlawfully by implementing revisions to two operating procedures M-401 (revised M-401) and M-403 (revised M-403) (collectively, revised operating procedures), concerning real-time and forward intra-zonal congestion management and balancing energy ex post pricing (BEEP), respectively, without first seeking Commission authorization under section 205 of the Federal Power Act (FPA). The Complainants request, among other things, that the Commission order CA-ISO to revert to operation under the terms of the prior versions of the operating procedures until such time as it were to file and the Commission were to approve the proposed changes. For the reasons discussed below, we grant, in part and dismiss in part, the complaint and find that CA-ISO must file with the Commission, under section 205 of the FPA, any such revisions to its operating procedures, if it seeks to implement them.

This order benefits customers by ensuring that all revisions to CA-ISO's tariff provisions regarding operating procedures are filed with the Commission and, thereby, ensures a proper review process for determining the justness and reasonableness of such procedures.

Notice of Filing and Responsive Pleadings

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Notice of Complainants' complaint was published in the Federal Register, 66 Fed. Reg. 67,237 (2001), with interventions, comments, and protests due on or before January 7, 2002. Timely motions to intervene and comments were filed by the following: BP Energy Company; City and County of San Francisco; Cities of Redding, California, City of Santa Clara, California, and M-S-R Public Power Agency; Cogeneration Association of California; Duke Energy North America, LLC, and Duke Energy Trading and Marketing, LLC, (collectively, Duke); Independent Energy Producers Association (Independent Producers); Modesto Irrigation District (Modesto Irrigation); NEO California Power LLC; Public Utilities Commission of the State of California; Reliant Energy Power Generation, Inc. (Reliant); Southern California Edison Company; Transmission Agency of Northern California; and Turlock Irrigation District. A late motion to intervene was filed by Pacific Gas & Electric Company (PG&E), on January 8, 2002.

The Complaint

According to Complainants, CA-ISO has implemented revised M-
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 401 and M-403 without first seeking Commission approval even though these revised operating procedures substantially modify the rates, terms, and conditions in the CA-ISO tariff. Accordingly, the Complainants assert that the revised operating procedures cannot take effect until after such time as the Commission has first approved and made effective any appropriate tariff revisions. Complainants also request that the Commission direct CA-ISO to return to operating under the prior versions of the revised operating procedures until such time as the CA-ISO has filed and the Commission has approved the revised operating procedures.

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 CA-ISO revised M-401 as follows: (1) granting CA-ISO discretion to determine reasonable incremental and decremental bids; (2) defining a competitive market at times of intra-zonal congestion as existing when there are no less than three scheduling coordinators available in the area to resolve the congestion; (3) adding direction to use RMR units for incremental energy for intra-zonal congestion when the market is deemed by CA-ISO to be "non-competitive"; and (4) remedying expected intra-zonal congestion prior to the real-time market.

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 CA-ISO revised M-403 by altering the way it pays inter-tie bids for energy. Specifically, although CA-ISO will continue to pre-dispatch an inter-tie bid in merit order in the BEEP stack before the beginning of the operating hour, it will now ensure such a bid is dispatched throughout the entire operating hour (i.e., never reversed); thus, the bid will be paid the instructed energy price for all ten-minute intervals in that hour.

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In particular, Dynegy states that the Commission has previously rejected CA-ISO's use of its out-of-market (OOM) authority to direct the redispatch of generating units to manage intra-zonal congestion if CA-ISO determines that the bids that are submitted will not be the result of a competitive market

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outcome. Nevertheless, according to Complainants, in revised M-401, CA-ISO returns to this "proposition." Additionally, Complainants argue that CA-ISO's proposal, regarding the use of RMR units for intra-zonal congestion relief when the market is "non-competitive," under section 4.1(b) of the RMR agreement, is prohibited by prior Commission rulings (i.e., CA-ISO is prohibited from skipping market bids when it determines a situation to be non-competitive).

Complainants further state that section 2.5 of revised M-401 changes the relationship between CA-ISO and the market participants, because it authorizes the CA-ISO to determine whether a decremental or incremental bid is reasonable and defines what CA-ISO deems to be a reasonable bid, as bids at or slightly below the resource's variable cost (proxy bids). According to Complainants, CA-ISO does not have authority to do this under its tariff, because the term "reasonable bids" is absent from the CA-ISO tariff and there is no basis for linking decremental bids to a resource's variable cost proxy bid. Complainants also state that in section 5 of revised M-401, CA-ISO seeks to remedy expected intra-zonal congestion prior to the real-time market; however, the CA-ISO tariff, as currently implemented, only authorizes the CA-ISO to manage intra-zonal congestion in real time.

Complainants state that CA-ISO, in revised M-403, creates a new procedure for external resources (i.e., resources outside the CA-ISO control area) that, essentially, creates a new 60-minute market. Complainants assert that CA-ISO informed market participants that this change was a minor modification that was necessary due to the discontinuance of the flow of non-public, preferential information from CA-ISO to California Department of Water Resources (DWR). Complainants also argue that these new procedures for inter-tie resources cannot be reconciled with the CA-ISO tariff or dispatch protocol, because, under revised M-403, CA-ISO will be able to discriminate against in-state generating units by favoring inter-tie schedules solely based on location.

Complainants, in addition, state that CA-ISO is excluding external resources from setting the market clearing price; however, Complainants argue that the Commission only prohibits such resources from setting a new mitigated price cap during a stage one emergency, which has not occurred in the control area

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See California Independent System Operator Corporation, 90 FERC - 61,006 (2000).

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since May 2001. Accordingly, Complainants request that the Commission direct CA-ISO to revise all market clearing prices since June 19, 2001 that were influenced by CA-ISO's exclusion of such bids. Complainants also urge the Commission to initiate, on an expedited basis, a technical conference to establish an hourly market in which all market participants can participate on a non-discriminatory basis. Finally, Complainants request that CA-ISO re-run any market settlement statements that were affected by implementation of the revised operating procedures.

Interventions

Duke, Reliant, Independent Producers, and Modesto Irrigation filed comments in support of Dynegy's complaint, arguing that the complaint demonstrates that the revised operating procedures substantially and prejudicially affect the rates, terms, and conditions the Commission has approved in the CA-ISO tariff. Duke and Reliant also maintain that the revisions to BEEP procedures, in revised M-403, fundamentally and discriminatorily alter the terms according to which resources located outside the CA-ISO control area may participate in the California wholesale electricity market by barring them from setting the market clearing price and permitting them to be dispatched for one-hour periods, regardless of whether lower bids are available for any intervening intervals through the BEEP stack. Independent Producers and Reliant request that the Commission initiate a technical conference on the merits of a non-discriminatory hourly forward market for energy. Modesto Irrigation urges the Commission to carefully consider whether there exists substantial evidence showing that a 60-minute market will benefit the CA-ISO markets before directing the initiation of a technical conference. In addition, on January 25, 2001, Complainants' filed an answer to CA-ISO's answer to the complaint.

CA-ISO's Answer

With respect to revised M-401, CA-ISO acknowledges that it included certain language that may have given the impression that CA-ISO determines what is and what is not a reasonable and/or competitive bid. Therefore, CA-ISO states that it has modified M-401, in response to the complaint, to clarify that CA-ISO does not make a determination regarding the competitiveness or reasonableness of any bid. Furthermore, CA-ISO states that to the extent that in the future CA-ISO may propose modifications to M-401, the CA-ISO will provide public notice and, if appropriate, submit a filing with the Commission seeking tariff revisions.

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Regarding its proposed modifications to M-403, CA-ISO states
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 that the Commission's November 7 Order and November 20, Order required it, among other things, to halt preferential reliance on the DWR for procurement of generation to meet system demands in the CA-ISO control area. According to CA-ISO, in the November 20 Order, the Commission also stated that CA-ISO was the only entity authorized under the CA-ISO tariff to engage in OOM

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transactions. Thus, according to CA-ISO, to provide an additional incentive for out-of-state resources to participate in the CA-ISO imbalance energy market, CA-ISO revised M-403 to provide clarification as to how it would dispatch such units given the limitations on inter-control area scheduling protocols. CA-ISO states that these modifications are minor, specific to long-standing requirements of inter-control area scheduling practices and consistent with the CA-ISO tariff. CA-ISO acknowledges that this is a change from its earlier position; however, CA-ISO believes that the change is warranted by current circumstances and by the limitation that these out-of-state resources will not set the market clearing price. Moreover, CA-ISO states that it is not in violation of the CA-ISO tariff, because CA-ISO has broad authority under its tariff to exercise "good utility practices" to ensure, among other things, that CA-ISO can meet dispatch protocol objectives.

CA-ISO also maintains that the complaint is without foundation in its assertion that CA-ISO is improperly excluding external resources from setting the market clearing price; however, CA-ISO asserts that this issue is now mooted by the

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Commission's December 19 Order, which reaffirms that out-of-state generators will be treated like in state

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generators. CA-ISO also states that it will propose, in its compliance filing on January 18, 2002, the terms for such a provision.

Discussion

A. Procedural Matters

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See California Independent System Operator Corporation, , 97 FERC - 61,151 (2001) (November 7 Order).

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See Reliant Energy Power Generation, Inc., et al., 97 FERC - 61,215 (2001) (November 20 Order).

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See id.

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See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, 97 FERC - 61,293 at 62,368 (2001) (December 19 Order).

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See id.

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Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214 (2001), the timely, unopposed motions to intervene and the California Commission's notice of intervention serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding, PG&E's interest in the proceeding, and the absence of undue delay or prejudice, we find good cause to grant PG&E's late intervention. Rule 213(a)(2) of the Commission's Rules of

Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2001), generally prohibits an answer to an answer. We are not persuaded to allow Complainants' proposed answer; accordingly, we reject it.

B. The Complaint

M-401

The issues raised by the complaint regarding revised M-401 are partially mooted, because CA-ISO has revised operating procedure M-401 (consistent with the complaint) to make clear, among other things, that CA-ISO does not make a determination regarding the competitiveness or reasonableness of any bid and as to whether that bid is in conformance with the Commission's market power mitigation program. Thus, the part of the Complaint that addresses this issue is dismissed as moot.

With respect to the other provisions of M-401, which CA-ISO has revised pursuant to its market notice, that modified CA-ISO's operating procedures (i.e., by defining a competitive market at times of intra-zonal congestion as existing when there are no less than three scheduling coordinators available in the area to resolve congestion and adding the use of RMR units for incremental energy for intra-zonal congestion when the CA-ISO deems the market to be non-competitive), we find that these modifications are significant and require a timely filing by CA-ISO, pursuant to section 205 of the FPA, before they can become effective. Therefore, the relief requested by the Complainants regarding this provision is granted.

M-403

We also find that CA-ISO's revised M-403, regarding BEEP, is a significant tariff modification that must be filed with the Commission under section 205 of the FPA before it can be implemented. Therefore, if CA-ISO wants authorization for its revised operating procedures, it must make a filing under section 205 of the FPA.

CA-ISO states in its answer that the modifications to M-403 are minor and are consistent with the CA-ISO tariff. We disagree; the nature and scope of the market revision CA-ISO has undertaken, in revised M-403, is not minor or ministerial.

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Instead, CA-ISO has through the implementation of M-403 made revisions to its market operations that result in the settlement of billing issues and, therefore, affect the rates under the CA-ISO tariff. This goes well beyond simply add[ing] details or procedures necessary to implement tariff provisions, which the Commission has recognized do not need to be filed with

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Commission. Although we agree with CA-ISO that it possesses authority under the section of its tariff regarding "good utility practices" to ensure that it can meet dispatch objectives, we find that this authority does not extend to making revisions to

its tariff when the revisions, such as those to M-403, have an impact on rates. Accordingly, if CA-ISO wants authorization for its revised operating procedures, it must make a filing under section 205 of the FPA.

Other Matters

With respect to the Complainants' argument that CA-ISO is improperly excluding external resources from setting the market clearing price, we note that our December 19 Order¹⁰ addresses this issue.

The Commission orders:

The Complaint is hereby granted, in part and dismissed in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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Pacific Gas and Elec. Co., et al., 81 FERC - 61,320 at 62,471 (1997) (rejecting CA-ISO's proposed treatment of its protocols as operating procedures and directing CA-ISO to file them with the Commission for approval).

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The December 19 Order states that "out-of-state generators will be treated like in state generators." 97 FERC at 62,368.